The Meaning and Significance in International Law of Non-Inter(ference/vention)

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ABSTRACT

The purpose of this study is to provide an orthodox answer to the question: 'what is the meaning and significance in international law of the principle of non-inter(ference/vention)?' The study breaks that question down into the following more specific questions: what is the difference, if any, between interference and intervention? What defines a prohibited inter(ference/vention)? Is the principle binding? To whom or what does it apply? What is the 'purpose' or 'end' associated with the principle? What other principles is it associated with?

The study's response to those questions is divided into seven chapters, two of which are the Introduction (Chapter I) and Conclusion (Chapter VII). The five remaining chapters each focus on a separate source of knowledge of international law: treaties (Chapter II), custom (Chapter III), 'general principles of law recognized by civilized nations' (Chapter IV), decisions of the ICJ (Chapter V), and teachings of the most qualified publicists of the UKGBNI (Chapter VI). Each chapter is structured by nine parts: an introduction which situates the chapter within the literature (Parts 1); an account of the materials studied (Parts 2); an account of the methods used for studying those materials (Parts 3); three specific findings from the application of that method to those materials in relation to the thesis questions (Parts 4, 5, and 6, being each chapter's most substantive parts); a case-study with regards to the UKGBNI (Parts 7); an evaluation of the study conducted in each chapter (Parts 8), and finally the conclusions that can be drawn from the chapter regarding the thesis question (Parts 9).

The study concludes that two false premises have been prevalent in the literature with which it engaged: the first is that there is a difference in law between interference and intervention; the second is that coercion defines what is prohibited by the principle. Instead, the study shows that there presently appears no possible distinction between interference and intervention, and that the principle is better understood in terms of consent than coercion. In addition, the study concludes that the principle (and the principles with which it is inherently associated in international law) is significantly more important for the rule of law, peace, co-operation, and human rights than is currently presented in the literature.

CONTENTS

ABBREVIATIONS

Abbreviations marked below with an asterisk are my own.

AU — African Union

CFREU — Charter of Fundamental Rights of the European Union

ECHR — European Convention on Human Rights

CIA — Central Intelligence Agency

CJEU — Court of Justice of the European Union

DPRK — Democratic People's Republic of Korea

EU — European Union

FO — Foreign Office

FCO — Foreign and Commonwealth Office

FCO(D) — Foreign, Commonwealth, and Development Office

FRD — Declaration on Principles of International Law Concerning Friendly Relations and Cooperation in Accordance with the Charter of the United Nations ('Friendly Relations Declaration')

GCHQ — Government Communications Headquarters

*GPOLRBCN — General Principles Of Law Recognized By Civilized Nations

HMG — Her Majesty's Government

ICJ — International Court of Justice

ILC — International Law Commission

*Inter(O) — Intercourse that does not violate the principle of non-inter(ference/vention)

*Inter(X) — Intercourse that violates the principle of non-inter(ference/vention)

NATO — North Atlantic Treaty Organisation

*PONI — Principle Of Non-Inter(ference/vention)

PRC — People's Republic of China

ROK — Republic of Korea

SAR — Syrian Arab Republic

SCO — Shanghai Cooperation Organisation

TEU — Treaty of the European Union

UDHR — Universal Declaration of Human Rights

UKGBNI — United Kingdom of Great Britain and Northern Ireland

UN — United Nations

UNGA — United Nations General Assembly

UNSC — United Nations Security Council

USA — United States of America

USSR — Union of Soviet Socialist Republics

VCCR — Vienna Convention on Consular Relations

VCDR — Vienna Convention on Diplomatic Relations

VCLT — Vienna Convention on the Law of Treaties

WEOG — Western Europe and Other Group

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Ambatielos case (merits: obligation to arbitrate) (Judgment) [1953] ICJ Rep 10

Anglo-Iranian Oil Co. (United Kingdom v. Iran) (Judgment) [1952] ICJ Rep 93

Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations (Advisory Opinion) [1989] ICJ Rep 177

Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal (Advisory Opinion) [1973] ICJ Rep 166

Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal (Advisory Opinion) [1982] ICJ Rep 325

Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda) (Judgment) [2005] ICJ Rep 168

Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (Judgment) [1970]

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Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania) (Judgment) [1949] ICJ Rep 4

International Status of South West Africa (Advisory Opinion) [1950] ICJ Rep 128

Interpretation of Peace Treaties (Advisory Opinion) [1950] ICJ Rep 65

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion) [1971] ICJ Rep 16

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136

Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion) [2019] ICJ Rep 95

Military and Paramilitary Activities In And Against Nicaragua (Nicaragua v. United States of America) (Judgment) [1986] ICJ Rep 14

North Sea Continental Shelf (Federal Republic of Germany/Netherlands) (Judgment) [1969] ICJ Rep 3

Nottebohm Case (second phase) (Judgment) [1955] ICJ Rep 4

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C-476/11 *HK Danmark v Experian* [2013] OJ C344/18

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NOTE: Treaties subject to quantitative analysis in Chapter II are prefixed here with a number in square brackets to ease their reference in that Chapter. To view a treaty online in English, French, or Other (if available), replace the word preceding ".pdf" in the hyperlinks provided.

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Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI

Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3

[1] Agreement concerning the establishment of an International Scientific and Technological Information Centre (adopted 27 February 1969, entered into force 03 April 1970) 789 UNTS 245 <https://treaties.un.org/doc/Publication/UNTS/Volume 789/volume-789-I-11230-English.pdf> accessed 24 September 2019

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

[2] Convention to prevent and punish the acts of terrorism taking the form of crimes against persons and related extortion that are of international significance (adopted 02 February 1971, entered into force from 16 October 1973) 1438 UNTS 191 <https://treaties.un.org/doc/Publication/UNTS/Volume%201438/volume-1438-A-24381-French.pdf> accessed 24 September 2019

[3] Agreement on the establishment of the "Intersputnik" international system and Organization of Space Communications (adopted 15 November 1971, entered into force 12 July 1972) 862 UNTS 3 <https://treaties.un.org/doc/Publication/UNTS/Volume 862/volume-862-I-12343-English.pdf> accessed 24 September 2019

[4] Charter of the Islamic Conference (adopted 04 March 1972, entered into force 28 February 1973) 914 UNTS 103 <https://treaties.un.org/doc/Publication/UNTS/Volume 914/volume-914-I-13039-English.pdf> accessed 24 September 2019

[5] Panama Convention establishing the Latin American Economic System (SELA) (with resolution) (adopted 17 October 1975, entered into force 07 June 1976) 1292 UNTS 309 <https://treaties.un.org/doc/Publication/UNTS/Volume%201292/volume-1292-I-21295-English.pdf> accessed 24 September 2019

[6] Agreement instituting the Latin American Organization for Fisheries Development (OLDEPESCA) (with amendments of 2 November 1984) (adopted 29 October 1982, entered into force 02 November 1984) 1427 UNTS 115 <https://treaties.un.org/doc/Publication/UNTS/Volume%201427/volume-1427-I-24116-English.pdf> accessed 24 September 2019

[7] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (with annex) (adopted 20 December 1988, entered into force 11 November 1990) 1582 UNTS 95 <https://treaties.un.org/doc/Publication/UNTS/Volume%201582/volume-1582-A-27627-French.pdf > accessed 24 September 2019

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Constitutive Act of the African Union (adopted 7 November 2000, entered into force 26 May 2001 <https://au.int/en/treaties/constitutive-act-african-union> accessed 13 March 2021

[9] AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIET-NAM (Cambodia-Democratic Republic of Viet-Nam-France-Laos-People's Republic of China-State of Viet-Nam-Union of Soviet Socialist Republics-United Kingdom of Great Britain and Northern Ireland-

United States of America) (adopted 27 January 1973, entered into force 27 January 1973) 935 UNTS 2 <https://treaties.un.org/doc/Publication/UNTS/Volume 935/volume-935-I-13295-English.pdf> accessed 24 September 2019

[10] Treaty of Friendship, Co-operation and Mutual Assistance (Albania-Bulgaria-Hungary-German Democratic Republic-Poland-Romania-Union of Soviet Socialist Republics-Czechoslovakia) (adopted 14 May 1955, entered into force 06 June 1955) 219 UNTS 3 <https://treaties.un.org/doc/Publication/UNTS/Volume 219/volume-219-I-2962-English.pdf> accessed 24 September 2019

[11] Charter of the Council for Mutual Economic Assistance (Union of Soviet Socialist Republics-Albania-Bulgaria-Hungary-German Democratic Republic-Poland-Romania-Czechoslovakia) (adopted 14 December 1959, entered into force 13 April 1960) 368 UNTS 253 <https://treaties.un.org/doc/Publication/UNTS/Volume 368/volume-368-I-5245-English.pdf> accessed 24 September 2019

[12] Declaration on the Neutrality of Laos (Union of Burma-Kingdom of Cambodia-Canada-People's Republic of China-Democratic Republic of Viet-Nam-Republic of France-Republic of India-Polish People's Republic-Republic of Viet-Nam-Kingdom of Thailand-Union of Soviet Socialist Republics-United Kingdom of Great Britain and Northern Ireland-United States of America) (adopted 23 July 1962, entered into force 14 March 1963) 456 UNTS 301 <https://treaties.un.org/doc/Publication/UNTS/Volume 456/volume-456-I-6564-French.pdf> accessed 24 September 2019

[13] Charter of the Organization of African Unity (Algeria-Burundi-Cameroon-Central African Republic-Chad-Congo (Brazzaville)-Congo (Leopoldville)-Dahomey-Ethiopia-Gabon-Ghana-Guinea-Ivory Coast-Liberia-Libya-Madagascar-Mali-Mauritania-Morocco-Niger-Nigeria-Rwanda-Senegal-Sierra Leone-Somalia-Sudan-Tanganyika-Tunisia-Uganda-United Arab Republic-Upper Volta) (adopted 25 May 1963, entered into force 13 September 1963) 479 UNTS 39 <https://treaties.un.org/doc/Publication/UNTS/Volume 479/volume-479-I-6947-English.pdf> accessed 24 September 2019

[14] Agreement on the establishment and operation of the Central-American Defence Council (Guatemala-Honduras-Nicaragua) (adopted 14 December 1963, entered into force 18 May 1964) 507 UNTS 149 <https://treaties.un.org/doc/Publication/UNTS/Volume 507/volume-507-I-7399-French.pdf> accessed 24 September 2019

[15] Agreement on co-operation with regard to maritime merchant shipping (Bulgaria-Czechoslovakia-German Democratic Republic-Hungary-Poland-Romania-Union of Soviet Socialist Republics) (adopted 03 December 1971, entered into force 17 June 1973) 936 UNTS 19 <https://treaties.un.org/doc/Publication/UNTS/Volume 936/volume-936-I-13304-French.pdf> accessed 24 September 2019

[16] Charter of Conduct (Colombia-Ecuador-Venezuela-Peru) (adopted 11 September 1980, entered into force 11 September 1980) 1301 UNTS 263 <https://treaties.un.org/doc/Publication/UNTS/Volume%201301/volume-1301-I-21611-English.pdf> accessed 24 September 2019

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[17] Treaty of Friendship, Mutual Assistance and Post-war Co-operation (Poland-Union of Soviet Socialist Republics) (adopted 21 April 1945, entered into force 21 April 1945) 12 UNTS 391 <https://treaties.un.org/doc/Publication/UNTS/Volume 12/volume-12-II-70-English.pdf> accessed 24 September 2019

[18] Pact of Amity (with annex) (Nicaragua-Costa Rica) (adopted 21 February 1949, entered into force 15 July 1949) 1465 UNTS 217 <https://treaties.un.org/doc/Publication/UNTS/Volume %201465/volume-1465-I-24843-English.pdf> accessed 24 September 2019

[19] Treaty of Friendship and Co-operation (Hungary-Indonesia) (adopted 23 August 1951, entered into force 02 November 1962) 519 UNTS 163 <https://treaties.un.org/doc/Publication/UNTS/Volume 519/volume-519-I-7507-English.pdf> accessed 24 September 2019

[20] Agreement concerning scientific and cultural co-operation (Union of Soviet Socialist Republics-Hungary) (adopted 28 June 1956, entered into force 28 June 1956) 259 UNTS 405 <https://treaties.un.org/doc/Publication/UNTS/Volume 259/volume-259-I-3700-English.pdf> accessed 24 September 2019

[21] Treaty of Friendship and Co-operation (Czechoslovakia-Mongolia) (adopted 08 April 1957, entered into force 1 August 1957) 501 UNTS 171 <https://treaties.un.org/doc/Publication/UNTS/Volume 501/volume-501-I-7317-English.pdf> accessed 24 September 2019

[22] Treaty of Friendship and Co-operation (Mongolia-German Democratic Republic) (adopted 22 August 1957, entered into force 05 March 1958) 521 UNTS 351 <https://treaties.un.org/doc/Publication/UNTS/Volume 521/volume-521-I-7530-English.pdf> accessed 24 September 2019

[23] Agreement on economic and technical co-operation (with annexed schedule) (Union of Soviet Socialist Republics-Ceylon) (adopted 25 February 1958, entered into force 16 May 1958) 721 UNTS 141 <https://treaties.un.org/doc/Publication/UNTS/Volume 721/volume-721-I-10361-English.pdf> accessed 24 September 2019

[24] Exchange of notes constituting an agreement concerning operation of a television station at Seranton, Pennsylvania (Canada-United States of America) (adopted 07 January 1959, entered into force 07 January 1959) 391 UNTS 207 <https://treaties.un.org/doc/Publication/UNTS/Volume 391/volume-391-I-5624-English.pdf> accessed 24 September 2019

[25] Agreement on economic and technical co-operation (with annexes) (Union of Soviet Socialist Republics-Iraq) (adopted 16 March 1959, entered into force 16 April 1959) 346 UNTS 107 <https://treaties.un.org/doc/Publication/UNTS/Volume 346/volume-346-I-4979-French.pdf> accessed 24 September 2019

[26] Agreement on economic and technical cooperation (Union of Soviet Socialist Republics-Republic of Iraq) (adopted 16 March 1959, entered into force 09 January 1961) 399 UNTS 287 <https://treaties.un.org/doc/Publication/UNTS/Volume 399/volume-399-I-4979-Other.pdf> accessed 24 September 2019

[27] Agreement between Canada and Italy for air services between and beyond their respective territories (Canada-Italy) (adopted 02 February 1960, entered into force 13 April 1962) 866 UNTS 265 <https://treaties.un.org/doc/Publication/UNTS/Volume 866/volume-866-I-12436-Other.pdf> accessed 24 September 2019

[28] Cultural Agreement (Union of Soviet Socialist Republics-Italy) (adopted 09 February 1960, entered into force 10 April 1961) 399 UNTS 75 <https://treaties.un.org/doc/Publication/UNTS/Volume 399/volume-399-I-5735-English.pdf> accessed 24 September 2019

[29] Second General Agreement on economic and technical co-operation (Union of Soviet Socialist Republics-Indonesia) (adopted 28 February 1960, entered into force 01 July 1960) 392

UNTS 173 <https://treaties.un.org/doc/Publication/UNTS/Volume 392/volume-392-I-5643-French.pdf> accessed 24 September 2019

[30] Agreement concerning cultural co-operation (Union of Soviet Socialist Republics-Indonesia) (adopted 28 February 1960, entered into force 23 June 1960) 392 UNTS 191 <https://treaties.un.org/doc/Publication/UNTS/Volume 392/volume-392-I-5644-English.pdf> accessed 24 September 2019

[31] Agreement for economic and technical co-operation (Union of Soviet Socialist Republics-Ghana) (adopted 04 August 1960, entered into force 23 December 1960) 399 UNTS 61 <https://treaties.un.org/doc/Publication/UNTS/Volume 399/volume-399-I-5734-English.pdf> accessed 24 September 2019

[32] Agreement concerning the provision by the Union of Soviet Socialist Republics of economic and technical assistance to the United Arab Republic in completing the construction of the Aswan High Dam up to the final stage (Union of Soviet Socialist Republics-United Arab Republic) (adopted 27 August 1960, entered into force 02 March 1961) 399 UNTS 37 <https://treaties.un.org/doc/Publication/UNTS/Volume 399/volume-399-I-5733-French.pdf> accessed 24 September 2019

[33] Treaty of Friendship and Co-operation (Czechoslovakia-Cambodia) (adopted 27 November 1960, entered into force 02 May 1961) 412 UNTS 179 <https://treaties.un.org/doc/Publication/UNTS/Volume 412/volume-412-I-5931-English.pdf> accessed 24 September 2019

[34] Cultural Agreement (Union of Soviet Socialist Republics-Cuba) (adopted 12 December 1960, entered into force 25 August 1961) 421 UNTS 3 <https://treaties.un.org/doc/Publication/UNTS/Volume 421/volume-421-I-6048-English.pdf> accessed 24 September 2019

[35] Agreement on cultural co-operation (Union of Soviet Socialist Republics-Ethiopia) (adopted 13 January 1961, entered into force 08 December 1961) 421 UNTS 13 <https://treaties.un.org/doc/Publication/UNTS/Volume 421/volume-421-I-6049-English.pdf> accessed 24 September 2019

[36] Treaty of Friendship and Co-operation (Czechoslovakia-Indonesia) (adopted 29 May 1961, entered into force 10 January 1963) 479 UNTS 337

<https://treaties.un.org/doc/Publication/UNTS/Volume 479/volume-479-I-6962-English.pdf> accessed 24 September 2019

[37] Agreement on economic and technical co-operation (Union of Soviet Socialist Republics-Somalia) (adopted 02 June 1961, entered into force 10 February 1962) 457 UNTS 263 <https://treaties.un.org/doc/Publication/UNTS/Volume 457/volume-457-I-6587-French.pdf> accessed 24 September 2019

[38] Agreement on cultural co-operation (Union of Soviet Socialist Republics-Somalia) (adopted 02 June 1961, entered into force 13 September 1962) 528 UNTS 147 <https://treaties.un.org/doc/Publication/UNTS/Volume 528/volume-528-I-7638-English.pdf> accessed 24 September 2019

[39] Treaty of friendship, co-operation and mutual assistance (Union of Soviet Socialist Republics-Democratic People's Republic of Korea) (adopted 06 July 1961, entered into force 10 September 1961) 420 UNTS 145 <https://treaties.un.org/doc/Publication/UNTS/Volume 420/volume-420-I-6045-English.pdf> accessed 24 September 2019

[40] Agreement on Economic and Technical Co-operation (with annex) (Union of Soviet Socialist Republics-Tunisia) (adopted 30 August 1961, entered into force 16 February 1962) 437 UNTS 243 <https://treaties.un.org/doc/Publication/UNTS/Volume 437/volume-437-I-6310-English.pdf> accessed 24 September 2019

[41] Agreement concerning cultural co-operation (Union of Soviet Socialist Republics-Syrian Arab Republic) (adopted 19 August 1962, entered into force 09 January 1963) 457 UNTS 285 <https://treaties.un.org/doc/Publication/UNTS/Volume 457/volume-457-I-6588-English.pdf> accessed 24 September 2019

[42] Exchange of notes (with Memorandum of Understanding dated 31 May 1962) constituting an agreement relating to a space science research program (United States of America-Italy) (adopted 05 September 1962, entered into force 05 September 1962) 461 UNTS 185 <https://treaties.un.org/doc/Publication/UNTS/Volume 461/volume-461-I-6663-English.pdf> accessed 24 September 2019

[43] Agreement on cultural co-operation (Union of Soviet Socialist Republics-Denmark) (adopted 11 September 1962, entered into force 25 February 1963) 458 UNTS 3 <https://treaties.un.org/doc/Publication/UNTS/Volume 458/volume-458-I-6589-English.pdf> accessed 24 September 2019

[44] Agreement on cultural and scientific co-operation (Union of Soviet Socialist Republics-Dahomey) (adopted 20 March 1963, entered into force 17 July 1964) 528 UNTS 181 <https://treaties.un.org/doc/Publication/UNTS/Volume 528/volume-528-I-7641-English.pdf> accessed 24 September 2019

[45] Agreement on cultural co-operation (Tunisia-Czechoslovakia) (adopted 06 April 1963, entered into force 5 July 1964) 555 UNTS 111 <https://treaties.un.org/doc/Publication/UNTS/Volume 555/volume-555-I-8106-English.pdf> accessed 24 September 2019

[46] Agreement for cultural co-operation (United Kingdom of Great Britain and Northern Ireland-Cameroon) (adopted 20 August 1963, entered into force 15 July 1964) 539 UNTS 233 <https://treaties.un.org/doc/Publication/UNTS/Volume 539/volume-539-I-7834-English.pdf> accessed 24 September 2019

[47] Agreement on cultural and scientific co-operation (Romania-Mali) (adopted 26 September 1963, entered into force 21 August 1964) 528 UNTS 193 <https://treaties.un.org/doc/Publication/UNTS/Volume 528/volume-528-I-7642-English.pdf> accessed 24 September 2019

[48] Agreement on cultural co-operation (Poland-Ghana) (adopted 17 January 1964, entered into force 18 October 1965) 572 UNTS 209 <https://treaties.un.org/doc/Publication/UNTS/Volume 572/volume-572-I-8314-English.pdf> accessed 24 September 2019

[49] Treaty of friendship and co-operation (Czechoslovakia-Yemen) (adopted 02 April 1964, entered into force 27 September 1966) 708 UNTS 177 <https://treaties.un.org/doc/Publication/UNTS/Volume 708/volume-708-I-10172-English.pdf> accessed 24 September 2019

[50] Treaty of friendship and co-operation (Bulgaria-Yemen) (adopted 08 April 1964, entered into force 13 October 1964) 716 UNTS 103 <https://treaties.un.org/doc/Publication/UNTS/Volume 716/volume-716-I-10292-English.pdf> accessed 24 September 2019

[51] Cultural Agreement (Bulgaria-Yemen) (adopted 08 April 1964, entered into force 08 April 1964) 716 UNTS 117 <https://treaties.un.org/doc/Publication/UNTS/Volume 716/volume-716-I-10293-English.pdf> accessed 24 September 2019

[52] Agreement on cultural co-operation (Czechoslovakia-Algeria) (adopted 14 May 1964, entered into force 15 September 1964) 538 UNTS 301 <https://treaties.un.org/doc/Publication/UNTS/Volume 538/volume-538-I-7817-English.pdf> accessed 24 September 2019

[53] Treaty of Friendship and Co-operation (Hungary-Yemen) (adopted 30 May 1964, entered into force 20 October 1964) 577 UNTS 39 <https://treaties.un.org/doc/Publication/UNTS/Volume 577/volume-577-I-8371-French.pdf> accessed 24 September 2019

[54] Treaty of Friendship, Mutual Assistance and Co-operation (Union of Soviet Socialist Republics-German Democratic Republic) (adopted 12 June 1964, entered into force 29 September 1964) 553 UNTS 259 <https://treaties.un.org/doc/Publication/UNTS/Volume 553/volume-553-I-8093-English.pdf> accessed 24 September 2019

[55] Cultural Agreement (France-Romania) (adopted 11 January 1965, entered into force 11 January 1965) 733 UNTS 195 <https://treaties.un.org/doc/Publication/UNTS/Volume 733/volume-733-I-10528-English.pdf> accessed 24 September 2019

[56] Treaty of Friendship, Co-operation and Mutual Assistance (Poland-Union of Soviet Socialist Republics) (adopted 08 April 1965, entered into force 21 April 1965) 540 UNTS 97 <https://treaties.un.org/doc/Publication/UNTS/Volume 540/volume-540-I-7845-English.pdf> accessed 24 September 2019

[57] Agreement concerning cultural co-operation (Romania-People's Republic of China) (adopted 27 May 1965, entered into force 13 August 1965) 592 UNTS 3 <https://treaties.un.org/doc/Publication/UNTS/Volume 592/volume-592-I-8566-English.pdf> accessed 24 September 2019

[58] Agreement on cultural and scientific co-operation (Union of Soviet Socialist Republics-Uganda) (adopted 24 July 1965, entered into force 11 January 1967) 596 UNTS 199 <https://treaties.un.org/doc/Publication/UNTS/Volume 596/volume-596-I-8633-English.pdf> accessed 24 September 2019

[59] Treaty of Friendship and Co-operation (Hungary-Mongolia) (adopted 02 October 1965, entered into force 01 December 1965) 587 UNTS 35 <https://treaties.un.org/doc/Publication/UNTS/Volume 587/volume-587-I-8508-English.pdf> accessed 24 September 2019

[60] Agreement concerning scientific and technical co-operation (Bulgaria-Syria) (adopted 08 November 1965, entered into force 29 December 1966) 695 UNTS 189 <https://treaties.un.org/doc/Publication/UNTS/Volume 695/volume-695-I-9959-English.pdf> accessed 24 September 2019

[61] Agreement for co-operation in the field of tourism (Bulgaria-United Arab Republic) (adopted 17 November 1965, entered into force 25 July 1966) 695 UNTS 195 <https://treaties.un.org/doc/Publication/UNTS/Volume 695/volume-695-I-9960-English.pdf> accessed 24 September 2019

[62] Tashkent Declaration (India-Pakistan) (adopted 10 January 1966, entered into force 10 January 1966) 560 UNTS 39 <https://treaties.un.org/doc/Publication/UNTS/Volume 560/volume-560-I-8166-English.pdf> accessed 24 September 2019

[63] Agreement on co-operation in the construction of industrial and other projects in Iran and the granting of a loan for this purpose (with annex) (Union of Soviet Socialist Republics-Iran) (adopted 13 January 1966, entered into force 13 January 1966) 633 UNTS 123 <https://treaties.un.org/doc/Publication/UNTS/Volume 633/volume-633-I-9037-English.pdf> accessed 24 September 2019

[64] Agreement on cultural co-operation (Romania-Tunisia) (adopted 21 April 1966, entered into force 08 September 1966) 604 UNTS 57 <https://treaties.un.org/doc/Publication/UNTS/Volume 604/volume-604-I-8743-English.pdf> accessed 24 September 2019

[65] Agreement on scientific and technical co-operation (Romania-Tunisia) (adopted 21 April 1966, entered into force 17 February 1967) 604 UNTS 65 <https://treaties.un.org/doc/Publication/UNTS/Volume 604/volume-604-I-8744-English.pdf> accessed 24 September 2019

[66] Agreement on cultural and scientific co-operation (Union of Soviet Socialist Republics-Rwanda) (adopted 06 May 1966, entered into force 23 March 1967) 633 UNTS 217 <https://treaties.un.org/doc/Publication/UNTS/Volume 633/volume-633-I-9039-English.pdf> accessed 24 September 2019

[67] Agreement concerning co-operation in the field of tourism (with annex) (Bulgaria-Syria) (adopted 12 June 1966, entered into force 29 December 1968) 695 UNTS 201

<https://treaties.un.org/doc/Publication/UNTS/Volume 695/volume-695-I-9961-French.pdf> accessed 24 September 2019

[68] Agreement on cultural relations (Union of Soviet Socialist Republics-Iran) (adopted 22 August 1966, entered into force 31 March 1968) 643 UNTS 203 <https://treaties.un.org/doc/Publication/UNTS/Volume 643/volume-643-I-9192-French.pdf> accessed 24 September 2019

[69] Agreement on co-operation in the field of radio and television (Union of Soviet Socialist Republics-Morocco) (adopted 27 October 1966, entered into force 27 October 1966) 608 UNTS 207 <https://treaties.un.org/doc/Publication/UNTS/Volume 608/volume-608-I-8817-English.pdf> accessed 24 September 2019

[70] Agreement on cultural co-operation (Czechoslovakia-Republic of Congo) (adopted 29 November 1966, entered into force 29 November 1966) 635 UNTS 3 <https://treaties.un.org/doc/Publication/UNTS/Volume 635/volume-635-I-9069-English.pdf> accessed 24 September 2019

[71] Treaty of friendship, co-operation and mutual assistance (Czechoslovakia-Poland) (adopted 01 March 1967, entered into force 12 May 1967) 632 UNTS 255 <https://treaties.un.org/doc/Publication/UNTS/Volume 632/volume-632-I-9027-English.pdf> accessed 24 September 2019

[72] Treaty of friendship, co-operation and mutual assistance (Poland-German Democratic Republic) (adopted 15 March 1967, entered into force 26 June 1967) 618 UNTS 21 <https://treaties.un.org/doc/Publication/UNTS/Volume 618/volume-618-I-8922-English.pdf> accessed 24 September 2019

[73] Treaty of friendship, co-operation and mutual assistance (Poland-German Democratic Republic) (adopted 15 March 1967, entered into force 26 June 1967) 618 UNTS 21 <https://treaties.un.org/doc/Publication/UNTS/Volume 618/volume-618-I-8922-English.pdf> accessed 24 September 2019

[74] Cultural Agreement (Union of Soviet Socialist Republics-Kuwait) (adopted 27 March 1967, entered into force 11 October 1967) 643 UNTS 135 <https://treaties.un.org/doc/Publication/UNTS/Volume 643/volume-643-I-9189-English.pdf> accessed 24 September 2019

[75] Treaty of friendship, co-operation and mutual assistance (Bulgaria-Poland) (adopted 06 April 1967, entered into force 24 August 1967) 617 UNTS 327 <https://treaties.un.org/doc/Publication/UNTS/Volume 617/volume-617-I-8920-English.pdf> accessed 24 September 2019

[76] Agreement on technical and scientific co-operation (Romania-Somalia) (adopted 20 April 1967, entered into force 17 December 1967) 642 UNTS 155 <https://treaties.un.org/doc/Publication/UNTS/Volume 642/volume-642-I-9171-English.pdf> accessed 24 September 2019

[77] Treaty of friendship, co-operation and mutual assistance (Bulgaria-Union of Soviet Socialist Republics) (adopted 12 May 1967, entered into force 04 August 1967) 631 UNTS 239 <https://treaties.un.org/doc/Publication/UNTS/Volume 631/volume-631-I-8997-English.pdf> accessed 24 September 2019

[78] Treaty of friendship, co-operation and mutual assistance (Hungary-Democratic Republic of Germany) (adopted 18 May 1967, entered into force 25 September 1967) 617 UNTS 3 <https://treaties.un.org/doc/Publication/UNTS/Volume 617/volume-617-I-8905-English.pdf> accessed 24 September 2019

[79] Agreement on economic and technical co-operation (Union of Soviet Socialist Republics-Zambia) (adopted 26 May 1967, entered into force 08 January 1968) 643 UNTS 179 <https://treaties.un.org/doc/Publication/UNTS/Volume 643/volume-643-I-9191-French.pdf> accessed 24 September 2019

[80] Treaty of friendship and co-operation (Mongolia-Bulgaria) (adopted 21 July 1967, entered into force 13 September 1967) 610 UNTS 129 <https://treaties.un.org/doc/Publication/UNTS/Volume 610/volume-610-I-8839-English.pdf> accessed 24 September 2019

[81] Cultural Agreement (Romania-Italy) (adopted 08 August 1967, entered into force 08 February 1968) 642 UNTS 191 <https://treaties.un.org/doc/Publication/UNTS/Volume 642/volume-642-I-9174-Other.pdf> accessed 24 September 2019

[82] Consular Convention (Romania-Italy) (adopted 08 August 1967, entered into force 11 May 1972) 847 UNTS 3 <https://treaties.un.org/doc/Publication/UNTS/Volume 847/volume-847-I-12131-Other.pdf> accessed 24 September 2019

[83] Treaty of friendship, co-operation and mutual assistance (Bulgaria-German Democratic Republic) (adopted 07 September 1967, entered into force 13 November 1967) 631 UNTS 81 <https://treaties.un.org/doc/Publication/UNTS/Volume 631/volume-631-I-8988-English.pdf> accessed 24 September 2019

[84] Treaty of Friendship, Co-operation and Mutual Assistance (Hungary-Union of Soviet Socialist Republics) (adopted 07 September 1967, entered into force 28 November 1967) 632 UNTS 89 <https://treaties.un.org/doc/Publication/UNTS/Volume 632/volume-632-I-9011-English.pdf> accessed 24 September 2019

[85] Cultural Agreement (Bulgaria-Iran) (adopted 26 November 1967, entered into force 27 August 1968) 656 UNTS 301 <https://treaties.un.org/doc/Publication/UNTS/Volume 656/volume-656-I-9402-English.pdf> accessed 24 September 2019

[86] Agreement on cultural and scientific co-operation (Union of Soviet Socialist Republics-Austria) (adopted 22 March 1968, entered into force 06 June 1969) 715 UNTS 159 <https://treaties.un.org/doc/Publication/UNTS/Volume 715/volume-715-I-10281-French.pdf> accessed 24 September 2019

[87] Treaty of friendship, co-operation and mutual assistance (Czechoslovakia-Bulgaria) (adopted 26 April 1968, entered into force 30 April 1969) 720 UNTS 101 <https://treaties.un.org/doc/Publication/UNTS/Volume 720/volume-720-I-10344-English.pdf> accessed 24 September 2019

[88] Treaty of friendship, co-operation and mutual assistance (Hungary-Poland) (adopted 16 May 1968, entered into force 28 June 1968) 649 UNTS 153 <https://treaties.un.org/doc/Publication/UNTS/Volume 649/volume-649-I-9292-English.pdf> accessed 24 September 2019

[89] Consular Convention (France-Romania) (adopted 18 May 1968, entered into force 16 July 1970) 747 UNTS 203 <https://treaties.un.org/doc/Publication/UNTS/Volume 747/volume-747-I-10724-English.pdf> accessed 24 September 2019

[90] Agreement on cultural and scientific exchanges (Union of Soviet Socialist Republics-Mexico) (adopted 28 May 1968, entered into force 11 April 1969) 715 UNTS 179 <https://treaties.un.org/doc/Publication/UNTS/Volume 715/volume-715-I-10282-French.pdf> accessed 24 September 2019

[91] Treaty of Friendship, Co-operation and Mutual Assistance (Hungary-Czechoslovakia) (adopted 14 June 1968, entered into force 11 April 1969) 678 UNTS 45 <https://treaties.un.org/doc/Publication/UNTS/Volume 678/volume-678-I-9645-English.pdf> accessed 24 September 2019

[92] Agreement concerning economic and technical co-operation (Union of Soviet Socialist Republics-Iran) (adopted 22 June 1968, entered into force 25 February 1970) 777 UNTS 83 <https://treaties.un.org/doc/Publication/UNTS/Volume 777/volume-777-I-11071-English.pdf> accessed 24 September 2019

[93] Treaty of friendship, co-operation and mutual assistance (Czechoslovakia-Romania) (adopted 16 August 1968, entered into force 07 May 1969) 722 UNTS 377 <https://treaties.un.org/doc/Publication/UNTS/Volume 722/volume-722-I-10392-English.pdf> accessed 24 September 2019

[94] Consular Convention (with exchange of notes of rectification) (Romania-United Kingdom of Great Britain and Northern Ireland) (adopted 11 September 1968, entered into force 21 April 1971) 789 UNTS 3 <https://treaties.un.org/doc/Publication/UNTS/Volume 789/volume-789-I-11218-English.pdf> accessed 24 September 2019

[95] Treaty of friendship and co-operation (Mongolia-German Democratic Republic) (adopted 12 September 1968, entered into force 18 December 1968) 659 UNTS 301 <https://treaties.un.org/doc/Publication/UNTS/Volume 659/volume-659-I-9453-English.pdf> accessed 24 September 2019

[96] Agreement concerning cultural and scientific co-operation (Romania-Central African Republic) (adopted 13 September 1968, entered into force 11 June 1969) 711 UNTS 3 <https://treaties.un.org/doc/Publication/UNTS/Volume 711/volume-711-I-10209-English.pdf> accessed 24 September 2019

[97] Agreement for cultural co-operation (Argentina-Romania) (adopted 05 November 1968, entered into force 03 May 1969) 672 UNTS 101 <https://treaties.un.org/doc/Publication/UNTS/Volume 672/volume-672-I-9573-French.pdf> accessed 24 September 2019

[98] Agreement on economic and technical co-operation (Romania-Peru) (adopted 09 November 1968, entered into force 17 June 1969) 1103 UNTS 265

<https://treaties.un.org/doc/Publication/UNTS/Volume 1103/volume-1103-I-16934-English.pdf> accessed 24 September 2019

[99] Treaty of brotherhood, good-neighbourly relations and co-operation (Morocco-Algeria) (adopted 15 January 1969, entered into force 15 January 1969) 703 UNTS 327 <https://treaties.un.org/doc/Publication/UNTS/Volume 703/volume-703-I-10095-English.pdf> accessed 24 September 2019

[100] Treaty of friendship, co-operation and mutual assistance (Hungary-Bulgaria) (adopted 10 July 1969, entered into force 08 September 1969) 705 UNTS 47 <https://treaties.un.org/doc/Publication/UNTS/Volume 705/volume-705-I-10111-English.pdf> accessed 24 September 2019

[101] Agreement on cultural cooperation (with exchange of letters) (Belgium-Indonesia) (adopted 15 January 1970, entered into force 23 December 1972) 854 UNTS 79 <https://treaties.un.org/doc/Publication/UNTS/Volume 854/volume-854-I-12263-English.pdf> accessed 24 September 2019

[102] Agreement concerning co-operation in the establishment of direct tropospheric radio communications (Union of Soviet Socialist Republics-Syria) (adopted 30 March 1970, entered into force 15 December 1970) 820 UNTS 35 <https://treaties.un.org/doc/Publication/UNTS/Volume 820/volume-820-I-11698-English.pdf> accessed 24 September 2019

[103] Agreement on cultural and scientific co-operation (Romania-Burundi) (adopted 04 April 1970, entered into force 04 April 1970) 820 UNTS 77 <https://treaties.un.org/doc/Publication/UNTS/Volume 820/volume-820-I-11701-English.pdf> accessed 24 September 2019

[104] Treaty of Friendship, Co-operation and Mutual Assistance (Czechoslovakia-Union of Soviet Socialist Republics) (adopted 06 May 1970, entered into force 9 June 1970) 735 UNTS 219 <https://treaties.un.org/doc/Publication/UNTS/Volume 735/volume-735-I-10560-English.pdf> accessed 24 September 2019

[105] Exchange of notes constituting an agreement concerning the famishing of satellite launching and associated services (with memorandum of understanding) (United States of America-Italy) (adopted 20 June 1970, entered into force 20 June 1970) 753 UNTS 259

<https://treaties.un.org/doc/Publication/UNTS/Volume 753/volume-753-I-10814-English.pdf> accessed 24 September 2019

[106] Air Transport Agreement (with route schedule, memorandum and exchange of notes) (United States of America-Italy) (adopted 22 June 1970, entered into force 00 January 1900) 764 UNTS 161 <https://treaties.un.org/doc/Publication/UNTS/Volume 764/volume-764-I-10927-Other.pdf> accessed 24 September 2019

[107] Agreement for cultural and technical cooperation (France-Mauritius) (adopted 22 June 1970, entered into force 10 October 1973) 930 UNTS 3 <https://treaties.un.org/doc/Publication/UNTS/Volume 930/volume-930-I-13233-English.pdf> accessed 24 September 2019

[108] Agreement on technical co-operation (France-Syrian Arab Republic) (adopted 02 July 1970, entered into force 24 May 1971) 808 UNTS 127 <https://treaties.un.org/doc/Publication/UNTS/Volume 808/volume-808-I-11530-English.pdf> accessed 24 September 2019

[109] Treaty of friendship, co-operation and mutual assistance (Romania-Union of Soviet Socialist Republics) (adopted 07 July 1970, entered into force 06 November 1970) 789 UNTS 115 <https://treaties.un.org/doc/Publication/UNTS/Volume 789/volume-789-I-11221-English.pdf> accessed 24 September 2019

[110] Consular Convention (Austria-Romania) (adopted 24 September 1970, entered into force 11 August 1972) 848 UNTS 69 <https://treaties.un.org/doc/Publication/UNTS/Volume 848/volume-848-I-12146-English.pdf> accessed 24 September 2019

[111] Treaty of friendship, co-operation and mutual assistance (Romania-Poland) (adopted 12 November 1970, entered into force 15 March 1971) 789 UNTS 157 <https://treaties.un.org/doc/Publication/UNTS/Volume 789/volume-789-I-11224-English.pdf> accessed 24 September 2019

[112] Treaty of friendship, co-operation and mutual assistance (Bulgaria-Romania) (adopted 19 November 1970, entered into force 31 March 1971) 855 UNTS 221 <https://treaties.un.org/doc/Publication/UNTS/Volume 855/volume-855-I-12282-English.pdf> accessed 24 September 2019

[113] CONSULAR CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND ITALY (United Kingdom of Great Britain and Northern Ireland-Italy)

(adopted 29 December 1970, entered into force 09 March 1978) 1110 UNTS 311 <https://treaties.un.org/doc/Publication/UNTS/Volume%201110/volume-1110-I-5798-English.pdf> accessed 24 September 2019

[114] Treaty of friendship and co-operation (Egypt-Union of Soviet Socialist Republics) (adopted 27 May 1971, entered into force 01 July 1971) 798 UNTS 175 <https://treaties.un.org/doc/Publication/UNTS/Volume 798/volume-798-I-11379-English.pdf> accessed 24 September 2019

[115] Agreement on cultural co-operation (Austria-Romania) (adopted 17 September 1971, entered into force 27 November 1972) 870 UNTS 251 <https://treaties.un.org/doc/Publication/UNTS/Volume 870/volume-870-I-12505-French.pdf> accessed 24 September 2019

[116] Agreement concerning legal assistance in civil, family and criminal cases (Romania-Democratic People's Republic of Korea) (adopted 02 November 1971, entered into force 21 October 1972) 871 UNTS 43 <https://treaties.un.org/doc/Publication/UNTS/Volume 871/volume-871-I-12508-English.pdf> accessed 24 September 2019

[117] Consular Convention (Romania-Democratic People's Republic of Korea) (adopted 02 November 1971, entered into force 21 October 1972) 889 UNTS 31 <https://treaties.un.org/doc/Publication/UNTS/Volume 889/volume-889-I-12742-English.pdf> accessed 24 September 2019

[118] Agreement concerning cultural and scientific co-operation (Romania-Cyprus) (adopted 06 January 1972, entered into force 27 April 1972) 847 UNTS 119 <https://treaties.un.org/doc/Publication/UNTS/Volume 847/volume-847-I-12135-English.pdf> accessed 24 September 2019

[119] Treaty of friendship, co-operation and mutual assistance (Romania-Hungary) (adopted 24 February 1972, entered into force 09 June 1972) 847 UNTS 133 <https://treaties.un.org/doc/Publication/UNTS/Volume 847/volume-847-I-12136-English.pdf> accessed 24 September 2019

[120] Exchange of notes constituting an agreement establishing a consultation procedure between the governmental authorities of Denmark and Brazil in the field of shipping (with related notes) (Denmark-Brazil) (adopted 29 March 1972, entered into force 29 March 1972) 846

UNTS 311 <https://treaties.un.org/doc/Publication/UNTS/Volume 846/volume-846-I-12128-English.pdf> accessed 24 September 2019

[121] Civil Air Transport Agreement (with annex) (Romania-China) (adopted 06 April 1972, entered into force 06 April 1972) 871 UNTS 119 <https://treaties.un.org/doc/Publication/UNTS/Volume 871/volume-871-I-12510-English.pdf> accessed 24 September 2019

[122] Treaty of friendship, co-operation and mutual assistance (Romania-German Democratic Republic) (adopted 12 May 1972, entered into force 20 September 1972) 847 UNTS 105 <https://treaties.un.org/doc/Publication/UNTS/Volume 847/volume-847-I-12134-English.pdf> accessed 24 September 2019

[123] Consular Convention (Greece-Romania) (adopted 22 May 1972, entered into force 28 September 1974) 952 UNTS 159 <https://treaties.un.org/doc/Publication/UNTS/Volume 952/volume-952-I-13604-English.pdf> accessed 24 September 2019

[124] Agreement on bilateral relations (India-Pakistan) (adopted 02 July 1972, entered into force 04 August 1972) 858 UNTS 71 <https://treaties.un.org/doc/Publication/UNTS/Volume 858/volume-858-I-12308-English.pdf> accessed 24 September 2019

[125] Consular Convention (with protocol) (Romania-United States of America) (adopted 05 July 1972, entered into force 05 July 1973) 890 UNTS 109 <https://treaties.un.org/doc/Publication/UNTS/Volume 890/volume-890-I-12744-English.pdf> accessed 24 September 2019

[126] Agreement for co-operation in the fields of science, education and culture (Cyprus-Poland) (adopted 01 February 1973, entered into force 10 April 1974) 940 UNTS 153 <https://treaties.un.org/doc/Publication/UNTS/Volume 940/volume-940-I-13389-English.pdf> accessed 24 September 2019

[127] Agreement on cultural co-operation (Mongolia-Italy) (adopted 15 February 1973, entered into force 25 April 1973) 914 UNTS 175 <https://treaties.un.org/doc/Publication/UNTS/Volume 914/volume-914-I-13041-French.pdf> accessed 24 September 2019

[128] Agreement on cultural and scientific co-operation (Union of Soviet Socialist Republics-Gambia) (adopted 05 March 1973, entered into force 31 March 1973) 990 UNTS 191 <https://treaties.un.org/doc/Publication/UNTS/Volume 990/volume-990-I-14474-English.pdf> accessed 24 September 2019

[129] Agreement on co-operation (with annex) (Finland-Council for Mutual Economic Assistance) (adopted 16 May 1973, entered into force 14 July 1973) 894 UNTS 59 <https://treaties.un.org/doc/Publication/UNTS/Volume 894/volume-894-I-12785-English.pdf> accessed 24 September 2019

[130] Civil Air Transport Agreement (with annex and exchange of letters) (Denmark-China) (adopted 18 May 1973, entered into force 18 May 1973) 904 UNTS 147 <https://treaties.un.org/doc/Publication/UNTS/Volume 904/volume-904-I-12915-English.pdf> accessed 24 September 2019

[131] Civil Air Transport Agreement (with annex and exchange of notes) (Sweden-China) (adopted 01 June 1973, entered into force 01 June 1973) 920 UNTS 51 <https://treaties.un.org/doc/Publication/UNTS/Volume 920/volume-920-I-13137-English.pdf> accessed 24 September 2019

[132] General Agreement (France-Madagascar) (adopted 04 June 1973, entered into force 19 March 1975) 978 UNTS 261 <https://treaties.un.org/doc/Publication/UNTS/Volume 978/volume-978-I-14224-English.pdf> accessed 24 September 2019

[133] Civil Air Transport Agreement (with annex and protocol between the Department of Transport of Canada and the General Administration of Civil Aviation of China concerning technical requirements and procedures related to the operation of the agreed air services (Canada-China) (adopted 11 June 1973, entered into force 11 June 1973) 918 UNTS 91 <https://treaties.un.org/doc/Publication/UNTS/Volume 918/volume-918-I-13109-English.pdf> accessed 24 September 2019

[134] Treaty of friendship and co-operation (Mongolia-Czechoslovakia) (adopted 18 June 1973, entered into force 05 February 1974) 929 UNTS 71 <https://treaties.un.org/doc/Publication/UNTS/Volume 929/volume-929-I-13230-English.pdf> accessed 24 September 2019

[135] General Agreement on co-operation (Romania-Central African Republic) (adopted 26 July 1973, entered into force 26 July 1973) 931 UNTS 153 <https://treaties.un.org/doc/Publication/UNTS/Volume 931/volume-931-I-13268-English.pdf> accessed 24 September 2019

[136] Agreement relating to civil air transport (with annexes) (Switzerland-China) (adopted 12 November 1973, entered into force 12 November 1973) 987 UNTS 3

<https://treaties.un.org/doc/Publication/UNTS/Volume 987/volume-987-I-14419-English.pdf> accessed 24 September 2019

[137] Mongol-Iranian Joint Declaration (Mongolia-Iran) (adopted 28 November 1973, entered into force 28 November 1973) 945 UNTS 57 <https://treaties.un.org/doc/Publication/UNTS/Volume 945/volume-945-I-13471-English.pdf> accessed 24 September 2019

[138] Joint Statement (United States of America-Romania) (adopted 05 December 1973, entered into force 05 December 1973) 938 UNTS 457 <https://treaties.un.org/doc/Publication/UNTS/Volume 938/volume-938-I-13367-English.pdf> accessed 24 September 2019

[139] Treaty of friendship and co-operation (France-Senegal) (adopted 29 March 1974, entered into force 16 July 1976) 1061 UNTS 185 <https://treaties.un.org/doc/Publication/UNTS/Volume %201061/volume-1061-I-16151-English.pdf> accessed 24 September 2019

[140] Agreement relating to principles of relations and cooperation between the United States of America and Egypt (United States of America-Egypt) (adopted 14 June 1974, entered into force 14 June 1974) 967 UNTS 137 <https://treaties.un.org/doc/Publication/UNTS/Volume 967/volume-967-I-13951-English.pdf> accessed 24 September 2019

[141] Convention for the avoidance of double taxation with respect to taxes on income and fortune (France-Romania) (adopted 27 September 1974, entered into force 27 September 1975) 991 UNTS 155 <https://treaties.un.org/doc/Publication/UNTS/Volume 991/volume-991-I-14496-English.pdf> accessed 24 September 2019

[142] Convention concerning mutual legal assistance in civil and commercial matters (France-Romania) (adopted 05 November 1974, entered into force 01 September 1975) 991 UNTS 201 <https://treaties.un.org/doc/Publication/UNTS/Volume 991/volume-991-I-14497-English.pdf> accessed 24 September 2019

[143] Convention concerning reciprocal legal assistance in criminal matters and extradition (France-Romania) (adopted 05 November 1974, entered into force 01 September 1975) 996 UNTS 359 <https://treaties.un.org/doc/Publication/UNTS/Volume 996/volume-996-I-14593-English.pdf> accessed 24 September 2019

[144] Agreement on cultural co-operation (Australia-Union of Soviet Socialist Republics) (adopted 15 January 1975, entered into force 15 January 1975) 975 UNTS 119

<https://treaties.un.org/doc/Publication/UNTS/Volume 975/volume-975-I-14133-English.pdf> accessed 24 September 2019

[145] AGREEMENT ON TECHNICAL COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE IMPERIAL GOVERNMENT OF IRAN (Iran-United States of America) (adopted 04 March 1975, entered into force 05 April 1976) 1041 UNTS 285 <https://treaties.un.org/doc/Publication/UNTS/Volume%201041/volume-1041-I-15698-English.pdf> accessed 24 September 2019

[146] Agreement on scheduled international air transport services (with annex) (France-Laos) (adopted 01 April 1975, entered into force 01 April 1975) 985 UNTS 307 <https://treaties.un.org/doc/Publication/UNTS/Volume 985/volume-985-I-14401-English.pdf> accessed 24 September 2019

[147] Agreement on cultural co-operation (Union of Soviet Socialist Republics-Libyan Arab Republic) (adopted 13 May 1975, entered into force 13 (or 15?) May 1975) 990 UNTS 329 <https://treaties.un.org/doc/Publication/UNTS/Volume 990/volume-990-I-14480-English.pdf> accessed 24 September 2019

[148] Agreement on cultural co-operation (Mexico-Hungary) (adopted 19 September 1975, entered into force 12 January 1977) 1356 UNTS 67 <https://treaties.un.org/doc/Publication/UNTS/Volume%201356/volume-1356-I-22893-ENGLISH.pdf> accessed 24 September 2019

[149] CONVENTION BETWEEN THE KINGDOM OF BELGIUM AND THE SOCIALIST REPUBLIC OF ROMANIA CONCERNING MUTUAL LEGAL ASSISTANCE IN CIVIL AND COMMERCIAL MATTERS (Belgium-Romania) (adopted 03 October 1975, entered into force 01 April 1977) 1037 UNTS 19 <https://treaties.un.org/doc/Publication/UNTS/Volume%201037/volume-1037-I-15502-English.pdf> accessed 24 September 2019

[150] Treaty of friendship and co-operation (Angola-Union of Soviet Socialist Republics) (adopted 08 October 1976, entered into force 09 September 1977) 1146 UNTS 123 <https://treaties.un.org/doc/Publication/UNTS/Volume 1146/volume-1146-I-17992-English.pdf> accessed 24 September 2019

[151] Basic Agreement on scientific and technical co-operation (Union of Soviet Socialist Republics-Peru) (adopted 11 November 1976, entered into force 19 April 1978) 1151 UNTS 147

<https://treaties.un.org/doc/Publication/UNTS/Volume%201151/volume-1151-I-18118-English.pdf> accessed 24 September 2019

[152] Treaty of friendship and co-operation (Mozambique-Union of Soviet Socialist Republics) (adopted 31 March 1977, entered into force 04 November 1977) 1154 UNTS 409 <https://treaties.un.org/doc/Publication/UNTS/Volume 1154/volume-1154-I-18221-English.pdf > accessed 24 September 2019

[153] Treaty of friendship and co-operation (France-Djibouti) (adopted 27 June 1977, entered into force 31 October 1982) 1482 UNTS 193 <https://treaties.un.org/doc/Publication/UNTS/Volume 1482/volume-1482-I-25292-English.pdf> accessed 24 September 2019

[154] Provisional Protocol concerning the conditions for the stationing of French forces on the territory of the Republic of Djibouti after independence and the principles of military co-operation (France-Djibouti) (adopted 27 June 1977, entered into force 31 October 1982) 1430 UNTS 99 <https://treaties.un.org/doc/Publication/UNTS/Volume%201430/volume-1430-I-24252-English.pdf> accessed 24 September 2019

[155] Panama Canal Treaty (with annex, agreed minute, related letter, and reservations and understandings made by the United States) (United States of America-Panama) (adopted 07 September 1977, entered into force 01 October 1979) 1280 UNTS 3 <https://treaties.un.org/doc/Publication/UNTS/Volume%201280/volume-1280-I-21086-English.pdf> accessed 24 September 2019

[156] Agreement in implementation of article IV of the Panama Canal Treaty (with annexes and agreed minutes) (United States of America-Panama) (adopted 07 September 1977, entered into force 01 October 1979) 1280 UNTS 201 <https://treaties.un.org/doc/Publication/UNTS/Volume %201280/volume-1280-I-21088-English.pdf> accessed 24 September 2019

[157] TREATY OF FRIENDSHIP, CO-OPERATION AND MUTUAL ASSISTANCE BETWEEN THE POLISH PEOPLE'S REPUBLIC AND THE GERMAN DEMOCRATIC REPUBLIC (Poland-Germany) (adopted 18 November 1977, entered into force 13 July 1977) 1058 UNTS 141 <https://treaties.un.org/doc/Publication/UNTS/Volume%201058/volume-1058-I-16018-English.pdf> accessed 24 September 2019

[158] Treaty of peace and friendship (Japan-China) (adopted 12 August 1978, entered into force 23 October 1978) 1225 UNTS 257 <https://treaties.un.org/doc/Publication/UNTS/Volume%201225/volume-1225-I-19784-English.pdf> accessed 24 September 2019

[159] Treaty of friendship and co-operation (Union of Soviet Socialist Republics-Viet Nam) (adopted 03 November 1978, entered into force 13 December 1978) 1145 UNTS 185 <https://treaties.un.org/doc/Publication/UNTS/Volume%201145/volume-1145-I-17968-English.pdf> accessed 24 September 2019

[160] Treaty of friendship and co-operation (France-Comoros) (adopted 10 November 1978, entered into force 02 February 1983) 1306 UNTS 263 <https://treaties.un.org/doc/Publication/UNTS/Volume%201306/volume-1306-I-21778-English.pdf> accessed 24 September 2019

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I. INTRODUCTION

1. Introduction

In this chapter I introduce the thesis, which is an orthodox study of the meaning and importance of the principle of non-inter(ference/intervention)[1]—hereafter 'the principle'—in international law. In this part (Part 1) of the chapter I review the structure of the chapter and present the hypothesis. In Part 2 I introduce the thesis' materials that will be studied to test the hypothesis. In Part 3 I introduce the thesis' methods that will be used to study the materials. In Part 4 I substantiate the thesis research questions to be answered regarding the meaning of the principle, and describe how each chapter variously considers them. In Part 5 I substantiate the thesis research questions to be answered regarding the importance of the principle, and describe how each chapter variously considers them. In Part 6 I substantiate the thesis research questions to be answered regarding the status of the principle, and describe how each chapter variously considers them. In Part 7 I introduce the UKGBNI as a case-study to be considered in each chapter. Finally, in Part 8 I review the hypothesis and the thesis' research plan for testing it.

The problem which precipitates this thesis is long-standing confusion in the literature regarding the principle.[2] That there is long-standing confusion was stated by Winfield[3] and by

1 'Interference' and 'intervention' are presumed to be different by the literature with which I engage, but are in fact—as will be demonstrated through this thesis—regarded as synonymous in international law.

2 In this thesis I take 'the literature' to be the most qualified and/or influential legal literature in the UKGBNI regarding the principle, notably including the writings of Rosalyn Higgins, James Crawford, and Robert Jennings (all being former Presidents of the ICJ; Higgins and Crawford were also Professors of International Law), the Tallinn Manual 2.0 (informing the legal basis of NATO's cyber-operations), and Jamnejad and Wood (the latter being a former legal adviser at the FCO and member of the ILC). See Chapter VI for a broader range of opinions within the UKGBNI.

3 Winfield (1922, 130): "The subject of intervention is one of the vaguest branches of international law. We are told that intervention is a right; that it is a crime; that it is the rule; that it is the exception; that it is never permissible at all. A reader, after perusing Phillimore's chapter upon intervention, might close the book with the impression that intervention may be anything from a speech of Lord Palmerston's in the House of Commons to the partition of Poland. In what purports to be a code of international law, Bluntschli gives no leading definition of a word which is employed in three distinct portions of the book with at least two different meanings. Yet these methods of treating intervention are but natural consequences of the darkness which besets a subject, at no time clear and even now in a fluid condition."

Jamnejad and Wood,[4] and is evidenced in the writings of Higgins[5] and Wright.[6] However, although such works generally set out to provide an analysis of *lex lata*, they seemed to me to suffer from some shortcomings in their studies of the principle: my basis for that assessment is provided in Parts 2 and 3 of each of this thesis' substantive chapters (Chapters II to VI). Accordingly, my hypothesis is that a clearer answer might be obtained if the principle is studied in a stricter and more orthodox manner: the aim of the thesis is to test that hypothesis by conducting such a study.

2. Materials

Which 'formal sources' are studied

In order to contest the selected literature's findings on its own terms, I adopted the orthodox approach professed by that literature. It is quite clear that those authors profess to give 'strict' meanings according to the law as it is: *lex lata*, not *lex ferenda*, and not the history or politics of the law. For example, Jamnejad and Wood wrote "We are concerned with law, not with politics or international relations, and we seek to address the law as it is, not the law as it might be."[7] For determining the law, authors often turn

4 Jamnejad and Wood (2009, 348): "What constitutes an 'intervention' is nowhere set out clearly. This in itself goes far towards explaining the uncertainties surround the subject. For our part, we shall use the term chiefly to refer to cases where coercive action is taken by one State to secure a change in the policies of another."

5 Higgins (2009, 273): "Is there an acceptable definition of intervention in the context of international law? One perceives very rapidly that not only is it not profitable to seek such a definition, but that really one is dealing with a spectrum. This spectrum ranges from the notion of any interference at all in the State's affairs at the one end, to the concept of military intervention at the other. And if one is choosing to deal with all of these as intervention, that choice is immediately complicated by the fact that not every maximalist intervention is unlawful and not every minimalist intrusion is lawful. One cannot simply indicate a particular point along the spectrum and assert that everything from there onwards is an unlawful intervention and everything prior to that is a tolerable interference, and one of the things we put up with in an interdependent world. It is not that simple."

6 Wright (1962, 5-6): "In the definition of intervention, stress has been laid on the words dictatorial and interference. Persuasion is said to be legitimate; coercion, dictatorial and illegitimate; but the line between the two may be vague. Military invasion is certainly coercive, but what of economic embargo, secret infiltration, peremptory diplomatic notes, or incitement to subversion by radio? Public statements of policy or purpose by a government are said to be legitimate; subversive or inciting actions by, or with complicity of, a government within another state's territory or affecting another state's officials are considered interference and illegitimate. But here again the line is not easy to draw. Officially supported hostilities, assassinations, or incitements; infiltration of government agencies; bribery of officials; espionage into official secrets; and other acts within a state's territory forbidden by its laws – these are doubtless interference; but what of expressed or implied threats in public pronouncements of policy by a government? What of the publications, speeches, and conversations of an inciting character by foreign travelers? What of observations and reports by diplomatic attachés and citizens instructed by another government?"

7 Jamnejad and Wood (2009, 346). See also Pomson (2022).

to Article 38(1) of the Statute of the ICJ.[8] Yet the literature's reach for Article 38 of the Statute of the ICJ is not without errors.[9] I therefore study (and divide the thesis according to) the categories provided in Article 38(1) of the Statute of the ICJ, but in doing so try to avoid some of the afore-mentioned problems identified in the literature. I study international conventions in Chapter II, custom in Chapter III, and 'general principles of law recognised by civilized nations' in Chapter IV. As subsidiary means for determination of the rules of law I study decisions (and the Statute itself) of the International Court of Justice in Chapter V, and teachings of the most qualified publicists of the UKGBNI (part of which being the literature with which I critically engage) in Chapter VI.

Which 'material sources' are studied

However, the literature is in implicit disagreement about the importance of various materials. For example, Higgins said of the Friendly Relations Declaration that "[t]here are very few states which take seriously what is in it",[10] yet Crawford stated it was as "an authoritative interpretation [...] of the principles of the [UN] Charter"[11] and the editors of *Oppenheim's International Law* had described it as having "pre-eminent value in contemporary international law".[12]

In choosing the materials for study within those categories, I had in mind the importance of objectivity when selecting materials for analysis, and the desirability of introducing to the literature new materials and a re-evaluation of what appear to be under-considered

8 eg Higgins (2009, 272): "International lawyers perceive the source of international law, (that is to say where we look for international law), as comprising treaties—multilateral and bilateral, but importantly multilateral treaties; custom, which is the habit evidenced in state practice of doing something through a period of time with the belief that one is obliged to act in that way; and judicial decisions. [Footnote 3: Along with general principles of international law and (as a subsidiary source) the writings of leading jurists, see Art. 38 of the Statute of the International Court of Justice] Each of these is relevant in the context of intervention."

9 For example, in the preceding quote [fn:7] Higgins identified the teachings of the most qualified publicists as subsidiary but did not so qualify 'judicial decisions' even though Article 38 ranks both at the same level. Furthermore, Higgins relegated 'general principles of international law recognized by civilized nations' to a footnote and did not consider it at all in their text on the principle—nor did Jamnejad and Wood, nor Jennings and Watts, nor Crawford—despite Article 38(1) of the Statute of the ICJ ranking it equally with international conventions and custom (and despite it being an actual source of law, according to the preamble of the Charter of the UN—see Chapter V).

10 Rosalyn Higgins, 'Intervention' in *Themes and Theories: selected essays, speeches, and writings on international law* (Oxford University Press, 2009) 279

11 James Crawford, *Brownlie's Principles of Public International Law* (Oxford University Press, 2019) 40

12 Jennings and Watts (2008, 333-334)

materials.[13] Accordingly, in Chapter II I consider all treaties registered with the UN (and in language versions other than English but which are equally authoritative in law): this is in contrast to the literature, which considers only a few treaties and offers no account for its selection of which treaties it considered relevant to study. By considering all such treaties and in as diverse languages as possible, I aim to avoid the problem of paying attention to a narrow range of states but instead to include as wide a breadth of states as possible in my analysis.[14] In Chapter III I consider the 1970 Friendly Relations Declaration because its words and process of formation appears to offer the most authoritative exposition available within the episteme of customary international law regarding the meaning and significance of the principle, and yet the literature with which I engage appears to under-estimate or even nearly dismiss its relevance to the question of legal reality (see e.g. Higgins above).[15] In Chapter IV I consider prominent legal materials of the general international, European Union, and UKGBNI legal orders in order to establish whether or not the principle can be considered as a 'general principle of law recognized by civilized nations' and, if so, what its meaning and significance appears to be.[16] In Chapter V I focus on the ICJ's decision in *Military and Paramilitary Activities In and Against Nicaragua* because I claim it is unduly relied upon by the literature regarding the meaning of the principle (see above), but also choose to not 'beg the question' regarding the meaning and significance of the principle by considering also the meaning of 'intervention' as presented in the Statute of the ICJ, and consider other decisions about interference and intervention from ICJ decisions that were not considered by the literature (such as the diplomatic intervention referred to in *Barcelona Traction, Light and Power*). In Chapter VI I focus on what is taught about the principle in Sir Robert Jennings' and Sir Arthur Watts' 9th edition of *Oppenheim's* and other teachings of the most qualified publicists of the UKGBNI because it is treated by some in the literature as sufficient

13 See Part 7 for how recognition of the situated position of myself as researcher subjectively determined the identification of the UKGBNI as this thesis' case-study.

14 This follows Roberts (2017, 165) identification of a parochial bias in international legal studies generally and Reisman (1994, 270) on such potential bias in *Oppenheim's International Law* specifically. For examples of analysis of the principle which rests on WEOG state interpretations see Pomson (2022) and Ohlin (2017).

15 My initial approach had been to trawl the records of State practice found in official yearbooks, but I noticed that those yearbooks were generally skewed towards WEOG states, and it would have been too much work.

16 The reason I consider materials from this diversity of orders is because I do not choose to take a position in the debate about whether or not 'general principles of law recognized by civilized nations' refers to those arising from the international or national orders, and so for the principle of non-inter(ference/vention) satisfy the test for both. It is a subjective 'failing' to consider only the UKGBNI and EU in this regard and I accept the consequent limitation.

authority for determining the meaning of the principle[17] and yet is itself based on unfounded assertions,[18] and contextualise that study with a review of other teachings in the UKGBNI from 1828 to 2022. My aim is that these materials will be considered acceptable materials by those whom I critique, so that I can resolve the confusion within the terms of their own debate.

3. Methods

How the materials were selected

The method used to identify specific materials for study is described in each chapter, but is summarised here. I take care to select the materials in a way that best accords with the principle of sovereign equality (eg no one State speaks with more authority than another regarding the law), subject also to my limits of time and language skills. I reasoned that if the starting materials are selected fairly, of good quality and analysed soundly, then the resulting conclusions should be reliable and persuasive. For Chapter II I searched the UN Treaty Series for all references to "interfere", "interference", "intervene", and "intervention". For Chapter III I studied statements made in the Sixth (Legal) Committee with regards to the meaning and status in law of the principle as elaborated in the Friendly Relations Declaration.[19] Chapter IV was probably the most difficult to find a principled and systematic method of selection; I relied instead on background awareness from my previous studies[20] supplemented with library research. In Chapter V I search the ICJ's online database for all references to "interfere", "interference", "intervene", and "intervention". Unlike the similar approach taken in Chapter II, this was not conducted exhaustively due to time constraints, the lesser status of such decisions according to Article 38(1) of the Statute of the ICJ (they are merely 'subsidiary means' for determining the law, my sense that the most important cases are already known in the literature, and my decision to focus on a closer reading of the definition in *Military and Paramilitary Activities in and against Nicaragua* (which I claim has been unduly relied upon in parts of the literature). In Chapter VI I started with the problematic definition of non-

17 eg Jamnejad and Wood (2009).

18 See Chapter VI.

19 cf Vincent (1974) and Pomson (2022) who study statements made in the Special Committee.

20 eg Webb (2017), and EU-law teaching duties at the University of Kent 2017-2020.

intervention in *Oppenheim's International Law* (9th edition), traced back to the first edition (and the teachings of those its first author praised, and their peers) to observe and compare edited changes in meanings and conclusions regarding the principle. Limiting my review to publicists of the UKGBNI as just "one"[21] of the "various nations" referred to in Article 38(1)(d) is a major limitation of this part of the study: however, I saw no means of being able to review the teachings of publicists from all nations without major bias in selection (how to decide systematically and fairly which nations and publicists to exclude from a time and language-limited study?). Furthermore, this is just one half of Article 38(1)(d), which is itself merely "subsidiary means" for determining the law according to the Statute of the ICJ.

How the materials were analysed

In determining the appropriate weight to be given to the materials selected, I kept in mind the lack of categorical hierarchy in the Article 38(1) ICJ Statute (notwithstanding the 'subsidiary' character of those identified in Article 38(1)(d)). Accordingly, I treat treaties, custom, and 'general principles of law recognized by civilized nations' as 'sources' of law with potentially binding effect, and decisions and teachings as interpretations of law but incapable of binding effect (except with regards to parties to a case in ICJ). This is different from the current literature, which generally elides the possibility of 'general principles of law recognized by civilized nations' as relevant to ascertaining the meaning and significance of the principle,[22] and places undue weight on the status of publicists' teachings.[23]

For undertaking analysis of the materials thus selected and weighed, I selected specific techniques established in the practice of international law as relevant to the study of particular categories of material. Those specific techniques are the use of the 1969 Vienna Convention on the Law of Treaties for analysing treaties in Chapter II, recommendations of the International Law Commission for the identification of customary international law in Chapter III, and recommendations of the International Law Commission for the identification of 'general principles of law recognized by civilized

21 Though of course, the UKGBNI is comprised of at least four nations: Alba, Cymru, England, and "northern Ireland".

22 eg Higgins (2009)

23 eg Jamnejad and Wood (2009, 348): "According to Oppenheim, 'the interference must be forcible or dictatorial, or otherwise coercive [...].' Thus, the essence of intervention is coercion." See Chapter VI for discussion (though I note here the fact that Oppenheim did not mention 'coercive' or 'coercion'--that was an addition by Jennings and Watts in the 9th edition of *Oppenheim's International Law*).

nations' in Chapter IV. In Chapters V and VI I use the general techniques of giving words their ordinary meaning. Specifically, in Chapter V I look not only at the ordinary meaning of the words in the sentence in which the court defines "those aspects of the principle which appear to be relevant to the resolution of the dispute", but at the whole paragraph, and indeed the whole judgment. I also do not 'beg the question' by excluding some types of inter(ference/vention) from consideration and so, for example, do not exclude consideration of its meaning as found in Article 62 of the Statute of the ICJ.

4. Research Question: The Meaning Of The Principle

The first set of questions regards the meaning of the principle of non-inter(ference/vention). Of the three sets of questions I consider, I regard these as the most important, since they account for the largest divergence of opinion in the literature (see Chapter VI).

(i) What is the difference, if any, between 'interference' and 'intervention'?

The first question regarding the meaning of the principle is: what is the difference, if any, between interference and intervention? Currently there is substantial confusion on this point. On the one hand, most publicists in the UKGBNI take it as a given that the two are definitely separate: the usual position is that intervention is a type of interference, and that while intervention is prohibited by the principle, the latter is not necessarily prohibited. For example, *Oppenheim's International Law* presupposes a difference between intervention (prohibited) and interference "pure and simple" (undefined).[24] Schmitt and Vihul (2017) also presuppose such a difference and show the policy impact thereby, for their work informs NATO's interpretation of law regarding cyber-operations. Some, such as Moynihan, say that only non-WEOG states like China and Russia claim the two are the same.[25]

However, on the other hand, 'interference' and 'intervention' are often treated as synonymous in the literature: for example Vincent, who is one of just two authors cited by Schmitt and Vihul (2017), said that interference and intervention were synonyms,[26] and the NATO Council of Ministers in a 1970 Final Communique referred to "the principle

24 Jennings and Watts (2008, 432)

25 Moynihan (2019, 27)

26 Vincent (1974, 7)

of non-interference and non-intervention" as governing relations between States.[27] Furthermore, there is in the literature no satisfactory account for the two having different meanings; in all cases it ultimately rests on the mere assertion of an author. Finally, there is State evidence to the contrary: for example, the 1981 Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States[28] treats 'interference' and 'intervention' as essentially synonymous and part of the same principle.[29] Although not all States voted in favour on that Declaration, one can turn Moynihan's claim on its head: most of the international community recognise 'interference' and 'intervention' as essentially synonymous, and it is only the WEOG that today contrives a difference between them.

To answer this question I study it in each chapter. In Chapter II Part 4 I find all occurrences of the words 'interfere'/'interference'/'intervene'/'intervention' in treaties since 1945 to see if the words are ever defined, or if a difference in meaning becomes clear from their usage. Finding that the terms are never defined and are used too equivalently to have any separate meaning, I look at equally authoritative language versions of the treaties to see if relevant information can be gleaned as to their different meaning (or not). In Chapter III Part 5 I consider the text of the Friendly Relations Declaration to see what it says of any difference. In Chapter IV I search for references for interference and intervention and compare the results. In Chapter V Part 6 I search decisions of the ICJ to see if difference can be discerned, and in Chapter VI I study the teachings of the most qualified publicists of the UKGBNI to see what difference between the two has been considered.

(ii) What defines a prohibited inter(ference/vention)?

The second question regarding the meaning of the principle is: what defines the essence of that which is prohibited by the principle? On the one hand, there are voices in the literature that it is definitely coercion that defines that which is prohibited. For example,

27 HC Deb 7 December 1970, vol 808, col 27. Note, NATO documents were not selected by this thesis for study; this document merely appeared during a non-exhaustive search of Hansard for Chapter IV Part 6: maybe it is the only time NATO referred to it as the same principle, maybe not.

28 UNGA Res 36/103 (9 December 1981) (adopted by 120 votes to 22; 6 abstentions and 9 non-voting)

29 Confusingly, the Declaration at times refers to "the principles" and at other times to "the principle" of non-interference and non-intervention.

the decision in *Military and Paramilitary Activities in and against Nicaragua* says so,[30] Jamnejad and Wood concur,[31] and so too does the Tallinn Manual 2.0.[32]

However, on the other hand, there are reasons to be sceptical that it is coercion that defines the prohibition. For example, the decision in *Military and Paramilitary Activities in and against Nicaragua* defined just one part of the principle (where it overlapped with the principle prohibiting the threat or use of force).[33] The claims of Jamnejad and Wood and the Tallinn Manual take the matter as a presumption with no firm evidence for it being so (see Chapter VI Parts 6 and 7), and there are other highly regarded publicists who claim it is consent, yet there claims are not considered: such as Hall,[34] Phillimore,[35] Thomas and Thomas (see Chapter VI).[36] Furthermore, the 'coercion' thesis does not work well as a test because there is such confusion about what coercion means. For example, the International Law Commission's Commentary to its Draft Article 18 on State Responsibility (paragraphs 2 and 3) discusses the meaning of coercion, and gives four slightly different descriptions of it: (i) 'essentially the same' as force majeure; (ii) "conduct which forces the will of the coerced State"; giving it (iii) "no effective choice but to comply"; and/or which (iv) "deprive[s] the coerced State of any possibility" of not complying.[37] Taking a slightly different phrasing, Jamnejad and Wood had asserted that coercion (which they held to be the essence of prohibited intervention) is pressure that cannot "reasonably be resisted."[38] With such consistent confusion about applying this

30 "The element of coercion [...] defines, and indeed forms the very essence of, prohibited intervention" *Military and Paramilitary Activities in and against Nicaragua* page 108.

31 Jamnejad and Wood (2009, 347-348)

32 Schmitt and Vihul (2017, 312)

33 "[T]he Court will define only those aspects of the principle which appear to be relevant to the resolution of the dispute" *Military and Paramilitary Activities in and against Nicaragua* page 108.

34 Hall (1884, 240): "Intervention takes place when a State interferes in the relations of two other States without the consent of both or either of them [...]"

35 Phillimore (1879, 221): "A State in the lawful possession of a territory has an exclusive right of property therein, and no stranger can be entitled, **without her permission**, to enter within her boundaries, much less to interfere with her full exercise of all the rights incident to that supreme dominion [...]" (emphasis added)

36 Thomas and Thomas (1956, 71): "[I]ntervention occurs when a state or group of states interferes, in order to impose its will, in the internal or external affairs of another state, sovereign and independent, with which peaceful relations exist and without its consent [...]"

37 Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001) II(2) Yearbook of the International Law Commission

38 Maziar Jamnejad and Michael Wood, 'The Principle of Non-Intervention' (2009) 22 *Leiden Journal of International Law* 348. One problem with this as a test, is that trying to ascertain whether pressure can or cannot be reasonably resisted in any particular case is such a subjective exercise, putting the observer in the shoes of the State's sovereign and requiring a vast wealth of information about that State's strengths and weaknesses (much of which will be secret information), that it is liable to raise

test, I found it to be of little surprise that two more recent authors, investigating the case of alleged Russian interference in the USA's 2016 presidential elections, came to two different answers: one that the element of coercion was present, the other that it was not.[39] Finally, the 'coercion' thesis does not seem fair as a test because it privileges the freedom of the inter(ferer/venor) over the freedom of the target.

To answer this question I study it in each chapter. In Chapter II I review all treaties published in the UNTS to see if there is an evidence basis for interpreting the meaning in terms of coercion or consent, and review the results in Part 5. In Chapter III Part 5 I consider whether the Friendly Relations Declaration's mention of a prohibition of coercion is included as an example of what is prohibited, or is presented as the definition of what is prohibited. In Chapter IV I review the examples of interference and intervention in the general international, EU, and UKGBNI legal orders to see if in each it is coercion or consent that better explains the results. In Chapter V I review the decision in *Military and Paramilitary Activities in and against Nicaragua*, other decisions, and Article 62 of the Statute of the ICJ to see if coercion or consent better defines what is prohibited by the principle. In Chapter VI I compare those authors which defined the principle in terms of coercion and those which defined in terms of consent, and consider why the interpretations of the former should have risen to ascendancy.

5. Research Question: The Status Of The Principle

The second set of questions regards the status of the principle of non-inter(ference/vention). This is not as difficult a set of questions as the first set (regarding the meaning of the principle), since there has long been consensus in the literature that the principle is binding (see Chapter VI). But there is still a lack of clarity about the formal source(s) of the binding obligation, and the precise nature of the obligation.

(i) Is it binding?

The first question regarding the status of the principle is simply: is it binding? On the one hand, the Friendly Relations Declaration says that intervention and all other forms or

more questions than it answers.

39 Jens David Ohlin, 'Did Russian Cyber Interference in the 2016 Election Violate International Law?' (2017) 95 *Texas Law Review* 1580 and Steven J. Barela, 'Zero Shades of Grey: Russian-Ops Violate International Law' (Just Security, 29 March 2018)

interference are in violation of international law (see Chapter III). However, on the other hand, Higgins says that "very few" States take the Friendly Relations Declaration seriously,[40] and that not every intervention is unlawful and every interference unlawful.[41]

To answer this question I study it in each chapter. In Chapter II Part 7 I assess the weight of the Friendly Relations Declaration as a binding interpretation of the Charter of the UN. In Chapter III Part 4 I assess the weight of the Friendly Relations Declaration as evidence of customary international law, and look at the words used in that Declaration (and in statements of State representatives in the Sixth (Legal) Committee) regarding the character of obligations regarding the principle of non-inter(ference/vention) in particular. In Chapter IV I ascertain if the principle is a GPOLRBCN: if it is, then it is binding as a separate source of law from custom and treaties. In Chapter V I see what the ICJ has said of the principle's character. In Chapter VI I note that all generally agree that the principle is binding, but that there is confusion as to the distinction between interference and intervention in the principle.

(ii) On whom or what is it binding?

The second question regarding the status of the principle is on whom or what (or with regards to what) is it binding? On the one hand, the Tallinn Manual 2.0 claims the principle only applies between States. The manual's exact wording is that the rule that "a State may not intervene, including by cyber means, in the internal or external affairs of another State [...] only operates in relations between States."[42] Apart from being a tautology, the only evidence offered for this claim is a memorandum to the USA's Attorney General in 1961.[43] However, the memorandum contradicts an important claim made by the manual on State attribution. The memorandum states that a State can violate the principle by failing to prevent the activities of individuals or groups, if such prevention is required by international law.[44] Does international law require any such

40 Higgins (2009, 279)

41 Higgins (2009, 273): "[N]ot every maximalist intervention is unlawful and not every minimalist intrusion is lawful. One cannot simply indicate a particular point along the spectrum and assert that everything from there onwards is an unlawful intervention and everything prior to that is a tolerable interference, and one of the things we put up with in an interdependent world. "

42 Tallinn Manual 2.0 (2017, 312-313)

43 United States Department of Justice, Office of Legal Counsel, Memorandum Opinion for the Attorney General, Intervention by States and Private Groups in the Internal Affairs of Another State (12 April 1961)

44 "The structure of international law has traditionally been viewed as imposing obligations upon states only, and not (with very rare exceptions) upon individuals or sub-national groups. Therefore

prevention? Yes it does, according to the memorandum, which quotes approvingly a 1928 statement from H. Lauterpacht that:

> *[i]nternational law imposes upon the state the duty of restraining persons resident within its territory from engaging in such revolutionary activities against friendly states as amount to organized acts of force in the form of hostile expeditions against the territory of those states. It also obliges the state to repress and to discourage activities in which attempts against the life of political opponents are regarded as a proper means of revolutionary action.*[45]

However, in the same paragraph as citing that memorandum, the Tallinn Manual refers to its self-declared rules on State attribution which claim that the action executed by a non-State actor can only violate the principle if that actor is being directed by (or controlled by or under the direction of) the State.[46] Therefore, "a private corporation conducting hostile cyber operations against a State's cyber infrastructure" would not violate the rule.[47] This would be so even if that corporation was owned by the State, so long as the corporation was doing its hostile cyber operations on its own time and design.[48]

On the other hand, the Friendly Relations Declaration says that the principle applies between States and peoples, too (see Chapter III), and Art 62 of the Statute of the ICJ refers to the principle as applying to court proceedings also.

To answer this question I study it in each chapter. In Chapter II Part 5 I consider the entities described by treaties as having rights or obligations regarding the principle. In Chapter III I read the Friendly Relations Declaration to see if anything other than a State has rights or obligations regarding the principle. In Chapters IV and V I do not discriminate against expressions of the principle as applying to entities other than States, and instead consider the principle in the round.

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international law with respect to intervention in the internal affairs of another state, by force or other means, is designed to set standards for the conduct of states. If the provision of arms, personnel, or other assistance by private groups is in violation of international law, it can only be because a state actively assists such groups—therefore making it state action—or fails to take measures required by international law to prevent such activities." United States Department of Justice (1961, 225)

45 H. Lauterpacht, Revolutionary Activities by Private Persons Against Foreign States, 22 Am. J. Int. L. 105, 126 (1928) cited in United States Department of Justice (1961, 228). Similar wording is found in the Friendly Relations Declaration (1970, Annex paragraph 1).

46 Tallinn Manual 2.0 (2017, 87, 94)

47 Tallinn Manual 2.0 (2017, 313-314)

48 Tallinn Manual 2.0 (2017, 88)

6. Research Question: The Importance Of The Principle

The third and final set of questions regards the importance of the principle of non-inter(ference/vention).

(i) What results from following it?

The first question regarding the importance of the principle is: what results from following it? In other words, what are the outcomes to which it contributes, or with what ends is it associated? On the one hand, Jamnejad and Wood referred to the principle as perhaps being a "positive tool for the regulation of diplomacy, international relations, and our growing interdependence"[49], Higgins' referred to the difficulty of sifting through the "rhetoric" surrounding the principle and getting to reality,[50] and Crawford and Shaw gave the principle just a few lines treatment near the back of their works (see Chapter VI).

On the other hand, Stapleton described the principle as "the one great principle of international law on which, far more than on any other, depends the free and independent existence of all the less powerful States which form part of the great family of nations" and that "[r]epeated violations of it can only lead to the re-establishment of that law—if law it can be called—which marked the barbarous ages of the world, viz., the law of the strongest,"[51] and the Friendly Relations Declaration says that "strict observance" of the principle is "an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security."[52]

To answer this question I study it in each chapter. In Chapter II Part 6 I consider the topic of each treaty. In Chapter III Part 6 I consider the ends associated with the principle according to the text of the Friendly Relations Declaration and statements of State representatives in the Sixth (Legal) Committee. In Chapter IV I consider the purpose of the principle as found variously in the general international, EU, and UKGBNI legal orders. In Chapter V I consider the importance of the principle as described by the ICJ in

49 Jamnejad and Wood (2009)

50 Higgins (2009, 279)

51 Stapleton (1866, 14-15)

52 Preamble to the Friendly Relations Declaration.

its various decisions, and in Chapter VI compare the findings of various publicists of the UKGBNI over the past century and a half.

(ii) What principles is it associated with?

The second question regarding the importance of the principle is: with what other principles is it associated with? It has already been noted that the decision in *Military and Paramilitary Activities in and against Nicaragua* considered the principle insofar as it overlaps with the principle prohibiting the use or threat of force, and authors in the literature are already clear that principles prohibits the use of force: such as Pomson (2022). Others have noted that the principle relates to sovereign equality, sovereignty, and self-determination: for example, Higgin's saw it as a "balance" between "the sovereign equality and independence of states on the one hand and the reality of an interdependent world and the international law commitment to human dignity on the other.[53] The principle is also associated in the literature with cooperation: for example, Oppenheim's *International Law* referred to "interference pure and simple" as including cooperation (see Chapter VI); but the Friendly Relations Declaration says that all interference violates international law, and that there is a separate "duty" to cooperate (see Chapter III).

To answer this question I study it in each chapter. In Chapter II Part 6 I consider the other principles appearing alongside the principle in the treaty texts considered. In Chapter III I consider the expressly inter-related character of the principles of the Friendly Relations Declaration. In Chapter IV I observe the associated principles found in the general international, EU, and UKGBNI legal orders. In Chapter V I observe the associated principles as found by the ICJ, and in Chapter VI touch on some of the comments made by UKGBNI publicists regarding these associations.

7. The UKGBNI As A Case-Study

I take the opportunity in Part 7 of each chapter's study to consider the materials in relation to the UKGBNI as a case study. I do this in relation to the UKGBNI because of the relation between the teachings of the most qualified publicists of the UKGBNI and the practice of the UKGBNI, but also because my presence in the UKGBNI and previous familiarity with using the National Archives allowed me to make what I consider to be

53 Higgins (2009, 273)

some interesting contributions to the wider literature regarding previously unreferenced primary material of *opinio juris*, and because I think it is interesting to have a case study that runs through the substantive chapters for secondary reflection upon in the concluding chapter. Furthermore, I think it professionally proper and a privilege for a researcher of international law to subject the activities of one's own state to scrutiny.

In Chapter II I study treaties referencing non-inter(ference/vention) to which the UKGBNI is party, including the Charter of the United Nations. In Chapter III I study declassified public records of the UKGBNI's Government regarding its legal interpretation of the Friendly Relations Declaration. In Chapter IV I study the texts of the most learned jurists of English common law to ascertain whether or not the UKGBNI can be regarded as a 'civilised nation' (for the purposes of Article 38(1)(c)) and, in case it cannot, the domestic legal implications. In Chapter V I study the UKGBNI's performance at the ICJ with regards to the principle. In Chapter VI I study the recent relationship between the 'teachings of the most highly qualified publicists' of the UKGBNI and its Government. In Chapter VII I compare the performance of the UKGBNI against its obligations.

8. Conclusion

In conclusion, the starting point of this thesis is that the literature suffers from some persistent confusions regarding the principle. The hypothesis of the thesis is that through taking account of current limitations in the literature and conducting a more rigorous orthodox study, it will be possible to find a clearer answer to key questions regarding the principle. The rest of the thesis undertakes to test that hypothesis through conducting such a study.

II. The Principle According To All Treaties Registered With The UN Secretariat

1. Introduction

In this chapter I study the meaning and significance of the principle of non-inter(ference/vention) according to treaties governed by international law.

In this part (Part 1) I review the structure of the chapter. In Part 2 I introduce the materials that are studied: over two hundred treaties registered with, and published by, the UN Secretariat. In Part 3 I introduce the methods provided by the Vienna Convention on the Law of Treaties (VCLT) that I use to study the materials. In Part 4 I study the materials to ascertain the difference, if any, between 'interfere'/'interference' and 'intervene'/'intervention' and the commonality between them. In Part 5 I study the materials to ascertain whether the principle has binding status, and whom or what the principle regards. In Part 6 I study the materials to ascertain the ends and principles associated with the principle of non-inter(ference/vention). In Part 7 I study the UKGBNI's treaty obligations regarding the principle. In Part 8 I critically evaluate the limitations of this study. Finally, in Part 9 I review the conclusions that can be taken from the chapter and carried forward to Chapter VII, which is the conclusion of this thesis.

My primary intention in studying treaty law is to ascertain if any clarification is available as to the meaning of 'interfere' and 'interference' compared to 'intervene' and 'intervention'. I also hope to see if these concepts are regarded in those treaties as being binding, and to see if they are especially favoured by some States.[54]

54 eg Moynihan (2019, 27) claims that China and Russia see the two concepts as the same, but that Western states do not.

2. Materials

I study treaty law for three reasons. First, because it is referred to in the Preamble of the UN Charter as one of the sources of international law,[55] and is one of the categories of materials that can be considered by the International Court of Justice.[56] Second, because it is regarded as a source of law by the general literature.[57] Third, because it is treated as a source of law by the literature with which I engage regarding the principle.

I take the term "international convention" of Article 38(1) to mean 'treaty', the latter defined in the VCLT as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation".[58] Examples incidentally considered in this chapter that do not fit this are the Helsinki Final Act (1975) (an international agreement concluded between States in written form but expressly not governed by international law)[59] and intra-Korean agreements (which are "not a relationship between states" but "a special interim relationship stemming from the process towards reunification").[60]

In selecting treaties for study I note that none in the literature with which I engage presented a systematic approach to studying treaties or explicit reasoning for their selection of treaties.[61] Accordingly, it appears possible that the literature might have suffered some degree of unconscious bias in its treaty selection. Anthea Roberts has observed from a systematic qualitative study of literature in international law generally that:

> *Although the books from different states varied in terms of how nationalized or denationalized they were, they were consistent on one point. When it came to looking*

55 "We the peoples of the United Nations determined [...] to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained" (Preamble to the Charter of the UN, third recital)

56 Statute of the ICJ, Article 38(1)(a)

57 eg Thirlway (2014, 31)

58 VCLT (1969, Article 2)

59 "[T]he text of this Final Act [...] is not eligible for registration under Article 102 of the Charter of the United Nations" (Helsinki Final Act, 59)

60 Agreement on Reconciliation, Non-Aggression and Exchanges and Cooperation between the South and the North (1991, seventh preambular recital). See the Annex for consideration of the principle as found in intra-Korean agreements.

61 For an example in the literature that explicitly and uncritically focuses on the practice of such states, see Pomson (2022).

> *at the practice of foreign states or the writings of foreign scholars, they tended to focus primarily on material from Western states in general, and core English-speaking Western states in particular.*[62]

Preceding Roberts' finding by more than twenty years, Reisman made a similar observation regarding *Oppenheim's International Law* (which is treated as a key authority in the literature on the principle; see Chapters I and VI):

> *The Ninth Edition contains more scholarly citations than Oppenheim's original, but the geographic scope is not any more expansive. While an abundance of Western European and North American treatises and journals are consulted throughout, Eastern European, Latin American, and Asian materials are not. The wide-ranging bibliographical lists at the start of each new section have become mostly English and West European.*[63]

Accordingly, I intend to not only undertake a wider review of treaties than presently found in the literature, but to select my materials for that review transparently, objectively, and systematically.

3. Methods

The primary source I use for treaty selection is the United Nations' Treaty Series. The reason I chose this source is that upon joining the United Nations each Member State assumes an obligation to register with the UN Secretariat copies of all treaties they subsequently enter into:[64] since by default all treaties are registered in English (and French) as well as their authoritative language (if different), this provides the Anglo-phone researcher a complete catalogue of material to investigate. The Secretariat has published these treaties online and made them machine-readable through Optical Character Recognition.[65] This allows the researcher to review all States' usage of the principle in their treaties. The terms I searched for were "interfer*" and "interven*", the asterisk being used as a 'wild-card' to include both terms in their verb and noun forms (interfere/intervene and interference/intervention respectively). The search was conducted in 2018, reviewing all treaties registered with and published by the Secretariat from 1945 to 2017. In total 217 treaties were returned and analysed. To facilitate scrutiny

62 Roberts (2017, 165)

63 Reisman (1994, 270)

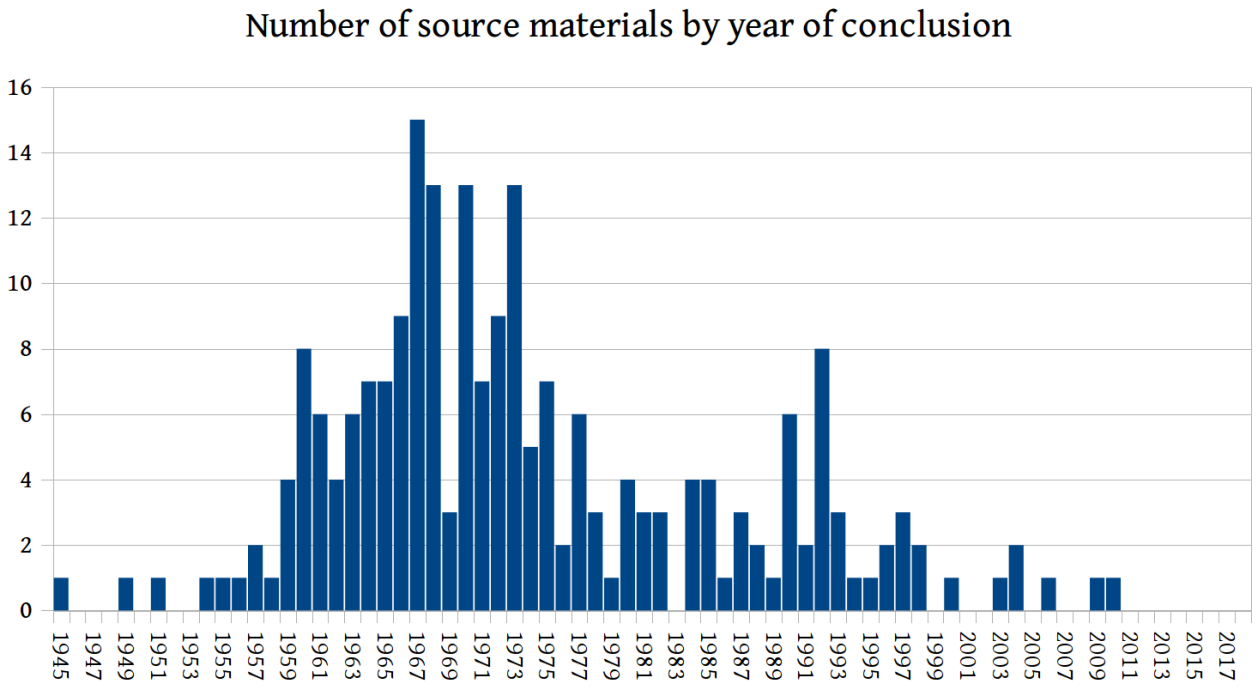
64 Article 102, Charter of the UN.

65 For the rules governing the Secretariat's publishing of treaties registered under Article 102 see 'Regulation to give effect to Article 102 of the Charter of the United Nations' 1 UNTS XVI.

of my analysis of these treaties, I have prefixed the bibliographic entries of these 217 treaties with a chronologically sequential number in square brackets ([*n*]). This not only keeps the prose of this chapter free from masses of text in citations, but together with the unique URL links provided for each treaty it also makes it easier for the reader to check the data quickly and directly.

To analyse the selected treaties I applied a consistent methodology. First, I noted the year in which each treaty was signed and the parties to it. This showed that almost all Member States have used the search terms in their treaties, and that although there are trends in the term's occurrence over time the principle remained in reference throughout the period studied. The following chart provides an overview of the years in which the treaties in the sample were concluded. It shows that in most but not all years since 1945 a treaty mentioning 'interfer*' or 'interven*' was concluded and subsequently registered with and published by the Secretariat, and that of the seven complete decades reviewed the great majority of the treaty sample were concluded in the three decades after 1960 with strong clustering in the years around 1970. This clustering is probably due to factors such as the process of de-colonisation, but see the evaluation section for questions arising from other data regarding alternative explanations for a decline in the number of treaties published.

Chart 1: Number of source materials by year of conclusion



The following table indicates the parties included in the treaty sample. It shows that a large number of parties are considered (148), and that most States therefore have recognized the principle in a treaty other than the Charter of the UN (which narrowly predates the treaty selection period, but is considered separately in Part 7). While the USSR and its East European neighbours concluded by far the highest numbers of treaties in the sample, there are also a considerable number of treaties concluded by States within the Western Europe and Other Group (WEOG).[66] Considering the well-known association of the PRC to five principles of peaceful coexistence (one of which being the principle of non-interference/vention), and the opposition of groups such as the American Bar Association to the concept of peaceful coexistence as a Communist conspiracy,[67] I was surprised to see that the USA had more treaties in the treaty sample than the PRC.

Table 1: Number of Treaties by State

No. of treaties	**State**
54	Union of Soviet Socialist Republics
42	Romania
23	Bulgaria
19	Czechoslovakia
17	Mexico
16	France; Hungary; Poland
15	German Democratic Republic; United States of America
11	China
10	Mongolia
9	Brazil; Italy

66 The WEOG comprises Andorra, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Israel*, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey*, United Kingdom of Great Britain and Northern Ireland, and United States of America*(*="special cases"). <https://www.un.org/dgacm/en/content/regional-groups> accessed 24 March 2021

67 Standing Committee on Education Against Communism, *Peaceful Coexistence: a Communist Blueprint for Victory* (American Bar Association 1964)

8	Spain
7	Iran; Peru; Tunisia
6	Democratic People's Republic of Korea; Morocco; Nicaragua
5	Canada; Cuba; Ghana; Indonesia; Somalia; United Kingdom of Great Britain and Northern Ireland; Venezuela
4	Costa Rica; Ecuador; India; Panama; Senegal; Syria; Yemen
3	Algeria; Austria; Bolivia; Central African Republic; Colombia; Cyprus; Denmark; Dominican Republic; Egypt; Jamaica; Jordan; Mali; Pakistan; People's Republic of China; Syrian Arab Republic; Uganda; United Arab Republic
2	Albania; Bahrain; Belgium; Burundi; Cambodia; Cameroon; Chile; Dahomey; Democratic Republic of Viet-Nam; Djibouti; El Salvador; Ethiopia; Guatemala; Guinea; Honduras; Iraq; Kuwait; Laos; Libyan Arab Republic; Madagascar; Mozambique; Niger; Paraguay; People's Republic of Bulgaria; Polish People's Republic; Qatar; Russian Federation; Rwanda; Sudan; Ukraine; United Arab Emirates; United Mexican States; Uruguay
1	Afghanistan; Angola; Argentina; Argentine Republic; Australia; Bahamas; Bangladesh; Barbados; Bhutan; Burkina Faso; Byelorussian Soviet Socialist Republic; Ceylon; Chad; Comoros; Congo Brazzaville; Congo Leopoldville; Council for Mutual Economic Assistance;[68] Czechoslovak Socialist Republic; Democratic Kampuchea; Democratic Republic of Germany; Democratic Yemen; El Salvador; Federative Republic of Brazil; Finland; Gabon; Gambia; Georgia; Germany; Greece; Hungarian People's Republic; Ivory Coast; Japan; Kingdom of Cambodia; Kingdom of Thailand; Lao People's Democratic Republic; Latvia; Liberia; Libya; Libyan Arab Jamahiriya; Malaysia; Mauritania; Mauritius; Mongolian People's Republic; Netherlands; Nigeria; Oman; People's Republic of Angola; People's Republic of Kampuchea; Republic of Korea.

It should be noted that just because a term is not mentioned in a treaty does not mean that the parties do not feel bound by it.[69] Furthermore, the principle is frequently

68 I follow here the UN Office of Legal Affairs' Treaty Section (2012, 5) in including non-States under the term 'State' for convenience.

69 eg Hall (1884, 10)

referred to within other keywords which I did not search for, such as 'the principles of the Charter of the United Nations'. In addition, not all treaties appear to be fully OCR searchable due to some data quality issues when scanned and published, and there is an open question in my mind about whether or not all treaties are being registered and published (see Part 7). Therefore, the actual number of treaties referring to the principle is known to be higher than the treaties selected.

The second step in my method of analysis was to note the topic of each of these treaties. The third step in analysis was to observe the location of the terms within the treaty. The fourth step was to note the precise term used in the treaty. This was done not only in the English language version of each treaty, but also its correlate and equally-authoritative French (and other, if available) language versions of each treaty. The fifth step was to observe the text immediately surrounding the term. The final step was to note any definitions, examples, or exemptions for the principle.

I adopt a doctrinal approach to hermeneutic analysis of the words found in the treaties by applying the VCLT's 'general rule of interpretation' and 'interpretation of treaties authenticated in two or more languages'. Specifically, I apply VCLT Article 31(1) in Parts 4 and 6 of this Chapter, Article 31(3) and (4) in Part 7, and Article 33 in Part 5.

On the basis of the preceding, I hope to contribute a sufficiently wide and reliable treaty review and analysis to test the thesis' hypothesis.

4. Question: What Is The Difference Between 'Interference' And 'Intervention' In The Treaty Sample?

(i) 'Interference' and 'intervention' are not distinguished, but are used as synonyms

I tried to ascertain a difference between 'interfere/interference' and 'intervene/intervention' in the treaty sample but could not. This is for several reasons. First, none of the treaties sampled explicitly defined 'interfere/interference' and 'intervene/intervention' or distinguished between them.

Second, on several occasions 'interfere/interference' and 'intervene/intervention' were explicitly interchanged without comment,[70] and elsewhere they were treated as implicitly interchangeable.[71] This observation is supported and the proposition confirmed by consideration of the Charter of the United Nations and the VCLT, because Article 2(7) of the Charter recognises the principle using 'intervene' but the sixth recital of the VCLT's preamble refers to the principle as embodied in the Charter by the term 'non-interference'. Additionally, in the treaty sample there was no different usage or legal association found between 'interfere/interference' and 'intervene/intervention', no difference according to the treaty topic (see Part 6), no difference according to whether it was "internal" or "domestic" affairs being referred to (see Part 5), no clear differentiation in usage between countries, and no distinction gleaned from the context of the term's occurrence (e.g. predicates or location in the treaty).

Third, the findings above extends to other language versions as well, at least from the perspective of searching for equivalents from the English keywords. For example, as shown in the table below, with the exception of "intervention" in English and "*intervención*" in Spanish (and perhaps "interference" in English and "*interférence*" in French, though those treaties are few), there was no consistent equivalence between "interference" and "intervention" in English and their counterparts in other languages. Of the 115 treaties mentioning 'interfere'/'interference' in English,[72] 74 gave "*ingérence*" (including "*ingérance*" once) as officially equivalent in French; 36 gave "*intervention*";[73] three gave "*interférence*";[74] one gave "*compromettre*" (given as "*interferenze*" in Italian);[75] and one gave "*s'immiscer*".[76] Other than French, equivalent wording for

70 e.g. [155] article 5 precludes "any interference" under a provision headed "Non-Intervention Principle".

71 e.g. [156] refers to non-'intervene'/'intervention' in internal affairs in article 1, and non-'interfere'/'interference' in internal affairs in Article 3.

72 [146]; [3]; [4]; [13]; [19]; [21]; [22]; [28]; [33]; [36]; [44]; [45]; [46]; [47]; [48]; [49]; [50]; [51]; [52]; [56]; [57]; [59]; [60]; [62]; [63]; [65]; [66]; [69]; [70]; [71]; [75]; [76]; [80]; [85]; [92]; [93]; [94]; [96]; [99]; [101]; [102]; [103]; [107]; [111]; [112]; [116]; [119]; [121]; [122]; [123]; [124]; [125]; [126]; [128]; [130]; [131]; [132]; [133]; [134]; [135]; [136]; [137]; [141]; [143]; [144]; [147]; [181]; [193]; [202]; [207]; [211]; [213]; [214]; and [216].

73 [8]; [12]; [15]; [20]; [23]; [25]; [26]; [29]; [30]; [31]; [32]; [35]; [37]; [38]; [40]; [53]; [58]; [68]; [79]; [86]; [90]; [97]; [115]; [127]; [145]; [148]; [151]; [164]; [167]; [168]; [170]; [191]; [198]; [201]; [203]; and [204].

74 [24] end of USA's note; [105]; and [209].

75 [42].

76 [82].

'interfere'/'interference' in English was "*injerencia*",[77] "*ingerencia*",[78] and "*intervención*"[79] in Spanish; "간섭"[80] (*kansŏp*, 干涉) in Korean; "*einmischung*"[81] in German; "*intervenção*"[82] and "*ingerência*"[83] in Portuguese; and "*ingerenza*",[84] "*interferenza*",[85] and "*interferire*"[86] in Italian. Of the 96 treaties mentioning 'intervene'/'intervention' in English, 70 gave "*ingérence*" as officially equivalent in French;[87] 24 gave "*intervention*";[88] one gave "*intervenir*";[89] and one gave "*n'interviendront*".[90] Other than French, equivalent wording for 'intervene'/'intervention' found in English was "*intervención*" (also rarely "*intervenciòn*", "*intervenciôn*") in Spanish;[91] "간섭"[92] (*kansŏp*, 干涉) in Korean; "*einmischung*"[93] in German; "*ingerência*"[94] and "*intervenção*"[95] in Portuguese; and "*intervento*"[96] in Italian. Of the three treaties not mentioning 'interfere'/'interference' or 'intervene'/'intervention' in English, "affect unduly" was given as "*interferire*" in Italian and "*affecter indûment*" in French;[97]

77 [191]; [198]; and [213].

78 [181] and [211].

79 [207] and [209].

80 [116] and [216].

81 [22] and [122].

82 [203] and [204].

83 [211].

84 [37].

85 [127].

86 [82].

87 [1]; [6]; [10]; [16]; [17]; [39]; [54]; [55]; [61]; [64]; [72]; [73]; [74]; [77]; [78]; [81]; [83]; [84]; [87]; [88]; [89]; [91]; [95]; [98]; [100]; [104]; [109]; [110]; [114]; [117]; [118]; [129]; [139]; [140]; [142]; [149]; [150]; [152]; [153]; [159]; [160]; [161]; [162]; [163]; [165]; [169]; [172]; [173]; [174]; [175]; [176]; [178]; [179]; [180]; [182]; [183]; [184]; [186]; [187]; [188]; [190]; [192]; [200]; [205]; [206]; [208]; [210]; [212]; and [215].

88 [2]; [5]; [7]; [11]; [14]; [18]; [34]; [41]; [43]; [67]; [108]; [120]; [138]; [154]; [157]; [171]; [177]; [185]; [189]; [194]; [196]; [197]; [199]; and [217].

89 [166].

90 [9].

91 [184]; [186]; [187]; [188]; [190]; [205]; [215]; [14]; [185]; [189]; [194]; [196]; [199]; [217]; [206]; [208]; [210]; and [195].

92 [117]; [177]; [178]; and [197].

93 [173]; [10]; [54]; and [78].

94 [173] and [211].

95 [203] and [204].

96 [81].

97 [27].

"entertain" as "*interverranno*" in Italian and "*ne pourront pas connaître*" in French;[98] and "infringement" as "*intervenir*" in French.[99]

Table 2: Frequency of Equivalent Terms

		English	
		'interfere' /'interference'	'intervene' /'intervention'
French	ingérence	74	70
	intervention	36	24
	interférence	3	0
	compromettre	1	0
	intervenir	0	1
	n'interviendront	0	1
Spanish	injerencia	3	0
	ingerencia	2	0
	intervención	1	18
Korean	간섭 (干涉)	2	4
German	einmischung	2	4
Portuguese	intervenção	2	2
	ingerência	1	2
Italian	ingerenza	1	0
	interferenza	1	0
	interferire	1	0
	interverento	0	1

If international law distinguished between 'interfere'/'interference' and 'intervene'/'intervention', we would see equivalent terms being used consistently in other equally authentic languages. However, we see the opposite: equivalent words used for 'interfere'/'interference' and 'intervene'/'intervention' are muddled. For example,

98 [113].

99 [106].

from the results above we see that the French equivalent of 'interfere' or 'interference' is usually "*ingérence*" (74 of 115 occasions) but also frequently "*intervention*" (36 of 115), and yet that the same is true of 'intervene'/'intervention' (70 and 24 of 96 respectively). Furthermore, though the sample size for these languages was small, 'interfere'/'interference' and 'intervene'/'intervention' were both equivalent to just one word in other languages: "*einmischung*" in German and "간섭" in Korean (which I found particularly interesting, because Korean does have a more direct equivalent for the English "intervention", namely "개입" (*kaeip*, 介入), yet even the Charter's transposition into ROK law uses 간섭 in article 2(7)).[100] Perhaps the best example is the Charter itself (though I cannot comment on the Arabic or Russian versions): the 'intervene' in the English text of Article 2(7) has as equivalence[101] in French "*intervenir*", in Spanish also "*intervenir*", and in Chinese "干涉" (the same as "간섭" in Korean). However, the same concept (viz., the principle as embodied in the Charter) is referred to in the sixth preambular recital of the VCLT by the same word in Chinese (干涉), and different words in English, French and Spanish (interference, *ingérence*, and *injerencia* respectively).[102]

Table 3: Reference to the Principle as found in the UN Charter, by Language

	Article 2(7) of the Charter of the United Nations	**The Vienna Convention on the Law of Treaties' reference to the principle in the Charter**
English	"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 [...]"	"Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principle[...] of non-interference in the domestic affairs of States"[103]

100 국제연합헌장 및 국제사법재판소규정. There is also a question (in the context of the agreed principles for the peaceful unification of the Korean peninsula, which include the principle) regarding the meaning of related terms like 지지성원하다 (*jijisŏngwŏnhada*), for discussion of which see the Annex.

101 According to the meaning of Article 33(3) of the VCLT.

102 It supports this point further to note that that Chinese characters are used twice by both Japan and China in their 1978 Treaty of peace and friendship ([158]), yet the official English version translates it as 'intervention' in one instance (article 1(1)) and 'interference' in the other (Article 3).

Chinese	"[...] 干涉 [...]"	"[...] 干涉 [...]"
French	"[...] *intervenir* [...]"	"[...] *ingérence* [...]"
Spanish	"[...] *intervenir* [...]"	"[...] *injerencia* [...]"

(ii) 'Interference' and 'intervention' have no stable equivalents in other languages

For guidance on reconciling the preceding observations, I turn to the VCLT provisions as a hermeneutic aid for interpreting meaning in treaty text across languages. Article 33(1) states (emphasis added):

> *When a treaty has been authenticated in **two or more languages,** the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.*

Article 33(3) states (emphasis added):

> *The terms of the treaty are presumed to have the **same meaning** in each authentic text.*

Considering the language results above in light of Article 33(1), I suggest any claim that "interference" and "intervention" are different according to international law, must first bear in mind what other languages say of that. However, I recall no examples in the UKGBNI literature of authors considering other languages, other than Paul Behrens' comparison with French in *Diplomatic interference and the law*.[104]

Applying Article 33(3) to the language results above, I suggest we cannot interpret 'interfere'/'interference' and 'intervene'/'intervention' as having a different meaning from each other, since even if there were a distinction between them (and there seems not), it would in any case be dissolved by their commonality of equivalent phrasing in the other language versions of the treaties sampled (e.g. both being published as equivalent to *ingérence*, *intervention*, *einmischung*, 간섭, 干涉).

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103 N.B. Article 2(7) is the only explicit and direct reference to the principle to be found in the Charter (for an explicit indirect reference, see e.g. references to good-neighbourliness and peace). The League of Nations Article 15(8) referred to "a matter which is solely within the domestic jurisdiction" whereas UN Charter Article 2(7) refers to matters "essentially" within the domestic jurisdiction, the latter being more deferential to states than the former.

104 Behrens (2018, 41)

Therefore, we can say that while 'intervene'/'intervention' and 'interfere'/'interference' have separate associations in the English language, the two terms do not appear legally distinguished or distinguishable in the treaty sample considered. I therefore reference the principle as being of non-inter(ference/vention), rather than considering it as two separate principles (this is further supported by findings in the subsequent Chapters).

(iii) VCLT analysis confirms that 'interference' and 'intervention' must be interpreted as synonymous

To sum up this Part 4, I claim that we can draw the following inferences from certain observations judged against the premise of the VCLT approach to treaty interpretation.

First, as "a treaty shall be interpreted [...] in accordance with the ordinary meaning to be given to the terms of the treaty [...]",[105] and 'interfere'/'interference' and 'intervene'/'intervention' are used not consistently but interchangeably in the English language versions of the treaty sample, it seems that we can infer that in the treaties considered there is no difference in legal meaning between 'interfere'/'interference' and 'intervene'/'intervention' as found in the English language materials considered.

Second, as "when a treaty has been authenticated in two or more languages, the text is equally authoritative in each language",[106] and in the treaty sample 'interfere'/'interference' and 'intervene'/'intervention' have inconsistent equivalent texts in other authentic languages or official translations, it seems that we can infer that even if there were a difference in the English language versions of the treaties considered (and according to the preceding inference there is not), any such purported difference is not found to be consistently translatable to other equally-authoritative languages.

Finally, as "the terms of the treaty are presumed to have the same meaning in each authentic text",[107] and in the treaty sample 'interfere'/'interference' and 'intervene'/'intervention' are interchanged in English and between English and other languages, it seems that we can infer that in the treaty sample considered, 'interfere'/'interference' and 'intervene'/'intervention' have the same meaning—a

105 VCLT Article 31(1)

106 VCLT Article 33(1)

107 VCLT Article 33(3)

meaning which I refer to by the term 'inter(fere/vene)' as a verb and 'inter(ference/vention)' as a noun.

These results are interesting because they contradict all editions of Oppenheim's *International Law* (and its many followers), which assert with little or no evidence that there is a "strict" difference in meaning in international law between 'interfere'/'interference' and 'intervene'/'intervention' (see Chapter VII). This is significant because Oppenheim and the subsequent editors of *International Law* treat "interference pure and simple" as lawful, and only "intervention proper" as prohibited (intervention being a "dictatorial" type of interference).[108]

5. Question: What Defines A Prohibited 'Inter(ference/vention)'?

In this Part I tentatively advance the claim that whether any particular inter(ference/vention) is lawful or not depends on whether it enjoys mutual consent or not, rather than the current test in the literature of whether or not it lacks coercion or not. In other words, it seems the principle means that States may be involved in the affairs of others if they have the consent of the latter, but may not if they do not. This is similar but subtly (and crucially) different to the current interpretation that States may be involved in the affairs of others as they wish, so long as they do not use coercion when doing so.

The Part is formed of three sections. In the first section I consider the location of an 'int': an 'int' in what? In the second section I consider consent *vis a vis* coercion as the element that defines the lawfulness or not of any particular 'int', and in the final section I consider the first two sections applied to four treaties selected from the treaty sample.

(i) Where does inter(ference/vention) occur?

The treaty sample showed that almost all referred to the principle as applying with regard to "internal affairs" and "domestic affairs", a small but significant number gave no specification, and several referred to technical areas such as courts, shipping, and information.[109] Specifically (and here I also divide treaties into those mentioning 'interfere'/'interference' and 'intervene'/'intervention' to illustrate the second

108 cf also Moynihan (2019, 27)

observation in Part 4 above): 139 treaties in the sample referred to “internal affairs”(81 'interfere'/'interference',[110] 58 'intervene'/'intervention'[111]); 51 referred to “domestic affairs” (26 'interfere'/'interference',[112] 25 'intervene'/'intervention'[113]); 15 referred to no specified area (five 'interfere'/'interference',[114] ten 'intervene'/'intervention'[115]); 3 referred to “each others affairs” or “the affairs of the other” (one 'interfere'/'interference',[116] two 'intervene'/'intervention'[117]); 1 referred to “assignation of frequencies”('interfere'/'interference');[118] 1 referred to “tracking and data acquisition services” ('interfere'/'interference');[119] and 1 referred to “international shipping”.[120] Of the three treaties included in the sample yet not mentioning 'interfere'/'interference' or 'intervene'/'intervention' in English: “affect unduly” referred to “airline services”;[121] "entertain” referred to “any proceedings relating to the remuneration or contracts of service of the master [of a vessel] or its crew”;[122] and “infringement” referred to “the laws and regulations of either Contracting Party”.[123]

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109 I inadvertently neglected to have included "external" and "foreign" affairs at the time of data entry, so some treaties mentioning both "domestic and foreign" treaties have been counted as "domestic" (see e.g. [65]).

110 [127]; [82]; [203]; [204]; [211]; [22]; [122]; [216]; [181]; [191]; [198]; [213]; [207]; [146]; [3]; [13]; [19]; [36]; [47]; [49]; [50]; [51]; [56]; [57]; [62]; [66]; [69]; [71]; [75]; [76]; [80]; [85]; [93]; [94]; [96]; [99]; [101]; [102]; [103]; [107]; [111]; [119]; [123]; [124]; [125]; [126]; [130]; [131]; [132]; [133]; [134]; [135]; [136]; [137]; [141]; [143]; [144]; [147]; [193]; [202]; [214]; [105]; [8]; [12]; [20]; [23]; [30]; [31]; [53]; [68]; [79]; [86]; [90]; [115]; [148]; [151]; [164]; [167]; [168]; [170]; and [201].

111 [173]; [176]; [117]; [178]; [177]; [197]; [192]; [184]; [186]; [187]; [188]; [205]; [215]; [185]; [189]; [199]; [206]; [208]; [210]; [195]; [17]; [89]; [98]; [104]; [109]; [110]; [114]; [118]; [139]; [140]; [142]; [149]; [150]; [152]; [153]; [159]; [160]; [161]; [162]; [163]; [165]; [169]; [172]; [174]; [175]; [179]; [180]; [182]; [183]; [200]; [166]; [5]; [34]; [108]; [138]; [154]; [171]; and [9].

112 [37]; [116]; [4]; [21]; [28]; [33]; [48]; [52]; [59]; [63]; [65]; [92]; [112]; [121]; [128]; [15]; [25]; [26]; [29]; [32]; [35]; [38]; [40]; [58]; [97]; and [145].

113 [81]; [212]; [10]; [54]; [78]; [1]; [6]; [55]; [64]; [72]; [73]; [77]; [83]; [84]; [87]; [88]; [91]; [95]; [100]; [129]; [7]; [11]; [41]; [43]; and [157].

114 [44]; [45]; [46]; [60]; and [70].

115 [190]; [14]; [194]; [196]; [217]; [16]; [61]; [2]; [18]; and [67].

116 [209].

117 [39]; and [74].

118 [24].

119 [42].

120 [120].

121 [27].

122 [113].

123 [106].

These results show that internal and domestic affairs are the most popular terms used in the treaty sample, but they also show that the non-'interfere'/'interference' and non-'intervene'/'intervention' apply in a surprising diversity of places, such as treaties regarding consulates, ships, and frequencies.[124]

(ii) Is the principle better understood in terms of consent or coercion?

The leading interpretation in the literature regarding the difference between a lawful and unlawful inter(ference/vention) is whether or not some amount of coercion is used, often but not always interpreted by the author as involving some amount of force or pressure.

However, no evidence was found supporting this interpretation in the treaty sample. Indeed, none of the treaties in the treaty sample defined whether the essence of a prohibited inter(ference/vention) was coercion or consent or something else (this follows the finding in Part 4 that none of the treaties defined 'interfere'/'interference' or 'intervene'/'intervention').

Instead, it seems from the context of the treaties that it is the presence of consent that defines a lawful inter(ference/vention) rather than the absence of coercion;[125] and that it is the absence of consent that more completely defines an unlawful inter(ference/vention) than the presence of coercion. For example, many of the treaties deal with topics such as educational co-operation, and for some of these the only principle referenced at all in the treaty text (e.g. as a basis for action) is the principle. If 'consent' defines the boundary of permitted action within an other State (for example, engaging in academic exchange) then the principle would mean visitors to the receiving State would not engage in activities beyond that which had been consented to expressly or implicitly (good faith and mutual respect are relevant here too, also respect for universal human rights of course). It seems difficult to contrive such prominent relevance of the principle if it refers merely to the use of coercion, especially if one

124 Another observer might consider the last three treaties as irrelevant and so exclude them from consideration, but as the research question was precisely "the meaning of [...] inter(ference/vention) according to treaty law", I think it would be a logical fallacy of 'begging the question' (*'petitio principii'*) to do so, as it would pre-selecting what the term(s) 'really' means. See also Chapter Five, Part V for consideration of 'intervention' in the Statute of the ICJ.

125 This is not suprising, since the basis of all action under a treaty is consent, see e.g. Part II section 1 of the VCLT (1969).

interprets coercion so narrowly as to limit it to where it overlaps with the principle of non-use or threat of force.

6. Question: What Is The Principle Important For?

(i) The principle is associated with cooperation, friendly relations, peace etc.

Looking at the titles in the treaty sample, it appears that the objects and purposes of the principle accord with the purposes of the United Nations, sometimes dealing with "adjustment or settlement of international disputes or situations which might lead to a breach of the peace" (Article 1(1)), very often dealing with the development of "friendly relations among nations" (Article 1(2)), and most often dealing with "international co-operation in solving international problems" (and "promoting and encouraging respect for human rights")[126] (Article 1(3)).

In other words, the principle appeared in the treaty sample to be very important for co-operation, good relations, and peace (it was usually referred to as being a basis, an obligation, or an inspiration/guide). Of the 217 treaties considered, 143 referred to “co-operation” (or “cooperation”) in their titles (of these, with reference again to the point in Part 4 regarding lack of the distinction between 'interfere'/'interference' and 'intervene'/'intervention' in the sample, 78 mentioned 'interfere'/'interference',[127] and 65 mentioned 'intervene'/'intervention'[128]).[129] Of the 143, 67 did not specify a sub-category

126 e.g. [2].

127 [19]; [21]; [22]; [33]; [36]; [44]; [45]; [46]; [47]; [48]; [49]; [50]; [52]; [56]; [57]; [59]; [60]; [63]; [65]; [66]; [69]; [70]; [71]; [75]; [76]; [80]; [92]; [93]; [96]; [99]; [102]; [103]; [111]; [112]; [119]; [122]; [126]; [128]; [134]; [135]; [144]; [147]; [15]; [20]; [23]; [25]; [29]; [30]; [31]; [35]; [37]; [38]; [40]; [53]; [58]; [79]; [86]; [97]; [115]; [127]; [148]; [151]; [164]; and [168] for "co-operation". [101]; [107]; [181]; [193]; [202]; [207]; [214]; [216]; [209]; [26]; [145]; [191]; [198]; and [201] for "cooperation".

128 [10]; [17]; [39]; [54]; [61]; [64]; [72]; [73]; [77]; [78]; [83]; [84]; [87]; [88]; [91]; [95]; [98]; [100]; [104]; [109]; [114]; [118]; [129]; [139]; [150]; [152]; [153]; [159]; [160]; [161]; [162]; [163]; [165]; [169]; [172]; [173]; [174]; [178]; [179]; [180]; [41]; [43]; [67]; [108]; [154]; and [157] for "co-operation". [140]; [176]; [182]; [183]; [184]; [186]; [187]; [188]; [190]; [192]; [200]; [205]; [206]; [210]; [212]; [189]; [194]; [196]; and [199] for "cooperation".

129 [10]; [15]; [17]; [19]; [20]; [21]; [22]; [23]; [25]; [26]; [29]; [30]; [31]; [33]; [35]; [36]; [37]; [38]; [39]; [40]; [41]; [43]; [44]; [45]; [46]; [47]; [48]; [49]; [50]; [52]; [53]; [54]; [56]; [57]; [58]; [59]; [60]; [61]; [63]; [64]; [65]; [66]; [67]; [69]; [70]; [71]; [72]; [73]; [75]; [76]; [77]; [78]; [79]; [80]; [83]; [84]; [86]; [87]; [88]; [91]; [92]; [93]; [95]; [96]; [97]; [98]; [99]; [100]; [101]; [102]; [103]; [104]; [107]; [108]; [109]; [111]; [112]; [114]; [115]; [118]; [119]; [122]; [126]; [127]; [128]; [129]; [134]; [135]; [139]; [140]; [144]; [145]; [147]; [148]; [150]; [151]; [152]; [153]; [154]; [157]; [159]; [160]; [161]; [162]; [163]; [164]; [165]; [168]; [169]; [172]; [173]; [174]; [176]; [178]; [179]; [180]; [181]; [182]; [183]; [184]; [186]; [187]; [188]; [189]; [190]; [191]; [192]; [193]; [194]; [196]; [198]; [199]; [200]; [201]; [202]; [205]; [206]; [207]; [209]; [210]; [212]; [214]; and [216].

of co-operation, and 60 of these also mentioned “friendship” (i.e. some of 'the friendship and co-operation treaties' occasionally referred to *en masse* in the literature).[130] Of the remainder, the following sub-topics were identified (some treaties dealing with more than one sub-topic): culture (20 occurrences);[131] technical (22 occurrences);[132] science (22 occurrences);[133] economy (13 occurrences);[134] drugs (11 occurrences);[135] education (five occurrences);[136] and seven other sub-topics (tourism, radio and television communications, merchant shipping, industrial, and military).[137] 12 treaties were titled "Consular Convention" (of these, 5 referred to 'interfere'/'interference'[138] and 6 referred to 'intervene'/'intervention'[139]). Others dealing implicitly with co-operation regarded most often peace, carriage, extradition, and counter-terrorism.

Important treaties for peace include the 'pact of amity' between Costa Rica and Nicaragua (1949),[140] the 'declaration on the neutrality of Laos' (1963),[141] the 'Tashkent declaration' between India and Pakistan (1966),[142] the 'agreement on ending the war and restoring peace in Viet-Nam' (1973),[143] the 'treaty of peace and friendship' between China and Japan (1978),[144] as well as the Helsinki Final Act and the Korean agreements for peaceful reunification of the Korean Peninsula (both of which are expressly not governed by international law) and of course the Charter of the United Nations itself (especially as

130 [10]; [17]; [19]; [21]; [22]; [33]; [36]; [39]; [49]; [50]; [53]; [54]; [56]; [59]; [71]; [72]; [73]; [75]; [77]; [78]; [80]; [83]; [84]; [87]; [88]; [91]; [93]; [95]; [100]; [104]; [109]; [111]; [112]; [114]; [119]; [122]; [134]; [139]; [150]; [152]; [153]; [157]; [159]; [160]; [161]; [162]; [163]; [164]; [169]; [172]; [174]; [178]; [189]; [191]; [192]; [194]; [196]; [200]; [202]; [210]; and [99]; [135]; [140]; [190]; [193]; [201]; and [214].

131 [20]; [30]; [35]; [38]; [41]; [43]; [44]; [45]; [46]; [47]; [48]; [52]; [57]; [58]; [64]; [66]; [70]; [86]; [96]; [97]; [101]; [103]; [107]; [115]; [118]; [126]; [127]; [128]; [144]; [147]; [148]; [168]; [176]; [180]; [181]; [196]; [198]; and [216].

132 [23]; [25]; [26]; [29]; [31]; [37]; [40]; [60]; [65]; [76]; [79]; [92]; [98]; [107]; [108]; [145]; [151]; [165]; [173]; [179]; [196]; and[198].

133 [20]; [44]; [47]; [58]; [60]; [65]; [66]; [76]; [86]; [96]; [103]; [118]; [126]; [128]; [151]; [165]; [173]; [179]; [181]; [196]; [198]; and [216].

134 [23]; [25]; [26]; [29]; [31]; [37]; [40]; [79]; [92]; [98]; [129]; [194]; and [196].

135 [182]; [183]; [184]; [186]; [187]; [188]; [199]; [205]; [206]; [207]; and [212].

136 [126]; [176]; [181]; [196]; and [216].

137 [15]; [61]; [63]; [67]; [69]; [102]; and [154].

138 [82]; [94]; [123]; [125]; and [67].

139 [89]; [110]; [117]; [171]; [175]; and [177].

140 [18]

141 [12]

142 [62]

143 [9]

144 [158]

elaborated by the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation in Accordance with the Charter of the United Nations (1970) (the latter three were not included in the treaty search). These peace agreements might be regarded as a first step in bilateral relations, from which subsequent co-operation and development of relations might ensue. A considerable number of these treaties referenced only the principle as the relevant principle for emphasis, while many others emphasised it in relation to sovereign equality and equal rights etc.

(ii) The principle was referred to as a guide, a basis, and a rule

It is also interesting to note the way in which the principle was used as a principle in the treaty sample. Of the 217 treaties, 143 referred to the principle (or respect for it) as being the basis for the treaty's performance,[145] while the remainder referred to it as something that would "guide" or "inspire" the parties in their performance, that would be kept "in accordance with", something that "shall" be complied with (viz. the principle) or refrained or abstained from (viz. 'int'). Therefore, we can see examples of the principle being used by States as an inspiration, a guide, a rule, and a basis.

(iii) The principle was usually mentioned in the preamble or Article 1

The principle usually appeared in either the preamble or article 1 (*article première*). With regard to the standing of the principle in this treaty sample according to a doctrinal interpretation of law, of the 217 treaties 82 referred to the principle only in their preamble,[146] which shows recognition of the principle as already existing, might refer to extant obligations, and can be used as material to help interpret treaties without creating an obligation in law.[147]

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145 [3]; [6]; [8]; [19]; [25]; [26]; [29]; [31]; [32]; [33]; [34]; [35]; [37]; [40]; [42]; [43]; [44]; [45]; [46]; [49]; [50]; [51]; [52]; [53]; [54]; [55]; [56]; [57]; [58]; [59]; [60]; [61]; [62]; [63]; [64]; [65]; [66]; [67]; [68]; [69]; [70]; [71]; [72]; [73]; [74]; [75]; [76]; [77]; [78]; [79]; [80]; [81]; [84]; [85]; [86]; [87]; [88]; [89]; [90]; [92]; [95]; [97]; [98]; [99]; [100]; [101]; [102]; [103]; [104]; [105]; [108]; [109]; [110]; [114]; [115]; [116]; [117]; [118]; [122]; [123]; [125]; [128]; [129]; [139]; [140]; [141]; [143]; [146]; [147]; [152]; [153]; [159]; [160]; [161]; [162]; [163]; [164]; [165]; [167]; [168]; [169]; [170]; [171]; [173]; [174]; [175]; [177]; [181]; [191]; [192]; [193]; [200]; [203]; [209]; [214]; and [216].

146 [1]; [2]; [3]; [11]; [14]; [20]; [23]; [25]; [26]; [29]; [31]; [32]; [33]; [40]; [45]; [48]; [49]; [61]; [63]; [67]; [69]; [74]; [76]; [79]; [81]; [85]; [89]; [92]; [96]; [99]; [102]; [103]; [107]; [108]; [115]; [116]; [118]; [121]; [126]; [129]; [130]; [131]; [132]; [133]; [135]; [136]; [139]; [141]; [142]; [143]; [146]; [147]; [148]; [149]; [153]; [160]; [161]; [165]; [167]; [170]; [171]; [173]; [176]; [179]; [180]; [181]; [189]; [190]; [193]; [194]; [196]; [198]; [200]; [203]; [204]; [208]; [209]; [210]; [211]; [213]; [214]; and [215].

147 See VCLT Article 31(2)

7. Case-Study: The UKGBNI's Treaty Obligations Regarding The Principle

In this Part I step aside from my primary research questions addressed above, and take a look at other aspects of interest, which here I take as being treaties to which the UKGBNI is party (this tangential look at the UKGBNI is consistent with other Chapters in this thesis). First I review the treaties of the UKGBNI which were found in the data sample. Then I consider the Charter of the United Nations itself, as it is already involved in this chapter through my methodology's partial reliance on its article 102. Finally, I wonder why the UNTS database shows a declining number of UKGBNI treaties registered under article 102 (same for (the) Korea(s)), and note an implication for the reliability of the treaty sample considered above.

(i) Treaties to which the UKGBNI is party

The UKGBNI is party to five treaties in the selection: consular conventions with Italy and Romania,[148] an agreement for cultural co-operation with Cameroon,[149] the Viet-Nam peace treaty,[150] and a declaration on the neutrality of Laos.[151] Analysis of these treaties accords with the main observations in Part 4 above. For example, the observation in Part 4 that there is no difference in treaty law between 'interfere'/'interference' and 'intervene'/'intervention' is supported by the fact that there is no consistency between the use of terms in these five treaties of the UKGBNI: three mention 'interfere'/'interference', one mentions 'intervene'/'intervention' (equivalent to "*interviendront*",[152] and the fifth mentions "entertain" (for the Italian "*interverranno*").[153] Of the 'interfere'/'interference' mentions, one is given as equivalent to "*intervention*" in the equally-authentic French language version,[154] while the two other equivalents (one of which is from an equally-authentic text) are given as "*ingérence*":[155] the earlier observations showed that "*intervention*" and "*ingérence*" were used as equivalents for

148 [113] and [94].

149 [46].

150 [9].

151 [12].

152 [9].

153 [113].

154 [12].

155 [46]; and [94].

'interfere'/'interference' in English about as often as they were for 'intervene'/'intervention'.

The UKGBNI is also a party to the Charter of the United Nations, which was not explicitly included in the treaty selection, but is now considered in a little detail because it is so important, fits best here in the thesis, and the consideration I give to it completes this chapter's application of the VCLT's articles on interpretation.

(ii) The meaning of the principle as found in the UN Charter, to which the UKGBNI is twice-bound

> *By adopting the draft [Friendly Relations] Declaration, the General Assembly and every Member State would solemnly reaffirm* ***the seven principles of the Charter*** *embodied in it. It was to be hoped that following* ***this solemn reaffirmation*** *States would honour those* ***vital principles of international law*** *by observing them faithfully, in response to the appeal addressed to them in the last part of the draft Declaration. (emphasis added)*[156]
>
> — United Kingdom of Great Britain and Northern Ireland (emphasis added)

The Charter of the United Nations was not included in the data sample returned by the UNTS search and therefore technically fell outside the scope of the preceding observations and analysis. However, because the Charter has such a prominent role in this thesis (and particularly so for the UKGBNI as a P5 member) not least due to the supremacy clause of Article 103, it is relevant to note the relevance of the principle as enshrined in the Charter and elaborated in the Friendly Relations Declaration. In addition, because of this Chapter's focus on the VCLT's methods of treaty interpretation, it seems worth noting that, as I shall demonstrate, the Friendly Relations Declaration appears to satisfy not only Article 31(3) but also Article 31(4) of the VCLT. It is therefore clear that the meaning of the principle as articulated in the Friendly Relations Declaration (1970) must be taken into account when interpreting the Charter obligations of the UKGBNI (or indeed, any other Member of the United Nations), for which see Chapter III.

156 UN Doc A/C.6/SR.1180 page 19 paragraph 34.

The UKGBNI is bound to the Charter as a Member of the UN and as a Member of the UNSC

As a party to the United Nations Charter, the UKGBNI incurs treaty obligations regarding the principle in two separate capacities (by Articles 24(2) and 103), which it is bound to honour in good faith, under threat of sanction under Article 6.[157]

The UKGBNI appears to be bound to the Friendly Relations Declaration's interpretation of the Charter by VCLT Articles 31(3) and 31(4)

The extent to which the Friendly Relations Declaration is an authoritative interpretation of the Charter is not clear from a reading of the literature with which I engage. On the one hand, writers such as Malcolm Shaw state that "The Declaration was specifically intended to act as an elucidation of certain important Charter provisions and was indeed adopted without opposition by the General Assembly."[158] Blaine Sloan wrote:

> *While the effect of declarations remains controversial, they are not recommendations and are not to be evaluated as such. [...] Where, however, there is an intent to declare law, whether customary, general principles or instant, spontaneous or new law, and the resolution is adopted by a unanimous or nearly unanimous vote or by genuine consensus, there is a presumption that the rules and principles embodied in the declaration are law. This presumption could only be overcome by evidence of substantial conflicting practice supported by an opinio juris contrary to that stated or implied in the resolution.*[159]
>
> *The Declaration on Friendly Relations as an interpretation and elaboration of Charter principles is binding on the parties, but the principles are also general international law, either customary or general principles, binding on non-members of the UN as well.*[160]

However, with regards to the principle as embodied in relation to the UN Charter, some authors do not consider the Friendly Relations Declaration. For example, *Oppenheim's International Law* merely notes Article 2(7).[161] This elides that the principle is a principle

157 In the context of the UKGBNI's responsibilities as a permanent member of the Security Council, it is relevant to note that the Friendly Relations Declaration states (in its fifth preambular recital) that the General Assembly considers that "the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfillment in good faith of the obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations" (emphasis added), and (in its eighth preambular recital) that it is convinced that "the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security" (emphasis added).

158 Shaw (2017, 200)

159 Sloan (1988, 140)

160 Sloan, (1988, 88)

embodied in the UN Charter[162] as binding on States not just the organisation, and in regard to the external as well as internal affairs of States and nations.

My application of the VCLT method is as follows.[163]

VCLT Article 31(3)(a) is satisfied

VCLT Article 31(3)(a) states:

> *There shall be taken into account, together with the context:*
>
> *(a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.*

This seems satisfied by two observations. First, the Friendly Relations Declaration composed by the Drafting Committee of the Special Committee was agreed to, on the basis of consensus and with statements of interpretation but without objection, by the members of that Special Committee, the Sixth (Legal) Committee, and the General Assembly: not only did all original parties to the Charter participate and agree, but the new members did too. This appears to satisfy the ordinary meaning of Article 31(3)(a)'s reference to "any subsequent agreement between the parties [...]".[164] Second, the Friendly Relations Declaration explicitly identifies its topic as an elaboration of the principles of the Charter, which appears to satisfy the ordinary meaning of the words "[....] regarding the interpretation of the treaty"—a point confirmed by State representatives at the UNGA Sixth (Legal) Committee and Plenary sessions,[165] and also by official internal records of

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161 Jennings and Watts (2008, 430) ""For the United Nations and its member states acting through its organs, non-intervention in essentially domestic matters is a principle set out in Article 2(7) of the Charter." This despite having mentioned in passing the Friendly Relations Declaration in the same paragraph.

162 Which *is* acknowledge by Jennings and Watts elsewhere (2008, 333-334)

163 This is a hermeneutic borrowing only. The VCLT was concluded in 1969 but came into force in 1980. Containing an explicit non-retroactivity clause at article 4, the treaty has no legal effect on preceding treaties, though its methods of interpretation have been confirmed by various authorities as representative of already existing customary international law.

164 I interpret 'agreement' in the sense stated by Walker (1980), page 42: "**Agreement** (or *consensus in idem*). The concurrence of the wills of two or more persons on some common matter, evidenced by acts apparent to or communicated to, and understood by, each other. Agreement undisclosed is ineffective. Agreement has by itself no legal effect but is a prerequisite of any valid contract, payment, compromise, variation or discharge of contract, or conveyance. [...] The term is also used as a synonym for a contract (q.v.), or sometimes for a distinguishable element of a contract, particularly where formalities are necessary for the legal validity or enforceability of the agreement as a legal contract."

165 See for example A/C.6/SR.1178 (for Australia at paragraph 35, Canada at paragraph 31, Czechoslovakia at paragraph 5, Chile at paragraph 9, the United Republic of Tanzania at paragraphs 41 and 42, and Yugoslavia at paragraphs 20 and 24), A/C.6/SR.1179 (for Finland at paragraph 9), and A/C.6/SR.1184 (for Venezuela at paragraph 42).

HMG (including definitive legal opinions in correspondence with the USA on statements of law)[166]—and also "the application of its provisions".

VCLT Article 31(3)(b) is satisfied

Article 31(3)(b) states:

> *There shall be taken into account, together with the context:*
>
> *[...]*
>
> *(b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.*

This also seems satisfied, since the "subsequent practice" it refers to was deliberately incorporated into the Friendly Relations Declaration by the initiating Resolution's explicit requirement, *inter alia*, that the initiated work include a study of the "practice of the United Nations and of States in the application of the principles established in the Charter of the United Nations."[167] States explicitly confirmed that that had been achieved, and the study was agreed upon.

VCLT Article 31(3)(c) is satisfied

Article 31(3)(c) states:

> *There shall be taken into account, together with the context:*
>
> *[...]*
>
> *(c) Any relevant rules of international law applicable in the relations between the parties.*

This also seems satisfied, because the principles were agreed to be not unique to the Charter of the United Nations but to be already applying in customary law; for example, the UKGBNI believed that the obligations as articulated in the Friendly Relations Declaration did not exceed what it was already bound to follow.[168]

VCLT Article 31(4) is satisfied

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166 For example, files FCO 58/139 (USA: "[t]he duty of every State not to intervene in any manner in the domestic or external affairs of any other State is a fundamental obligation under the Charter and international law") and FCO 58/522 (where Sinclair formally described the Friendly Relations Declaration as "formulating the legal content of the seven basic Charter principles").

167 UN Doc A/RES/18/1966 paragraphs 1 and 4.

168 See Sinclair in file reference FCO 58/522 (The National Archives).

In addition, Article 31(4) seems satisfied *inter alia* with regards to the principle, since it is confirmed that the meaning given to the term "intervene" in article 2(7) of the Charter of the United Nations is not to be interpreted as limiting the extent to which the Principle applied in the United Nations Organisation or between States.[169]

Whether or not the Friendly Relations Declaration satisfies one or all the criteria of articles 31(3) and (4) of the VCLT does not affect the findings of this Chapter, but does have significance when considered alongside other Chapters and will be referred back to again later in the thesis.

Therefore, it seems that the UKGBNI is bound by its UN Charter obligations to follow the principle of non-inter(ference/vention) as elaborated in the Friendly Relations Declaration; my findings here merely elaborate what has been claimed in the literature (eg Sloan above).

(iii) Is there a decline in UKGBNI treaty registration?

The observation

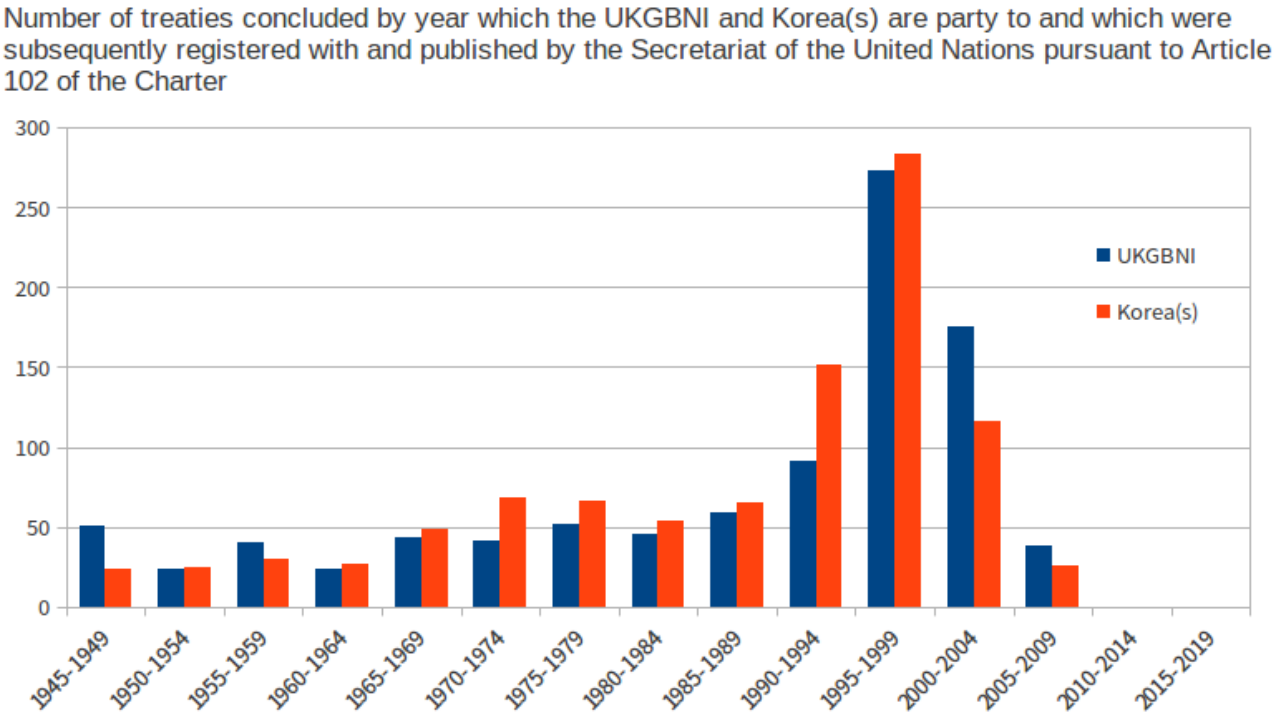
Whilst exploring the UNTS database I observed that there has been a decline in recent years in the number of treaties registered that included the UKGBNI as a party. I did not know why this would be and for comparison checked it against (both) Korea(s)'[170] appearance in the UNTS database, which showed a similar result and is presented alongside UKGBNI data in the chart below. This is confusing because the UN General Assembly has reported an increase in treaties registered in recent years.[171]

169 For example the 8th preambular recital of the Friendly Relations Declaration (1970) states: "the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another since the practice of any form of intervention not only violates the spirit and letter of the Charter of the United Nations but also leads to the creation of situations which threaten international peace and security." (emphasis added)

170 I appreciate the parenthesis look awkward, but it accurately conveys the senses that there is one Korea (from the perspective of, inter alia, the constituted authorities on the Korean peninsula) and two Koreas (from the perspective of, inter alia, the United Nations).

171 Strengthening and promoting the international treaty framework, UNGA Res 2010 (LXXIII) (20 December 2018) UN Doc A/RES/73/210.

Chart 2: Treaties concluded by the UKGBNI and (the) Korea(s)



I do not know why there might have been this decline: perhaps I have made a mistake with the UNTS search function. Either way, this potentially casts new doubt on the extent to which the treaty sample considered in this Chapter is sufficiently representative of the 'interfere'/'interference' / 'intervene'/'intervention' treaty pool available, since it suggests that there might have been more treaties missed than initially thought.[172] I did consider (when first learning of the Secretariat's 'Limited Publication Policy') that the drop-off might be accounted for by the extension in 1997 (A/RES/52/153) of the 1978 amendment (A/RES/33/141) of article 12 of the Regulations to allow the UNTS not to publish certain limited treaties *in extenso,* but saw that titles are still published so presume that they would still would have appeared in the search results.[173] Whatever the reason, it is interesting in this context to note the recent news that the UKGBNI signed a secret international agreement of considerable substance in 1946, since it confirms a "known unknown" as to how many other purported agreements the UKGBNI and others

172 Giving the quite large size of the sample considered though, and the generality and consistency of its findings, I would be pleasantly surprised if any treaties not included in the analysis were capable of significantly affecting it.

173 United Nations Treaty Collection, 'Limited Publication Policy of the Secretariat' <https://treaties.un.org/pages/Overview.aspx?path=overview/limitedPubPolicy/page1_en.xml> accessed 13 March 2021.

have made without registering.[174] Oppenheim reminds us of the importance of disavowing secret treaties.[175]

8. Evaluation

As indicated, there are several limitations affecting the scope and conduct of this study. I do not think they are so major as to negate the findings of the Chapter, but they are worth being aware of in order to prevent undue weight being placed on its findings. In addition, they can be seen as identifying opportunities to expand or test the study. They also reveal part of the extent to which I have tried to be self-critical and incorporated feedback throughout this study.

The main limitation seems to have been my limited study of one language (albeit an official language into which all treaties are translated) and a few basic observations from a few others. In addition, many 'interfere'/'interference' / 'intervene'/'intervention' treaties may have been missed even in English as a result of technological and human

174 GCHQ, 'GCHQ marks 75th anniversary of the UKUSA agreement' (HM Government, 5 March 2021) <https://www.gchq.gov.UKGBNI/news/gchq-marks-ukusa-75th-anniversary> accessed 8 March 2021. It is also interesting to note that because that secret treaty of 1946 was not registered with the Secretariat, it can be said the UKGBNI has violated one of the purposes and been under one of the sanctions of the Charter of the United Nations since 1946 (viz. article 102(1) and (2) respectively), for according to Limited Publication Policy of the Secretariat of the United Nations (paragraph 3), "[t]he purpose of Article 102 of the Charter of the United Nations is to avoid secret diplomacy by ensuring the publication of all treaties and international agreements. Paragraph 2 of Article 102 provides a sanction for failure to discharge the obligation to register under paragraph 1. The sanction provides that no party to a treaty or an international agreement which has not been registered, may invoke that treaty or agreement before any organ of the United Nations." (emphasis added.) A "failure to discharge the obligation" and accompanying sanction poses questions for interpreting articles 3 and 4 of the Charter of the United Nations, such as what if an "original Member" has shown itself to be unwilling or unable to "accept the obligations contained in the present Charter"?

175 Oppenheim (1919, 79-80): "I have come to the end of this course of lectures, but before we part I should like, in conclusion, to touch upon a question which has frequently been put with regard to the proposal of a new League of Nations: Can it really be expected that, in case of a great conflict of interests, all the members of the League will faithfully carry out their engagements? Will the new League stand the strain of such conflicts as shake the very existence of States and Nations? Will the League really stand the test of History?

"History teaches that many a State has entered into engagements with the intention of faithfully carrying them out, but, when a grave conflict arose, matters assumed a different aspect, with the consequence that the engagements remained unfulfilled. Will it be different in the future? Can the Powers which enter into the League of Nations trust to the security which it promises? Can they be prepared to disarm, although there is no guarantee that, when grave conflicts of vital interests arise, all the members of the League will faithfully stand by their engagements?

"These are questions which it is difficult to answer because no one can look into the future. We can only say that, **if really constitutional and democratic government all the world over makes international politics honest and reliable and excludes secret treaties**, all the chances are that the members of the League will see that their true interests and their lasting welfare are intimately connected with the necessity of fulfilling the obligations to which they have submitted by their entrance into the League." (emphasis added)

error. For example, it seems that where the word was broken apart by a new line in the treaty text registered with the UN Secretariat the OCR keyword search did not pick up the text, so some treaties have been left out. Furthermore, not all treaties are necessarily OCR keyword searchable; and there is an unresolved question about the seeming decline in treaties registered. And, there might be more treaties out there mentioning the principle than were captured in my search, in light of the unexplained drop-off noticed in Part 7. Also, in the process of manual data extraction, entry, and analysis, it is possible that I made small errors (however, my results can at least all be verified using the information presented). The error range which this places on the treaties collected as a representative sample seems tolerable, though it leaves open the possibility of some defining instrument lying yet out of view.

The VCLT analysis can be regarded only as a hermeneutic aid, for the Convention did not come into effect until 1980, and as affirmed in article 4 does not apply retroactively, so "applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States", thereby excluding, *inter alia*, the Charter of the United Nations. It is enough for the purposes of this Chapter that the VCLT analysis applies only as a hermeneutic aid. However, that is not to say that the interpretation provisions in the VCLT were not already applicable to treaties concluded before the VCLT's entry into force, since its article 4 also provides that its non-retroactivity is "without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention".[176]

In addition, I did not apply Article 32 ('Supplementary means of interpretation') of the VCLT or consider subsequent practice and agreements pertaining to any treaty other than the Charter of the United Nations (and even then only to a small degree) due to time constraints, and these therefore represent further areas where the study could be expanded to, though it seems a low priority.

I had intended to review those of the League of Nations Treaty Series also,[177] but did not have enough time and so leave that for any other interested persons (or myself another

176 On the customary status of the rules of interpretation, see e.g. Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal), Judgment, ICJ Reports 1991, para. 48; Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Judgment, ICJ Reports 1995, para. 33; Oil Platforms (Preliminary Objections) (Islamic Republic of Iran v. United States of America), Judgment, ICJ Reports 1996, para. 23.

177 From League of Nations resolution of 18 April 1946 (see Treaty Section of Office of Legal Affairs, p3)

time), wishing to focus here on treaty law as close as it stands to that which is in force today.

9. Conclusion

The meaning of the principle

With regards to the meaning of the terms 'interference' and 'intervention', in Part 4 this Chapter found not only that the two terms are undefined and undistinguished, but also that the two are often treated as synonymous, and in fact that according to the VCLT method of treaty-language analysis the two must generally be considered as equivalent.

With regards to the definition of a prohibited inter(ference/vention), in Part 5 Section (ii) this Chapter found no definition in the treaty texts, but that in the examples given the prohibited conduct could always be understood in terms of 'the absence of consent', but not in terms of 'the presence of coercion'.

The status of the principle

With regards to the principle's status in law, in Part 7 Section (ii) this Chapter found that the principle as articulated in the Friendly Relations Declaration is binding on all Member States as an authoritative interpretation of the Charter of the United Nations, and therefore has supremacy (via Article 103 of the Charter) over any conflicting treaty obligations. However, no conflicting treaty obligations were found: although there are instances where permission is given for what would otherwise be a prohibited inter(ference/vention), by definition (viz., "the presence of consent") such instances are excluded from that which is prohibited by the principle.

With regards to the entities to which the principle applies, in Part 5 Section (i) this Chapter found that it not only applies between States, but that it also protects groups of people, specific categories of individuals, chartered vessels, and transmissions.

The importance and associations of the principle

With regards to the outcomes of adhering to the principle, in Part 7 Section (ii) this Chapter found that as a foundational principle of the Charter of the UN the principle is important for international peace, cooperation, and promoting and encouraging respect for human rights (the Article 1 purposes of the Charter). In Part 6 this Chapter found that

in almost all other treaty instances the principle was seen as a basis, rule, or guide for co-operation, friendly relations, peace, and/or matters of a technical nature.

III. The Principle According To The Friendly Relations Declaration (1970)

1. Introduction

In this chapter I study the meaning and significance of the principle of non-inter(ference/intervention) according to customary international law.[178]

In this part (Part 1) I review the structure of the chapter. In Part 2 I introduce the materials that are studied: in brief, the materials are the statements given by State representatives in the Sixth Committee of the UNGA at the time of adopting the Friendly Relations Declaration,[179] and my reason for selecting them is that they are capable of fulfilling the conditions generally deemed necessary for being evidence of customary international law. In Part 3 I introduce the methods used to study the material: in brief, my methods are those recommended by the International Law Commission (hereafter 'the ILC') for the identification of customary international law. In Part 4 I study the materials to ascertain the potential status in customary international law of the principle as articulated in the Friendly Relations Declaration, and find that it is binding. In Part 5 I study the materials to ascertain the meaning of the principle as articulated in the Friendly Relations Declaration, and find that it is broader than generally presented in the literature with which I engage. In Part 6 I study the materials to ascertain the ends and principles associated with the principle of non-inter(ference/vention), and find that it is one of several inter-related principles that are essential for peace (and thereby the fulfilment of human rights). In Part 7 I study declassified official records to ascertain the UKGBNI's official position regarding the principle as articulated in the Friendly Relations

178 In Chapter II Part VII I considered the Friendly Relations Declaration as an authoritative interpretation of the Charter according to the VCLT and declassified records of HMG. In this Chapter however, I consider the Friendly Relations Declaration through the official statements of Member States in the Sixth Committee, the latter being taken (I show) as evidence of customary international law. In other words, there are two independent routes for interpreting the Friendly Relations Declaration as binding in international law.

179 the Friendly Relations Declaration's full title is "Declaration of Principles of International Law Concerning Friendly Relations and Cooperation in Accordance with the Charter of the United Nations."

Declaration, and find that they strongly support my findings of Parts 4, 5, and 6. In Part 8 I critically evaluate the limitations of this study. Finally, in Part 9 I review my conclusions from this study, viz. that the principle as articulated in the Friendly Relations Declaration is binding on member states, has a broader meaning than presented in the literature with which I engage, and is essential for the attainment of the objects of the UN including peace.

2. Materials

This chapter takes "international custom as evidence of a general practice accepted as law" as synonymous with "customary international law."[180] I selected 'customary international law' because of my earlier methodological decision to make this a doctrinal study of international law (See Chapter I, Part 1), and because the literature generally takes the sources of Article 38(1) as acceptable proxies for the 'sources' of international law when studying that law.[181] The Preamble of the Charter of the UN, in light of Article 38(1) of the ICJ, implicitly confirms that customary international law is a source of law (viz., "treaties and other sources of international law").

My reasons for focusing on the Friendly Relations Declaration are threefold. First, I noticed in my initial studies of the literature that UKGBNI authors often overlook or misrepresent the instrument (see below) even though it is arguably the most considered, detailed, and widely-contributed to representation of customary international law regarding the meaning and significance of the principle, and had hypothesised at the end of my first year of research that such errors and omissions plausibly contributed to the confusion and discord in the literature regarding the meaning and significance of the principle. Second, the Friendly Relations Declaration is a practical instrument for a researcher to study since it allows one to overcome to a considerable extent the problem of parochial selection of material (whereas I had noticed that the literature had generally considered only the perspectives of WEOG states), to mitigate criticism of a 'colonised curriculum', and it is also very manageable being a single and official document (with

180 For authority confirming this synonymity, see Paragraph 63(2) of the ILC's 2016 A/71/10.

181 The exact wording of Article 38(1) is "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: [...] b. international custom, as evidence of a general practice accepted as law." The wording of Article 38(1)(b) is treated in the literature as generally synonymous with the more usual phrase 'customary international law', the latter being the phrase I adopt.

preparatory material). The alternative material I considered was to trawl systematically through official yearbooks of international law and identify and analyse relevant State practice with *opinio juris* regarding the principle, but this was problematic due to the sheer scale of material involved, and the fact that most of those journals come from WEOG states and thus might be directly or indirectly skewed in their representations of State practice. Finally, the material itself (and thereby indirectly all States who supported its adoption) directly calls for its widespread dissemination, and, as shown in Part 6, the principles it elaborates are very special and important.

I shall now substantiate the claim that the Friendly Relations Declaration had been misinterpreted and overlooked in the literature with which I engage. In *Oppenheim's International Law* Jennings and Watts treat the Friendly Relations Declaration somewhat inconsistently. On the one hand, they identify at one point that for certain reasons the Friendly Relations Declaration has "pre-eminent value in contemporary international law",[182] but in the section on intervention make no mention of the special importance of the Friendly Relations Declaration, and do not distinguish it when mentioning it amidst the 1965 Declaration and the Final Act of the Conference on Security and Cooperation in Europe 1975 (both of which have no legal force). Furthermore, in their section on intervention they do not attempt to reconcile how or why the 1970 Declaration's clear statement that "all [forms] of interference [...] are in violation of international law"[183] fits with *Oppenheim's* asserted definition which claims that "interference pure and simple" is not prohibited.[184] The 9th edition of 'Brownlie's Principles of Public International Law' (OUP 2019) edited by Crawford, according to its 'table of treaties and other international instruments' references the Friendly Relations Declaration twice: once as a small aside in

182 Jennings and Watts (2008, 333-334): "In 1963 the General Assembly established a Special Committee on the Principles of International Law concerning Friendly Relations and Cooperation among States. This Committee held six sessions between 1964 and 1970, and on the basis of its work the General Assembly in 1970 adopted a Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations in which certain basic principles already enshrined in the Charter were authoritatively elaborated. The fact that the Friendly Relations Declaration was prepared within the framework of the United Nations after extensive inter-governmental discussion, and was adopted by acclamation and without dissenting vote by the General Assembly, gives the seven principles contained in it a pre-eminent value in contemporary international law." Fn 3: "The ICJ has regarded the effect of consent to such resolutions of the General Assembly, and particularly the Friendly Relations' Declaration, as not being merely that of a reiteration or elucidation of the treaty commitment undertaken in the Charter, but as an acceptance of the validity of the rules declared by the resolution by themselves, and as an expression of an *opinio juris* respecting such rules which thenceforth may be treated separately from other provisions with which, on the treaty-law plane, they would otherwise be associated: *Military and Paramilitary Activities Case*, ICJ Rep (1986), pp 89–90, 91. See generally on the effect of resolutions of the General Assembly, § 16, n 1."

183 Friendly Relations Declaration (1970), Annex paragraph 1

184 Jennings and Watts (2008, 432)

a footnote on page 229, and elsewhere as an example of "[W]hen a resolution of the General Assembly touches on subjects dealt with in the UN Charter, it may be regarded as an authoritative interpretation" on page 182 (of course, the Friendly Relations Declaration not only 'touched on' but elaborated not only a subject dealt with in the Charter, but the very principles on which the Charter was founded). In fact the text also mentions the Friendly Relations Declaration on page 40 in substantially the same terms as in Brownlie's 4th edition ("In some cases, a resolution may have effect as an authoritative interpretation and application of the principles of the Charter: this is true notably of the Friendly Relations Declaration of 1970"), though this is not referenced next to the Friendly Relations Declaration's entry at the start of the book. Higgins misquoted the Friendly Relations Declaration, saying "[t]he Declaration attempts to elaborate the Charter articles on the use of force."[185] That is a misrepresentation, for in fact the prohibition on the use or threat of force is only one of seven principles elaborated in the Friendly Relations Declaration (and the Friendly Relations Declaration actually does elaborate the principle prohibiting the use or threat of force, rather than merely attempting to do so). Higgins then quotes from the Friendly Relations Declaration verbatim without quotation marks, before asserting that "[t]here are very few states which take seriously what is in it."[186] That assertion seems unlikely, since the Friendly Relations Declaration includes the principle of self-determination, which is *jus cogens*. The claim also contradicts *Oppenheim's International Law* (which stated that "[t]he fact that the Declaration was prepared within the framework of the United Nations after extensive inter-governmental discussion, and was adopted by acclamation and without dissenting vote by the General Assembly, gives the seven principles contained in it a pre-eminent value in contemporary international law")[187] and Crawford (who presented it as "an authoritative interpretation [...] of the principle of the [UN] Charter).")[188] Higgins ends the paragraph by asserting that "many states regard it in practice as entirely acceptable to bring various pressures to bear, to influence the internal or external events of other states. One thus has constantly the problem of identifying the reality, and measuring it against the rhetoric."[189] That last sentence is particularly interesting for this chapter, since in it Higgins is claiming that States which violate the Friendly Relations Declaration

185 Higgins (2009, 279)

186 Higgins (2009, 279)

187 Jennings and Watts (2008, 334)

188 Crawford (2019, 40)

189 Higgins (2009, 279)

represent "the reality" of international law, and that the text of the Friendly Relations Declaration—"which was the outcome of several years of legal negotiations, and not a hasty political compromise"—is mere "rhetoric". The Tallinn Manual 2.0 elides the Friendly Relations Declaration.[190] Lowe takes the Friendly Relations Declaration seriously,[191] but in relation to the principle gives more space to nineteenth century policy of the USA than analysis of the Friendly Relations Declaration's text itself.[192] Some in the literature on non-inter(ference/vention) did consider State practice regarding the Friendly Relations Declaration,[193] but did so by analysis of discussion in the Special Committee rather than the Legal Committee: the former is less relevant for the identification of *opinio juris* as well as being limited to a smaller number of States.

I also consider material from the public archives of HMG to more closely ascertain the UKGBNI's position on the principle as represented in the Friendly Relations Declaration. This is not to establish the meaning and significance of the principle in customary international law *per se*, but instead forms part of my side-enquiry into the UKGBNI's position on this thesis question more broadly, and so in accordance with the rest of this thesis is considered separately in Part 7.

3. Methods

The main material I select for study in this chapter are certain types of 'State practice' mentioned in conclusion 6 of the ILC's report on identifying customary international law,[194] specifically "conduct in connection with resolutions adopted by an international organization" (Parts 4, 5, and 6) and "diplomatic acts and correspondence" (Part 7) with regard to the Friendly Relations Declaration. To find the expressions of state representatives, I read through the materials of recorded positions and note any reservations. I quote heavily from those statements of position for two reasons. First,

190 Schmitt and Vihul (2017, 312 and 316)

191 Lowe (2017, 100): "International law has something close to a constitutional document, or perhaps more exactly a manifesto [...]"

192 Lowe (2017, 106-107).

193 Vincent (1974) and Pomson (2022)

194 "Forms of practice. 1. Practice may take a wide range of forms. It includes both physical and verbal acts. It may, under certain circumstances, include inaction. 2. Forms of State practice include, but are not limited to: diplomatic acts and correspondence; conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference; conduct in connection with treaties; executive conduct, including operational conduct “on the ground”; legislative and administrative acts; and decisions of national courts. 3. There is no predetermined hierarchy among the various forms of practice." ILC, 2016, A/71/10, page 91.

because they are important and subtle. Second, for transparency and to help the reader satisfy themselves about my claims, since it is not so easy to find the source material due to much of it on the UN Document System being poor quality scans. To select the UKGBNI's records I went to The National Archives and read through the folders that seemed most likely to pertain to legal consideration of the Friendly Relations Declaration.

The methodology follows the draft conclusions (with accompanying commentary) identified by the International Law Commission in its 2016 report (A/71/10) (Michael Wood had been Special Rapporteur). Those conclusions "concern the way in which the existence and content of rules of customary international law are to be determined" (paragraph 63(4)). The form of this chapter aspires to shadow the "structured and careful" process of legal analysis and evaluation deemed requisite by the ILC (paragraph 63(1)). My authorities for doing so, and from which I draw my interpretations of the meaning of those terms, are the International Law Commission's interim reports on the identification of customary international law, the second conclusion of which (titled "Two constituent elements") states:

> *To determine the existence and content of a rule of customary international law, it is necessary to ascertain whether there is a general practice that is accepted as law (opinio juris).*

The third conclusion (titled "Assessment of evidence for the two constituent elements") states:

> *In assessing evidence for the purpose of ascertaining whether there is a general practice and whether that practice is accepted as law (opinio juris), regard must be had to the overall context, the nature of the rule, and the particular circumstances in which the evidence in question is to be found.*

This accords with the International Court of Justice's comments in *North Sea Continental Shelf.* Regarding the requirement of opinio juris, the court said:

> *Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of Iaw requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the opinio juris sive necessitatis. The States concerned must therefore feel that they are conforming to what amounts to a legal obligation.*[195]

Accordingly, this method seems to be appropriate as a doctrinal study. I hope thereby to contribute a doctrinally accurate answer to my research questions, in particular whether

195 *North Sea Continental Shelf* [77]

or not the principle is binding or not in customary international law, and what defines the meaning of the principle.

4. Question: Is The Articulation Of The Principle In The Friendly Relations Declaration Binding In Customary Law?

In this section we observe the following points: that, according to the Friendly Relations Declaration, the principle as elaborated is binding in law on States; that, according also to the general practice and *opinio juris* of States, the principle as elaborated is binding in law on States;[196] and that while the binding character of the principles elaborated in the Friendly Relations Declaration is not news to some authorities, it does contradict some impressions given by leading figures in the literature.

(i) According to the Declaration, the principle is binding

The claim that the principle is binding according to the Friendly Relations Declaration can be seen from the following observations.

The Declaration was expressly intended to represent binding obligations

First, via the General Assembly in plenary, States expressly willed that the Friendly Relations Declaration be drafted in such a way as to accurately represent binding obligations in international law.[197]

Every sentence referencing the principle says it is binding

Second, an ordinary reading of the text of the Friendly Relations Declaration as unanimously approved by the Special Committee, adopted without objection by not only the Sixth (Legal) Committee, and adopted without objection at the plenary of the UN

196 As well as in the Charter, and as well as (according to States drafting and adopting the Friendly Relations Declaration) from the inalienable rights of States and peoples.

197 This is found in its terms of reference, and is why so much effort was put into the exercise; see UNGA Res 1966 (XVIII) ("to undertake, pursuant to Article 13 of the Charter, a study of the principles...with a view to their progressive development and codification, so as to secure their more effective application"). This is partly why, when the Sixth Committee considered the draft declaration, it was officially introduced as being "as important as the Charter of the United Nations" (UN Doc A/C.6/SR.1178 page 5 paragraph 1), and why the draft "had originally had to be approved *ad referendum*, since certain delegates had feared that the concessions they had made had gone beyond their instructions" (UN Doc A/C.6/SR.1178 page 5 paragraph 2).

General Assembly, shows that literally every sentence which directly references the principle is written in terms of binding law (emphasis added):[198]

> *"Convinced that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security" (preamble)*
>
> *"The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter" (paragraph 1, title of Principle C)*
>
> *"No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State." (paragraph 1, Principle C, sub-paragraph 1)*
>
> *"Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law." (paragraph 1, Principle C, sub-paragraph 1)*
>
> *"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 and to secure from it advantages of any kind." (paragraph 1, Principle C, sub-paragraph 2)*
>
> *"Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State." (paragraph 1, Principle C, sub-paragraph 2)*
>
> *"The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention." (paragraph 1, Principle C, sub-paragraph 3)*
>
> *"Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State." (paragraph 1, Principle C, sub-paragraph 4)*
>
> *"States have the duty to co-operate with one another, [...] [t]o this end [...] States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention." (paragraph 1, Principle D, sub-paragraphs 1 and 2)*

198 Not all provisions of the Friendly Relations Declaration are expressed in such clear terms of stating what the law currently is. For example: "States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries." The heterogeneous character of provisions in the document was noted by the representative of Netherlands in the Sixth Committee (quoted below). For an alternative reading of the obligation imposed by "should", see Westlake (1914).

> *"By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter." (paragraph 1, Principle E, sub-paragraph 1)*
>
> *"The principles of the Charter which are embodied in this Declaration constitute basic principles of international law" (paragraph 3)*

The origin of those obligations is not only the Charter, but also the "inalienable rights" of States and peoples

In addition, it is relevant to note that the binding status of the principle was proclaimed to arise not only from the Charter, but from the "inalienable rights" of States and "rights" of peoples:[199] this is significant because it shows that States considered that the principle not only derived from and applies to State rights, but the rights of peoples also. To the extent that obligations regarding the principle derive from several different sources according to the document—the Charter, custom, and inalienable rights—any claim from the literature that the meaning of the principle changes over time must presumably address how the sources from which the principle is derived have also changed, and in the case of inalienable rights of peoples and of States, that seems particularly implausible.

Therefore, it is difficult to claim that the principle as elaborated in the Friendly Relations Declaration was not accepted as law in 1970.

(ii) According to state representatives at the UNGA Sixth Committee, the principle is binding

Irrespective of the text and weight of the Friendly Relations Declaration, I claim that State practice in the discussion and adoption of the Friendly Relations Declaration in the Sixth Committee is sufficient to constitute separate grounds of evidence of 'general practice with *opinio juris*' establishing the binding character of the principle in customary international law.[200] In short, my claim is that the 'general practice' element can be seen

199 Viz., "Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State" and "By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter."

200 The point is further established by reference to the unanimous agreement of the members of the Special Committee, and the content of that agreement; the sponsoring of the draft Declaration in the

in the official recognition in the Sixth Committee by States representatives that the principle is an obligation in law, and that the *opinio juris (sive necessitatis)* element can be seen in those representatives' descriptions of and support for the adoption for the principle, one of the seven principles, as being binding in not only treaty law (the Charter), but deriving from some other source also, including customary international law.[201] That I look only at practice in the Sixth Committee is not to say that other States did not separately provide sufficient evidence in the General Assembly plenary or the Special Committee. I look only at the Sixth Committee for reasons of convenience and appropriateness, but it seems sufficient.

It does not affect my argument to note where the source of the legal obligation was deemed to arise, but nonetheless it is interesting to observe, and so I group the statements by the category in which each State explicitly considered the principles they were considering for adoption.

Those saying the principles are those of the Charter

First, notwithstanding that the Friendly Relations Declaration itself refers to the principles as being those of the Charter (see above), several States chose to make statements confirming that these principles were the same binding principles as in the

Sixth Committee to the plenary, and the supporting comments (and caveats, such as ad referenda) by States during those discussions; and the comments of States during plenary; but most importantly the adoption without objection by constituent states of the plenary.

201 Alternatively, one could, I claim, take the official recognition by States that the principle is law as being the element of 'general practice', and the *opinio juris* for that practice of recognition being the legal obligations inherent in the principle's sibling principles of the duty to co-operate and the principle of good faith, especially when considered in regard of the institutional context of the United Nations and the States' self-given mandate (through plenary resolutions) for the elaboration and reaffirmation of the Charter principles.

Charter:[202] these States included Czechoslovakia,[203] Chile,[204] Yugoslavia,[205] Canada,[206] Burma,[207] Brazil,[208] Australia,[209] Finland,[210] Sweden,[211] United Republic of Tanzania,[212] Iraq,[213] Ceylon,[214] Japan,[215] United States of America,[216] Mali,[217] Cyprus,[218] Peru,[219] Mongolia,[220] Turkey,[221] Kenya,[222] Belgium,[223] Greece,[224] and UKGBNI.[225]

Those saying the principles are those of something else

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202 As suggested by the text of the Friendly Relations Declaration and its mandating resolutions.

203 "[The Declaration] gave legal form to the principles of co-operation and friendly relations by developing and interpreting the relevant provisions of the United Nations Charter. [...] The importance of the Declaration did not reside in the fact that it codified individual principles of international law but in the fact that it codified the principles contained in the Charter." UN Doc A/C.6/SR.1178 page 5 paragraph 5.

204 "[S]even years previously the Special Committee had been entrusted with the task of giving legal form to the basic principles of international law contained or implied in the United Nations Charter concerning friendly relations and co-operation among States". UN Doc A/C.6/SR.1178 page 6 paragraphs 9 and 10.

205 "[The] delegation had studied the draft Declaration very carefully and considered that the formulation of the seven principles represented the highest common factor—and a most valuable one—in the legal views currently held by all Members of the United Nations" and that the Friendly Relations Declaration's "value from both the legal and political points of view could not be over-estimated." [...] "To a large degree, the draft Declaration pinpointed the present stage of development of legal thinking on the application of the fundamental principles of the Charter and on contemporary international law. [...] The seven principles contained in the draft Declaration had been expressed in the form of general legal rules. They were derived from the Charter and formed an integral part of universal international law. They were valid for, nay binding on, every single State in its relations with others." UN Doc A/C.6/SR.1178 page 7 paragraphs 19 and 20.

206 "[T]he strengthening of international law had always been one of the main goals of Canadian foreign policy and his delegation had therefore endeavoured to play a most active part in the Special Committee" and that in "the case of the principle of non-intervention", Canada's delegation "had voted for General Assembly resolution 2131 (XX), but had stated at that time that many legal aspects of the question of non-intervention required further examination by the Special Committee. That had now been done, and he had noted that the statement on the principle of non-intervention embodied most of the substance of General Assembly resolution 2131 (XX) without following all of its provisions." He added he "thought that the Special Committee had done particularly well, after intensive discussions of the subject, to reach agreement on a compromise text which accurately reflected the purposes and principles of the Charter and the contemporary norms of international law." UN Doc A/C.6/SR.1178 page 8 paragraph 31.

207 "[The Declaration] marked a significant step forward in the elaboration of the principles contained in the Charter". UN Doc A/C.6/SR.1178 page 8 paragraph 33.

208 "[The Declaration] would help to strengthen the principles on which the United Nations was founded." UN Doc A/C.6/SR.1178 page 8 paragraph 34.

209 "[The Declaration] in no way prejudiced the fundamental principles of the Charter, for its task was not to amend the Charter, but to record the progress achieved in the elaboration of those principles." UN Doc A/C.6/SR.1178 page 9 paragraph 35.

210 "The fundamental principles of the Charter had frequently been worded in a general fashion which could give rise to different interpretations, but those principles had now been subjected to detailed study. [...] It was essential for all States to be guided in their international conduct by strict observance of the basic principles of international law embodied in the draft Declaration and his delegation was

In addition to being the principles of the Charter, some states also stated, to varying degrees, that these principles came from somewhere else as well (emphasis added):[226] Chile called them "the principles of natural law";[227] Lebanon said "the General Assembly would in fact be taking a decision to the effect that the principles embodied in the draft Declaration constituted the basic principles of international law";[228] Finland also referred to them as "the basic principles of international law" (and that it was "essential for all States to be guided in their international conduct by strict observance" of them);[229] France called them "a declaration of legal principles" (that was "valid" and "acceptable to

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ready to support its adoption unreservedly." UN Doc A/C.6/SR.1178 page 5 paragraph 2

211 "[The principles in the Declaration] were the corner-stone on which the United Nations was built." UN Doc A/C.6/SR.1179 page 12 paragraph 14.

212 "[The Declaration] might be described as a reiteration of the Charter in legal form". UN Doc A/C.6/SR.1179 page 15 paragraph 42.

213 "Since [the Declaration's] formulations constituted an attempt to clarify and interpret the fundamental principles of the Charter, they should be regarded as having binding force, to the same extent as the latter, and as forming part of positive international law." UN Doc A/C.6/SR.1180 pages 17-18 paragraphs 6 and 8..

214 "[The Special Committee] could not limit itself to reaffirming the principles laid down in the Charter, or even to summarizing in several paragraphs what was sometimes called the "law of peace", although that task was difficult enough in itself. The Special Committee was in fact required, without disregarding the political aspects of the problem, to codify a set of principles designed to govern the relations between States which were divided by different economic, social and political systems, but were united by their renunciation of war. Thus, a group of States operating under the auspices of the United Nations was called upon to set out for the first time the fundamental principles of peaceful coexistence." UN Doc A/C.6/SR.1180 page 18 paragraph 11.

215 "The significance of the Declaration was to be found in the fact that it elaborated the basic principles of the Charter and provided guidelines for States in their international conduct." UN Doc A/C.6/SR.1180 page 18 paragraph 17.

216 "The United States Government had agreed to such a review [of the principle of the Charter], provided it took the form of a careful analysis of the basic legal principles of the Charter governing the conduct of State, not of a so-called declaration on the principles of peaceful coexistence, since certain countries had sought to give the last named term political overtones; the United States Government was pleased that the Special Committee had not followed that partisan course. It was also glad to observe that the draft Declaration was an objective statement of relevant Charter principles, not an attempt to revise that instrument. Furthermore, it was glad that the Special Committee, in the light of experience, had adopted all its decisions by the process of consensus and unanimously." The USA representative added that in some regards, the Declaration had "clarified and strengthened the provisions of the Charter." UN Doc A/C.6/SR.1180 page 19 paragraphs 21 and 22.

217 "In Mali's view, the draft Declaration was a recommendation which interpreted the Charter and consequently no State which adopted it could evade its responsibilities." UN Doc A/C.6/SR.1181 page 25 paragraphs 38 and 39.

218 "In his view, the draft Declaration, once it had been adopted by the General Assembly, would be binding upon Member States in that it derived its authority from the Charter, of which it was an interpretation that had been accepted by the international community." UN Doc A/C.6/SR.1181 page 26 paragraph 45.

219 "[R]ecognized the value of the draft as a whole which his delegation would accept all the more easily since the principles stated therein were precisely those on which Peru's external policy had always been based. The same could no be said of all countries, for international law still played only a secondary role in inter-Power relations. That was a further reason for adopting a text which clarified and developed the principles of the Charter, and which constituted a normative codification of the rules of law essential to peaceful coexistence and the strengthening of world peace and security." UN

all concerned");[230] Romania "emphasized the universal applicability of the seven principles, which were binding on all States regardless of their political, economic and social systems";[231] Hungary felt the Friendly Relations Declaration was "a legal explanation"[232] that "would not have the status of a treaty and could not be considered *jus cogens*, but it would fall into the category of general principles of law";[233] Iraq stated that the principles themselves "constituted fundamental principles of international law which States were bound to respect and which therefore could be considered as true rules of *jus cogens*";[234] Ceylon referred to the principles as "the law of peace" and "the fundamental principles of peaceful coexistence" that were "designed to govern the

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Doc A/C.6/SR.1182 page 27 paragraph 5.

220 "The document was important for three reasons. In the first place, it reaffirmed and clarified the basic principles of the Charter governing the conduct of States in their relations with each other. Second, by codifying certain democratic principles such as that of equal rights and self-determination of peoples, it marked an important stage in the progressive development of international law. Lastly, the draft Declaration emphasized the need for complete respect for the principles of the Charter and international law and, in particular, stressed the principles that States should fulfil in good faith obligations assumed in accordance with the Charter." UN Doc A/C.6/SR.1182 page 28 paragraph 10

221 "[T]he seven principles outlined in the draft Declaration constituted the very foundation of the United Nations and of contemporary international law and order" UN Doc A/C.6/SR.1182 page 30 paragraph 40.

222 "[T]he principles contained in the draft Declaration would not constitute a recommendation, but would form part of the general principles of international law which were binding on all States. Those principles developed and elaborated, but did not amend the Charter. He expressed surprise concerning the statement made by the Portuguese delegation, which did not intend to vote in favour of the draft Declaration, on the pretext that it was supposedly vague. He recalled that Portugal had been condemned by the world community because of its aggressive policy in Africa, and cited the relevant statement made by the Kenyan Minister for Foreign Affairs in the General Assembly (1845th plenary meeting)." UN Doc A/C.6/SR.1182 page 32 paragraph 60.

223 "[I]n 1949, on the instructions of the General Assembly, the International Law Commission had prepared a draft Declaration on Rights and Duties of States. In essence, that initial draft was not very different from the text now before the Sixth Committee." He added "His delegation [...] hoped that all States which voted in favour of the present draft Declaration would conduct themselves in accordance with the basic principles set out therein. His delegation considered that a vote in favour of the draft Declaration would be tantamount to acceptance of the principle that State sovereignty was subordinate to those rules, norms and principles of international law which derived their legal force from the Charter and from the law which had existed before the Charter." UN Doc A/C.6/SR.1182 page 32 paragraph 64.

224 "[The Greek delegation] fully shared the general desire for unanimous adoption of the draft Declaration. Greece had traditionally laid special emphasis on the definition and practical implementation of the basic principles of the law of nations, firmly believing that international peace and security could be safeguarded by strengthening international law through precise elaboration of the principles of the Charter." He added that "the Special Committee had successfully completed the important task entrusted to it [...] The Declaration would constitute an important contribution to the safeguarding of international peace and security, and the consensus reached on the text of the seven principles furnished greatly needed clarification of the content of the related *jus cogens* provisions of the Charter. He welcomed the emphasis placed on the fact that the principles of the Charter embodied in the draft Declaration constituted basic principles of international law. Indeed the elaboration and definition of the seven principles was important not only for the progressive development of international law—it also reflected the Special Committee's unanimous view on the basic principles regarded as indispensable rules for the promotion of peace through friendly relations and co-operation among States." UN Doc A/C.6/SR.1181 page 24 paragraphs 30 and 31.

relations between States";[235] Mali considered that the Friendly Relations Declaration contained provisions (such as which "assured the maintenance of peace and the existence and equality of States") were "examples of laws which had their roots in the legal conscience of mankind";[236] Peru considered that the text also "constituted a normative codification of the rules of law essential to peaceful coexistence and the strengthening of world peace and security";[237] Mongolia thought that the principles were also "principles of international law" (as well as of the Charter) and that "by codifying certain democratic principles such as that of equal rights and self-determination of peoples, it marked an important stage in the progressive development of international law;"[238] Ethiopia considered that the principles' "adoption by the General Assembly would sanction their classification under *jus cogens*";[239] Kenya thought that the principles "contained in the draft Declaration would not constitute a recommendation, but would form part of the general principles of international law which were binding on all States";[240] Belgium "considered that a vote in favour of the draft Declaration would be tantamount to

225 "By adopting the draft Declaration, the General Assembly and every Member State would solemnly reaffirm the seven principles of the Charter embodied in it. It was to be hoped that following this solemn reaffirmation States would honour those vital principles of international law by observing them faithfully, in response to the appeal addressed to them in the last part of the draft Declaration." UN Doc A/C.6/SR.1180 page 19 paragraph 34.

226 Unsurprisingly, since the Friendly Relations Declaration itself states that "The principles of the Charter [...] constitute basic principles of international law" (paragraph 3). That the principle predated the Charter is a point emphasised by Jennings in his separate opinion to the '*Military and Paramilitary Activities in and against Nicaragua*' case: "There can be no doubt that the principle of non-intervention is an autonomous principle of customary law; indeed it is very much older than any of the multilateral treaty régimes in question. It is, moreover, a principle of law which in the inter-American system has its own peculiar development, interpretation and importance." *Military and Paramilitary Activities in and against Nicaragua* (Diss. Op. Jennings) pages 534-5

227 UN Doc A/C.6/SR.1178 page 6 paragraphs 9 and 10.

228 UN Doc A/C.6/SR.1179 pages 11-12 paragraph 5.

229 UN Doc A/C.6/SR.1178 page 5 paragraph 2

230 UN Doc A/C.6/SR.1179 page 12 paragraph 8.

231 UN Doc A/C.6/SR.1179 page 14 paragraph 30.

232 UN Doc A/C.6/SR.1179 page 14 paragraph 33.

233 "[A]nd, as such would be recognized, under the Statute of the International Court of Justice." UN Doc A/C.6/SR.1179 page 14 paragraph 35.

234 UN Doc A/C.6/SR.1180 pages 17-18 paragraphs 6 and 8..

235 UN Doc A/C.6/SR.1180 page 18 paragraph 11.

236 UN Doc A/C.6/SR.1181 page 25 paragraphs 38 and 39.

237 UN Doc A/C.6/SR.1182 page 21 paragraph 5.

238 UN Doc A/C.6/SR.1182 page 28 paragraph 10.

239 UN Doc A/C.6/SR.1182 page 31 paragraph 49.

240 UN Doc A/C.6/SR.1182 page 32 paragraph 60.

acceptance of the principle that State sovereignty was subordinate to those rules, norms and principles of international law which derived their legal force" not only from the Charter but also "from the law which had existed before the Charter;"[241] Indonesia "agreed with other delegations that the formulation of the seven principles was of a legal character"; [242] and Netherlands called the principles as elaborated "the basic tenets underlying the law of international relations."[243] Of those States which emphasised the binding character of the principles as also arising from something other than the Charter, several explicitly identified that the principles were binding in customary international law (or 'the contemporary norms of international law'): these States included Canada;[244] Lebanon;[245] Mali (who said that "under customary law certain provisions were without derogation, such as those which protected the human person or assured the maintenance of peace and the existence and equality of States");[246] and, regarding various sections of the Friendly Relations Declaration, Netherlands.[247] However, notwithstanding such comments, Higgins thought that "very few States" took seriously what was in the Friendly Relations Declaration.[248]

What significance is it that no-one objected?

Finally, I claim that the absence of objection to the Friendly Relations Declaration becomes relevant to the identification of evidence supporting the identification of customary international law. It is accepted by authorities such as the ILC that not objecting when one has the opportunity to object can, depending on the context, be taken as evidence of State practice.[249] States were well aware of the importance of what lay before them: the Friendly Relations Declaration said so on the face of it, and the matter had been through the General Assembly and Sixth Committee for years as being a subject

241 UN Doc A/C.6/SR.1182 page 32 paragraph 64.

242 UN Doc A/C.6/SR.1182 page 33 paragraph 76.

243 UN Doc A/C.6/SR.1183 page 37 paragraph 26.

244 UN Doc A/C.6/SR.1178 page 8 paragraph 31.

245 UN Doc A/C.6/SR.1179 page 12 paragraph 7.

246 UN Doc A/C.6/SR.1181 page 25 paragraphs 38 and 39.

247 UN Doc A/C.6/SR.1183 page 38 paragraph 30.

248 Higgins (2009, 279)

249 "Conclusion 10, Forms of evidence of acceptance as law (*opinio juris*) [...] 3. Failure to react over time to a practice may serve as evidence of acceptance as law (opinio juris), provided that States were in a position to react and the circumstances called for some reaction." UN Doc A/71/10 page 99. The ILC's report quotes the ICJ (at fn 315): "The absence of reaction may well amount to acquiescence .... That is to say, silence may also speak, but only if the conduct of the other State calls for a response" *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*[121]

of great legal importance. Indeed, HMG, which led the response of the WEOG, recognised in private discourse with allies that they would have to object throughout if they did not want their participation to have legal effect: and yet they did not object (see Part 7). Furthermore, certain States gave explanations of their votes, and statements of interpretation and understanding, which has two points of significance for this discussion: first, it shows that for those States such statements should be borne in mind when considering the obligations of those States;[250] and second, the very act of such statements of interpretation shows that those States recognised that their conduct in the proceedings was capable of creating legal significance.[251]

Therefore, it appears that the passage of the Friendly Relations Declaration attracted sufficient instances of *opinio juris* with State practice to substantiate the principle's standing in customary international law as articulated in the Friendly Relations Declaration, irrespective of the latter's weight in relation to the Charter (as considered in Chapter II Part 7).

(iii) This contradicts some in the literature

The preceding findings support those of certain authorities, but contradict some points in the literature.

Support from the ICJ

For example, that the Friendly Relations Declaration contains provisions which accurately reflect customary international law is a position already accepted by the ICJ.[252]

Support from the literature

250 Of the few States which expressed such reservations, it seems the strongest was made by the representative of Israel: see UN Doc A/C.6/SR.1181 page 22 paragraphs 18 and 19.

251 One such example of a statement of interpretation was given by Spain, whose representative said "His delegation had explicit reservations" regarding the second part of the fifth paragraph of the principle of equal rights and self-determination of peoples ("In their actions against, and resistance to, such forcible action [which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence] in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter") insofar as his delegation interpreted it as not prejudicial to the principle of non-intervention. UN Doc A/C.6/SR.1182 page 30 paragraph 29.

252 eg *Military and Paramilitary Activities in and Against Nicaragua* [203-204], [206] and [209], and its third decision of the 1986 judgment: "The existence in the opinio juris of States of the principle of non-intervention is backed by established and substantial practice. It has moreover been presented as a corollary of the principle of the sovereign equality of States. A particular instance of this is General Assembly resolution 2625 (XXV), the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States." [202]

Furthermore, some scholars already recognise part of the importance of the Friendly Relations Declaration: for example, Lowe devotes a chapter of their monograph *International Law* to the principles as elaborated by the Friendly Relations Declaration, opening that part of their book with:

> *International law has something close to a constitutional document, or perhaps more exactly a manifesto: a statement of the fundamental principles upon which the international legal order is based. It [...] has a peculiar importance*[253]

I regard Lowe's statement as correct and as being supported not only by my preceding observations in this part but also by those in Part 6.[254]

Contradictions in the literature

However, that position, and my findings, contradict others' conclusions in the literature. For example, Higgins implied that the Friendly Relations Declaration only regarded the use of force (which is incorrect), and claimed by assertion alone that "there are very few states which take seriously what is in it".[255] The 9th edition of *Oppenheim's International Law* describes the Friendly Relations Declaration as having "pre-eminent value" but does not consider it in its section on the principle of non-intervention, which directly contradicts by assertion the Friendly Relations Declaration.[256]

Therefore, notwithstanding some differences in the literature, it seems correct to regard the principle as elaborated by the Friendly Relations Declaration as binding in law.

5. Question: What Is The Meaning Of The Principle As Articulated In The Friendly Relations Declaration?

In this section I claim that the meaning of interference and/or intervention presented in the Friendly Relations Declaration differs from that presented in the literature. I advance this claim through three demonstrated observations: first, that the Friendly Relations Declaration explicitly prohibits intervention and interference with equivalence; second, that the defining element of the prohibition seems broader than the mere presence of

253 Lowe (2007, 100). See also Oppenheim (1919, 44): "It is a well-known fact that a distinction has to be made between universal International Law, that is, rules to which every civilised State agrees, and general International Law, that is, rules to which only the greater number of States agree."

254 This interpretation is supported also by, for example, Jennings & Watts and Crawford (op cit).

255 Higgins (2009, 279).

256 See Part 2 of this Chapter for further examples.

'coercion'; and finally, the observation that leading authors in the literature miss these points without sufficient explanation.

(i) The Declaration treats 'interference' and 'intervention' as synonymous

First, an ordinary reading of the 1970 Declaration's text regarding the principle indicates the equivalence of legal prohibition of both intervention and interference.

That there is no right to intervene

States concluded in the Friendly Relations Declaration that, without prejudice to the Charter (i.e. Chapter VII), all intervention between States is prohibited:

> *No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State.*

Such a position is implicit in the very title of the principle as presented by the General Assembly in its original instructions: viz., 'the principle concerning the duty not to intervene within the domestic jurisdiction of any State, in accordance with the Charter'.[257]

That all interference violates international law

Furthermore, States agreed that all interference is also prohibited, since the Friendly Relations Declaration proceeds from the part quoted above to immediately add that:

> *Consequently, all [...] forms of interference [...] are in violation of international law.*

Therefore, we have seen that not only is all intervention prohibited (shown in the first point of this paragraph), but so too is all interference. This is an important point to mention as it contradicts most of the literature today: all intervention (not in accordance with the Charter) is prohibited, and so too is all interference.[258]

That intervention and interference are used interchangeably

Third, the Friendly Relations Declaration uses interference and intervention quite interchangeably (a point found also in Chapter II): for example, not only does the Friendly Relations Declaration refer in its preamble to "the obligation not to intervene in the

257 Note "any State", not just member States of the United Nations, being perhaps another indication of recognition that the principle as elaborated is not derived solely from the Charter of the United Nations, but exists independently of the Charter.

258 See Chapter VI for discussion of this point.

affairs of any other State", but in the opening paragraph of the section on Principle C, it says that the fact that "all [...] forms of interference [...] are in violation of international law" is a consequence of the fact that "[n]o State or group of States has the right to intervene". Furthermore, under Principle C, which refers to "the duty not to intervene", the Friendly Relations Declaration additionally states that "[e]very State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State." This point is supported by the first paragraph under Principle E ("the principle of equal rights and self-determination of peoples"), where the word 'interference' is used in a way that seems entirely synonymous with other instances of the word 'intervention'.[259] Furthermore, States referred to the two terms synonymously without apparent concern or attempted correction during the drafting of the Friendly Relations Declaration.[260] Conversely, we cannot find any evidence that interference and intervention have, in fact, any difference in law.

(ii) The Declaration prohibits more than 'coercion'

We can see that in describing examples of what is prohibited by the principle the Friendly Relations Declaration seems to be referring to something broader than 'coercion'. This is despite the Friendly Relations Declaration explicitly prohibiting "economic, political or any other type of measures to coerce another State" in its second paragraph on the principle. My argument is as follows.

First, the second paragraph is clearly not definitive: just because an example of what is prohibited is included, does not limit the principle to that expression as worded. This point in general was made by the representative of The Netherlands in the Sixth Committee, using an example from the principle as an illustration.[261] This point can be

259 "By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right".

260 For example, UN Doc A/AC.119/L.1 page 94 paragraph 208.

261 "His delegation wished to reiterate its view that no legal consequences could be attached to the fact that the same notions had often been expressed in the draft Declaration in different wordings and that clauses which, once incorporated in one principle or part of a principle, should, in logic and law, also be inserted in another principle or part of a principle, had not been so inserted. His delegation also believed that any argumentation *a contrario*—already in any case a dubious process of reasoning in the interpretation of international legal documents—was inadmissible in respect of the draft Declaration. For instance, the use of the word "violent" in the last sentence of the second paragraph of the statement of the third principle [viz., that of the principle] could not be interpreted as implying that it was lawful for a State to take the action referred to for the purpose of overthrowing a régime in a non-violent manner." UN Doc A/C.6/SR.1183 page 38 paragraph 32. The same point had been made in a

demonstrated by the fact that in the second paragraph Principle C only refers to States in the singular (“No State”), whereas in the first paragraph it had also referred to States in the plural ("No State or group of States"), and the fact that the second paragraph goes on to give another example of what is prohibited by the principle, implying that the first sentence of that second paragraph is one of several consequences of the principle.

'Coercion' does not work very well hermeneutically

Second, coercion sits awkwardly with some examples, at least insofar as the word 'coercion' is usually interpreted:[262] for example, it seems a little awkward to imagine, in the context of the principle, physical force or pressure being applied against the cultural elements of a State, but far more difficult to imagine why that physical pressure (or threat of such pressure or force) would be prohibited but not, for example, non-physical subversion.[263]

The UKGBNI interpreted it more broadly than the 'coercion'

Finally, in Chapter's Part 7 consideration of HMG records, we will see that HMG's interpretation of that which is prohibited by the principle is broader than the coercion claimed by the literature: HMG's legal advisors and representatives had stated their understanding that even country-specific discussions, still less resolutions, could be tantamount to a prohibited intervention, even though there is clearly nothing coercive (still less forceful) about such acts. Therefore, it is not convincing to claim that the Friendly Relations Declaration supports coercion as a better fit than consent.

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more rhetorical manner by Mr. Pinto, representing Ceylon: see UN Doc A/C.6/SR.1180 page 18 paragraph 13.

262 See eg Vincent (1974, 7). That the word 'coercion' is typically interpreted as involving force is supported by remarks in the Sixth Committee of Mr. Khan, the representative of India, a country long familiar with the English language, who said "The draft Declaration also prohibited the use of other forms of force, such as economic, political and other types of coercion." UN Doc A/C.6/SR.1183 page 36 paragraph 8.

263 As an expression of this point in the Sixth Committee regarding economic and social development, Mr Dermizaky, representing Bolivia, said "it was right that the principle of non-intervention should take account not only of armed intervention but of intervention in political, economic and cultural matters. Developing countries such as his own, which produced raw materials, frequently suffered unjust treatment in their trade relations, something which could be described as intervention in internal affairs, since, by delaying the economic and social development of those countries, treatment of that type interfered with their right to determine their own growth." UN Doc A/C.6/SR.1181 page 23 paragraph 22.

(iii) This contradicts some in the literature

The preceding points in this Part are not considered by the literature. For example, Higgins misses the point that intervention and interference are both prohibited despite repeating, in the text body of their article, without quotation marks, the part of Principle C which confirms that "all [...] forms of interference [...] are in violation of international law". Furthermore, Higgins' consideration of the principle in the Friendly Relations Declaration follows their description of the Friendly Relations Declaration as an "attempt" to elaborate "the Charter articles on the use of force": but in fact the threat or use of force is just one of the seven principles covered in the Friendly Relations Declaration (Principle A) and is treated by the Friendly Relations Declaration as separate to the principle. Jamnejad and Wood note that the terms interference and intervention are sometimes used interchangeably,[264] but then ignore the Friendly Relations Declaration's clear prohibition of both interference and intervention and proceed on an unsubstantiated basis to claim that 'interference' seems broader than, and thus distinguishable in international law from, intervention, which they claim is what the principle is 'really' about (shown, for example, in their titling of their article as "the Principle of Non-Intervention", rather than my approach of referring to 'the principle' or 'the Principle of Non-Inter(ference/vention)'. In addition, Jamnejad and Wood cite the Friendly Relations Declaration as supporting their claim that "the essence of intervention is coercion" by referring to the first sentence of the second sub-paragraph of Principle C,[265] but as seen above an ordinary reading the second paragraph cannot be taken as an exhaustive definition of inter(ference/vention). Moynihan notes without comment that the Friendly Relations Declaration states that "all [...] forms of interference [...] are in violation of international law", but later proceeds, on the basis of no authority, to claim that only 'some' states (the examples given are China and Russia) treat intervention and interference as equivalent.[266]

In conclusion, we have seen that according to black-letter law in this area: "all forms of interference" are prohibited as well as all intervention (not in accordance with the Charter); what is meant by a prohibited 'interference' or 'intervention' goes beyond the usual meanings interpretations of 'coercion' indicated above; and that, by looking at a

264 Jamnejad and Wood (2009, 347 fn7)

265 "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 and to secure from it advantages of any kind"

266 Moynihan (2019, 27)

representative sample of the leading lights of practitioner-'scholars', the literature did not attend to these points.

6. Question: What Is The Principle Important For?

In this section I claim that the principle is seen by States as a pre-condition for international peace and co-operation. The authorities I refer to are the Charter of the UN, the Friendly Relations Declaration, and State representatives speaking through the auspices of the United Nations.

(i) The UN Charter affirms that the principle is essential for peace and the rule of law

First, I note that the Charter of the UN says as much in general terms. For example, it says so in the preamble,[267] and in Article 1,[268] and in Article 2(7).[269] That the principle, along with its sibling principles, is essential for peace has been subsequently reaffirmed in, for example, UNGA Resolution 290 (IV) (see Part 7 below).

(ii) The Declaration affirms the same

Second, I note that the Friendly Relations Declaration says so too, more emphatically and specifically. For example, in the draft resolution adopted without objection in the Sixth Committee and adopted without objection in the General Assembly, participating States affirmed (emphasis added):

> *the paramount importance of the Charter of the United Nations for the maintenance of international peace and security and for the development of friendly relations and co-operation among States;*

those States were

> *deeply convinced that the adoption of the Declaration [...] would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in promoting the rule of law among*

267 For example, "determined [...] to practice tolerance and live together in peace with one another as good neighbours", and "to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest".

268 For example, "To develop friendly relations among nations [...] and to take other appropriate measures to strengthen universal peace".

269 Which expressly recognises the existence of the principle, manifesting it as a particular treaty rule regarding the relationship between the UN and its member States.

> *nations and particularly the universal application of the principles embodied in the Charter;*[270]

those States considered

> *that the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfilment in good faith of the obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations" (preamble);*

and those States were convinced

> *that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security. (emphasis added)*

That last example is particularly illuminating because it not only identifies the principle directly (and not indirectly as one of the principles of the Charter or of good-neighbourliness), but it also identifies three ways in which the principle is associated with peace: in the conviction of those supporting the Friendly Relations Declaration, in the spirit of the Charter, and in the letter of the Charter.

Furthermore, of the six elements that were named as being part of the principle of sovereign equality of States, one expressed element was stated to be that:

> *Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States*[271]

which is a point made directly relevant for our consideration of the meaning and significance of the principle, via the Friendly Relations Declaration under paragraph 2 of the Friendly Relations Declaration that:

> *In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles.*

In addition, it seems relevant to note that originally the title of the Friendly Relations Declaration was proposed to be 'the principles of peaceful coexistence', not 'the

270 UN Doc A/8082 page 3.

271 In this connection, it seems relevant to note the publication by the ILC of principles of law recognised in the Charter of the Nuremburg Tribunal and in the judgment of the Tribunal (1950), specifically regarding crimes against peace; that the Friendly Relations Declaration affirms that "a war of aggression constitutes a crime against the peace, for which there is responsibility under international law"; and that the legal basis on which the ILC based its reasoning in 1950 that a war of aggression constituted a crime against-peace (see 1950 commentary) is not stronger than the legal basis since 1970 for finding that violation of the principle is also a crime against the peace.

principles of friendly relations and co-operation'.[272] Some state representatives (such as HMG) objected to that phrasing simply because they thought that it was a Communist 'political' tactic, but considered that there was no change of substance whichever way the principles were termed.[273] There was a proposal in the Sixth Committee to change the title of the Friendly Relations Declaration to include 'peaceful coexistence', but it was felt unnecessary rather than incorrect to do so.[274]

(iii) State representatives affirmed the same at UNGA's Sixth Committee

Third, I note that others have said so too (including the UKGBNI, which is considered in Part 7). For example, the President of UNGA said: "these principles lie at the very heart of peace, justice and progress".[275] This was a view shared by many States' representatives in the Sixth Committee, who made statements including (emphasis added):

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272 UN Doc A/C.6/SR.1178 page 5 paragraph 5.

273 Sinclair wrote in a confidential report circulated across the FCO (FCO 58/522 page marked 105, dated 26 June 1970) ' the Friendly Relations Declaration "had its origin in an initiative promoted by the Soviet Union and Czechoslovakia during the 1960 session of the Sixth Committee of the General Assembly to codify the principles of "peaceful coexistence". This was initially opposed by Western delegations on the ground that "peaceful coexistence" amounted to no more than an ideological slogan having little or no legal content. The debates in the Sixth Committee in the years 1960-62 were accordingly devoted in large measure to exposing the hidden political motives of the Eastern Europeans in seeking to provide a respectable endorsement by the United Nations of some of their more controversial ideological doctrines implicit in the concept of "peaceful coexistence". On the other hand, these debates also indicated that the vast majority of non-aligned states wished to take part in an exercise designed to study and clarify the content of certain basic principles embodied in the United Nations Charter. Thus it came about that, in 1963, the General Assembly decided to establish a Special Committee on the Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter. [...] With the establishment of the Special Committee (which met for the first time in Mexico City in 1964), the debate turned from ideology to substance."

274 Ceylon explicitly referred to the principles as the law of peace (none objected).

275 "The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations was adopted by the General Assembly on 24 October 1970 (resolution 26/25 (XXV)), during a commemorative session to celebrate the twenty-fifth anniversary of the United Nations (A/PV.1883).
"The following statement was made by Mr. Edvard Hambro (Norway), President of the General Assembly, following the adoption of the Declaration:
""As a man of law I am particularly happy to have just announced the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. This marks the culmination of many years of effort for the progressive development and codification of the concepts from which basic principles of the Charter are derived. The Assembly will remember that when we first embarked upon these efforts many doubted that it would be possible to obtain a result which would be acceptable to all the various political, economic and social systems represented in the United Nations. Today those doubts have been overcome. In a sense, however, the work has just begun. We have proclaimed the principles; from now on we must strive to make them a living reality in the life of States, because these principles lie at the very heart of peace, justice and progress."" <http://legal.un.org/avl/ha/dpilfrcscun/dpilfrcscun.html> accessed 9 June 2022

The draft Declaration contained a de facto recognition of the realities of the modern world, which was divided and in which there were States having different social systems. Consequently, the only way of maintaining and strengthening international peace and security was through peaceful coexistence and co-operation among States. The only alternative to that was the aggravation of tensions, the generation of conflicts and ultimately the threat of nuclear catastrophe. He was therefore pleased to note that the principles of peaceful coexistence had become a present-day reality in both the political and the legal spheres, which had not always been the case.[276] *(Czechoslovakia, represented by Mr. Zemla)*

He added that "the Special Committee had successfully completed the important task entrusted to it [...] The Declaration would constitute an important contribution to the safeguarding of international peace and security, and the consensus reached on the text of the seven principles furnished greatly needed clarification of the content of the related jus cogens provisions of the Charter. He welcomed the emphasis placed on the fact that the principles of the Charter embodied in the draft Declaration constituted basic principles of international law. Indeed the elaboration and definition of the seven principles was important not only for the progressive development of international law—it also reflected the Special Committee's unanimous view on the basic principles regarded as indispensable rules for the promotion of peace through friendly relations and co-operation among States.[277] *(representative of Greece)*

[H]is delegation considered that the Declaration would be a major step towards strengthening the rule of law among all nations as well as the preservation of peace among mankind. (Canada, represented by Mr. Lee)[278]

Without friendly relations and co-operation among States, there could be no lasting peace, and man's ingenuity and achievements in probing the universe would be of little practical importance. (Burma, represented by Mr. San Maung)[279]

In his view, adoption of the draft Declaration by the General Assembly would constitute one of the most important contributions ever made by the United Nations to international peace and security. (Lebanon, represented by Mr. Chammas)

World peace, for which acceptance of the seven principles was a prerequisite, would now cease to be a romantic notion and become a real possibility. (Hungary, represented by Mr. Csatorday)[280]

[These principles were] sometimes called the "law of peace" (Ceylon, represented by Mr. Pinto)[281]

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276 UN Doc A/C.6/SR.1181 page 5 paragraph 6.

277 UN Doc A/C.6/SR.1181 page 24 paragraphs 30 and 31.

278 UN Doc A/C.6/SR.1178 page 8 paragraph 32.

279 UN Doc A/C.6/SR.1178 page 8 paragraph 33.

280 UN Doc A/C.6/SR.1179 page 14 paragraph 32.

281 UN Doc A/C.6/SR.1180 page 18 paragraph 11.

[A]ll States were duty-bound to live in harmony with one another and actively promote international peace (Israel, represented by Mr. Nall)[282]

His delegation felt that the draft Declaration constituted a great advance in the progressive development and codification of international law and the devising of legal methods to safeguard peace and security. (Greece, represented by Mr. Zotiadis)[283]

[W]hen the Charter had been drawn up twenty-five years previously, the peoples of the world had seen in it a guarantee of universal peace and the promise of a better future. Subsequently, however, conflicts, dissensions, invasions and aggressions had dashed those hopes, and the principles of the Charter had even been used to justify breaches of the peace. From that paradox had been born the desire to formulate in a clear and unequivocal manner those principles of international law contained in the Charter relating to friendly relations and co-operation among States. For seven years the Special Committee had painstakingly pursued that goal. (Haiti, represented by Mr. Duplessy)[284]

The conduct of all States should be based on the seven principles of the draft Declaration in order that law might prevail in a world still governed by the law of the jungle. (Gabon, represented by Mr. Ndong)[285]

[T]he United Nations had emerged from the ruins of the Second World War, which had plunged mankind in suffering and desolation. Because certain moral rules had been neglected and the principles of equal rights and self-determination of peoples, non-intervention and sovereign equality of States had not been respected, the world had been ravaged by the horrors of war before international law and harmony could be re-established. (Nicaragua, represented by Mr. Montenegro)[286]

[The draft Declaration] symbolized the world community's hope that international peace and security could be maintained and inter-State relations conducted in accordance with the rule of law. (Trinidad and Tobago, represented by Mr. Ballah)[287]

[N]o international policy was viable until those principles [of the Declaration] were worked out. Indeed, the survival of the contemporary world depended upon their application" and, notwithstanding some concerns about the text, "the Declaration would be a great contribution to international law and might prevent future generations from having to live under the threat of war or to suffer from its disasters.

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282 UN Doc A/C.6/SR.1181 page 23 paragraph 20.

283 UN Doc A/C.6/SR.1181 page 24 paragraph 33.

284 UN Doc A/C.6/SR.1181 page 25 paragraph 40.

285 UN Doc A/C.6/SR.1182 page 21 paragraph 7. With regards to 'the law of the jungle', Mr. Rachmad, representing Indonesia, "wished to recall that some Governments had expressed the view that the principle of equal rights and self-determination did not preclude police action limited to the maintenance of law and order. These words awoke bitter memories of Indonesia's struggle against colonialism and racism. Police action with regular military troops armed with tanks, bombers and guns, against colonized peoples were actually full-scale military operations. Imposing "law and order" in such situations meant imposing "colonial law and order", that is the law of the jungle and the order of prisons." UN Doc A/C.6/SR.1182 page 33 paragraph 75.

286 UN Doc A/C.6/SR.1183 page 35 paragraph 2.

287 UN Doc A/C.6/SR.1182 page 31 paragraph 50.

> *It might enable resources to be channelled into economic development rather than armaments. (Guinea, represented by Mr. Barry)*[288]
>
> *[The Declaration] constituted a guarantee for States which aspired to live in independence and neutrality and it sought to establish freedom, equality, peace and justice. (Cambodia, represented by Mr. Danh Sang)*[289]

The Friendly Relations Declaration is still held up as being essential for peace and the rule of law on the international plane by, for example, the first paragraph of 'The Declaration of the Russian Federation and the People's Republic of China on the Promotion of International Law',[290] and in the remarks of those who reaffirmed their commitments to the Charter of the UN in the records of the UNSC meeting on international law in 2018.[291]

In conclusion, the principle and its interrelated principles[292] are very important not only for co-operation and friendly relations, but also for peace, order, and the rule of law. Specifically, in relation to the literature, it is more important than concluded by, for example, Jamnejad and Wood (who concluded that "it may be a positive tool for the regulation of diplomacy, international relations, and our growing interdependence.")[293], and makes Higgins' aforementioned assertion that very few states took the Friendly Relations Declaration seriously seem even more peculiar.

7. Case-Study: The Public Records Of The UKGBNI Regarding The Friendly Relations Declaration

This section concerns the same observations as above (Parts 4, 5, and 6) but focusing on the words and deeds of the UKGBNI. It establishes that the UKGBNI's practice supports my conclusions above: that the principle represented in the Friendly Relations Declaration is binding in customary international law, that interference and intervention are treated as equivalent (and that the literature's claim of the presence of coercion as the prohibited essence seems awkward), and that the principle is essential for peace and justice.

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288 UN Doc A/C.6/SR.1183 page 37 paragraphs 20 and 22.

289 UN Doc A/C.6/SR.1184 page 41 paragraph 8.

290 The Ministry of Foreign Affairs of the Russian Federation (2016)

291 Maintenance of International Peace and Security, UN Security Council open debate S/PV.8262 (17 May 2018)

292 Friendly Relations Declaration, Annex paragraph 2

293 Jamnejad and Wood (2009)

(i) The UKGBNI regarded the Declaration's articulation as binding

That the principles are binding irrespective of the Charter

First, I establish that the UKGBNI understood the Friendly Relations Declaration's articulation of the principle as representing a binding obligation in customary international law independent of, for example, the treaty obligations arising from the Charter. This is in contradistinction to Higgins' claim that "very few States" took the content of the Friendly Relations Declaration seriously.[294] It seems sufficient to rest my claim on the evidence of HMG's Legal Adviser Sinclair, who played a leading role for WEOG in drafting the Friendly Relations Declaration and who wrote in his final report archived on the subject that (emphasis added):

> *[T]he Western delegations expected to be in a minority defending, in general, the canons of traditional international law as against attempts to re-write the basic principles embodied in the Charter*

that the exercise

> *[R]esulted in the adoption by consensus of a draft Declaration formulating the legal content of the seven basic Charter principles*

and that it was

> *[A]n exercise designed to study and clarify the content of certain basic principles embodied in[295] the United Nations Charter.*[296]

However, to establish the point still further, I refer to HMG's diplomatic correspondence with the USA, which said that in negotiating, drafting and considering the proposed Declaration (emphasis added):

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294 One of many indications of the seriousness which HMG took in regarding the Friendly Relations Declaration is found, for example, from Sinclair, who, writing from Washington to London, reported on discussions with State Department lawyers, and said that in those meetings: "we, for our part, had conducted a searching review of our position on the substance of the principle of non-intervention last summer and had concluded that it would be possible for us to accept virtually unchanged operative paragraphs 1 to 4 of General Assembly Resolution 2131 (XX), provided that we made an interpretative statement which would cover the circumstances in which assistance might be rendered, at the request of the recognized Government of another State, in the event of civil strife in the territory of that State, particularly civil strife instigated, fomented or supported from outside. We, for our, part, assumed that the Americans had also reviewed, or would be reviewing, their position on the substance of this principle." FCO 371/136, sheet 22252/67, classified 'confidential', from British Embassy, Washington, D.C. 3 February 1967 to J.L.Y. Sanders, Foreign Office.

295 i.e. the principles predated the Charter.

296 To Lambert, sheet 105, title Special Committee on the Principles of International Law concerning Friendly Relations and Cooperation among States, file FCO 58/522.

[W]e will be compelled to oppose those statements which do not meet the standards of an accurate interpretation of the Charter and international law.[297]

That the UKGBNI accepted the "legal implications" of the Declaration

UNGA is not a legislative body. But it can reinterpret the Charter (Chapter II Part VII).[298] In this chapter I noted that the representatives of states who compose it can provide evidence of customary international law through what they say and do.

HMG recognised that when it came to UNGA Resolutions which purported to declare the law (such as the Friendly Relations Declaration), States would need to "resist the adoption of such instruments at every stage" if they were to avoid legal implications.[299] That the UKGBNI abstained on supporting Resolution 2131 (XX) for this reason, but went so far as to sponsor the draft Declaration, shows that the UKGBNI accepted the legal implications implicit in that practice of support.[300] Since HMG said they would oppose anything other than an accurate interpretation of such binding principles, and yet they did not (on the contrary, the UKGBNI sponsored the Friendly Relations Declaration), we can assume that HMG at least felt the Friendly Relations Declaration did meet "the standards of an accurate interpretation of the Charter and international law".[301] Furthermore, in their

297 "1. The views set forth in the aide-mémoire presented by the British Ambassador on March 1, 1967, are greatly appreciated. The Department has considered the aide-mémoire with care, in particular the guidelines for co-ordinated United Kingdom-United States policy suggested therein, and wishes to offer the following comments in response. [...] 10. The foregoing considerations are nowhere more applicable than in the Friendly Relations Committee where we will be compelled to oppose those statements which do not meet the standards of an accurate interpretation of the Charter and international law. To be effective, such opposition should be maintained not only in the Friendly Relations Committee but in the General Assembly as well. Moreover, it is most important that formulations of the Friendly Relations principles, dealing as they do with most sensitive political relationships, should be subjected to political scrutiny as well as legal analysis." FCO 58/139 'Principles Of International Law Concerning Friendly Relations And Cooperation Among States In Accordance With The Charter Of The United Nations'. In fact HMG did not make such opposition at the Special Committee, nor the Sixth Committee, nor the General Assembly.

298 See also Brownlie (1990, 14-15): "In general [resolutions of the UNGA] are not binding on member states, but [...] In some cases a resolution may have direct legal effects as an authoritative interpretation and application of the principles of the Charter.[fn: Declaration on the Elimination of All Forms of Racial Discrimination and the Friendly Relations Declaration]"

299 FCO 58/139 AIDE MEMOIR (Draft saved in Registry, flagged D to instructions to Washington D.C.)

300 Files elsewhere submitted state: "The composition of the General Assembly and its methods of work are not such as to give confidence in it as an organ for the making of law. It must, however, be recognised that undisputed and widely supported propositions about rights and duties endorsed by governments will come to be treated as declaratory of the law. This is particularly true where the subject is the interpretation of the Charter. Furthermore, unchallenged radical reinterpretaion of the Charter by the General Assembly will have the practical effect of amending the Charter. It was also agreed that voting in favour of a politico-legal resolution with the explanation that it represents only a statement of policy and not of law will not substantially mitigate undesirable long-term consequences." FCO 58/536, Annex.

301 FCO 58/139

subsequent diplomatic correspondence about their preferred formulation for the articulation of the principle, it was never doubted that the principle was binding not only under the Charter but also under international law more generally. For example, the USA volunteered to the UKGBNI that (all caps removed) "the practice of any form of intervention [...] violates the spirit and letter of the Charter of the United Nations";[302] and that "[t]he duty of every State not to intervene in any manner in the domestic or external affairs of any other State is a fundamental obligation under the Charter and international law" (emphasis added). Furthermore, it claimed, such interventions were "illegal" and "menace the peace", and "the encouragement of, or other complicity in, such coercive measures [...] is likewise illegal" (emphasis added).[303]

That the UKGBNI still agrees the Declaration reflects customary international law

That the UKGBNI accepted the Friendly Relations Declaration as representing binding customary international law was expressed by none other than HMG during proceedings for the ICJ's Advisory Opinion on the UKGBNI's unlawful separation of the Chagos Archipelago:

> *The United Kingdom argued that the right to self-determination did not become customary international law until the adoption of the Friendly Relations Declaration in 1970, which it agrees reflects customary international law.*[304]

Therefore the UKGBNI (and, for that matter, the USA) cannot claim that the binding character of the principle in customary international law as represented in the Friendly Relations Declaration is not opposable to it. If HMG think that the principles as elaborated in the Friendly Relations Declaration are not binding on the UKGBNI, it will need to establish how that obligation was lifted with regards to (i) the Charter and (ii) general international law.

302 FCO 58/139. Paper marked "22" (9 May 1967)

303 FCO 58/139 Paper marked "31" (19 May 1967)

304 It is significant to note that this contradicts the legal interpretation made at the time of the Friendly Relations Declaration, which was that the principles in that Declaration were already part of international law before the adoption of the UN Charter in 1945.

(ii) The UKGBNI regarded 'interference' and 'intervention' as synonymous, and broader than 'coercion'

Second, I establish that the UKGBNI was content to treat interference and intervention as essentially synonymous, and did not propose 'coercion' as defining the essence of what was prohibited.

The UKGBNI and USA treated interference and intervention as synonymous

In this regard, it seems sufficient to rest my claim on declassified diplomatic correspondence between legal teams of the UKGBNI and USA treating interference and intervention as equally prohibited and essentially synonymous.[305] Furthermore, according to HMG's own suggested draft, there is no reason to suppose that there is a distinction between 'intervention' and 'interference'.[306]

That coercion is too narrow to define the principle

With regard to my claim that 'coercion' seems too narrow to represent the character of what is prohibited by the principle, this is supported by the confidential Annex submitted by Sinclair in Washington to London, whose instructions stated:

> *Article 2(7) of the Charter 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". The United Kingdom Delegate should be aware that H.M.G. interpret Article 2(7) to mean that any matter which is not the subject of international obligations for a given state, whether under general principles of international law or by reason of a treaty to which it is a party, is a matter within the domestic jurisdiction of that state and intervention in it by the U.N. is precluded by Article 2(7). In this context an obligation means a definite legal obligation such as is accepted in an international convention, and not a declaration of principle, such as the Universal Declaration on Human Rights, or a general moral obligation.*
> *2. In the context of Article 2(7) "intervention" must, in Her Majesty's Government's view, include the only methods by which United Nations organs, other than the Security Council in certain cases, can take action, i.e. the adoption of resolutions and the making of recommendations. Her Majesty's Government hold therefore that such resolutions and recommendations are barred. Even discussion of specific subjects within the scope of Article 2(7) is in the view of Her Majesty's Government objectionable. Discussion may at any time result, as is normally the intention of its promoters, in pressure being brought to bear by sectional interests on the Government concerned. It is thus tantamount to intervention.*[307]

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305 eg FCO 58/139 Paper marked "22"

306 FCO 58/139

307 A formulation identical with that provided in official correspondence from FCO Deputy Legal Adviser (later Legal Adviser) Francis Vallat to the UKGBNI Representative to the UN on the Status of Women Commission: see Francis Aimé Vallat, FO 371/136932 (17 March 1958)

> *3. The United Nations may unquestionably discuss as general questions and make general recommendations on, for instance, all matters specified in Article 55 of the Charter. So long as the resolutions concerned take the form of recommendations addressed to Member States generally as to what is the desirable policy to be pursued as a matter of principle in relation to such topics, they could not be said to constitute intervention in the affairs of "any state" within the meaning of Article 2(7). It is, however, quite a different matter when the domestic activities of a particular state in relation to a specific current issue are singled out for discussion and criticism (except by the Trusteeship Council in the case of Trust Territories); it is even worse if a resolution is adopted.*[308]

Although this pronouncement relates to intervention by the UN rather than by a State, it is notable that the UKGBNI considered that mere discussion about a specific State was "tantamount to intervention." This seems paradoxical if we take the current leading interpretations in the UKGBNI of the principle, as there is nothing coercive (in the sense of 'force') about the activities the UKGBNI government described. In contrast, 'consent' can fit, since at one point States did not consent to such discussion, but since (for example) the adoption of the Universal Periodic Review, have now consented to such practice.

That the UKGBNI's interpretation of coercion was broader than interpreted by some in the literature

In addition, with regards to the principle (specifically operative paragraph 2 of 2131 (XX)), representatives of the USA told Sinclair, he reports, that they regarded that "the operation of their foreign aid programme and the Hickenlooper amendment [...] could be, and no doubt would be, represented as amounting to a form of coercion."[309] This shows that the use of coercion—prohibited—in this context sits awkwardly with the understanding of coercion interpreted by, for example, Vincent, Wood, or Moynihan.

(iii) The UKGBNI championed the principle for peace and justice

I note that the UKGBNI used to clearly express its conviction that such principles as those enshrined in the Charter of the UN are essential for peace and justice. For example, this conviction was expressed not only through its contribution to the development of the Charter of the UN, and its leading participation in the Friendly Relations Declaration,[310]

308 FCO 371/136

309 From Sinclair. FCO 58/139 (18 May 1967) Paper marked "30".

310 For example, it sponsored the draft resolution to the Sixth Committee and voted in favour of adopting it there, without objection. UN Doct A/8082 page 2. See also FCO 58/522 for HMG's pride in having played a "leading role" in the Friendly Relations Declaration.

but also in its sponsoring of early UNGA Resolutions on the topic, such as UNGA Resolution 290 (IV)—which is titled "Essentials of peace"—and which states:

> *The General Assembly*
> *1. Declares that the Charter of the United Nations, the most solemn pact of peace in history, lays down basic principles necessary for an enduring peace; that disregard of these principles is primarily responsible for the continuance of international tension; and that it is urgently necessary for all Members to act in accordance with these principles in the spirit of co-operation on which the United Nations was founded*[311]

However, it now seems that the UKGBNI is reluctant to recognise recognising the relationship of these principles to peace and justice. Instead, the UKGBNI does not behave as if these principles were important, as shown by, for example, its illegal intervention against FRY (a violation of Principles A and C),[312] and its ongoing denial of the Chagos Islander's right to self-determination (a violation of Principle E).[313] On 14 January 2014 Hugh Robertson, Minister of State at the FCO responded to questions of a Parliamentary Committee regarding its interpretation of the use of force. The FCO asserted that it was not unlawful to use force not only in self-defence or when authorised by the UN Security Council, but also when it felt it necessary to do so (in this case, when it felt that there was an imminent humanitarian catastrophe and that force was a last resort). Whatever one's personal feelings about the merits or not of such a policy, the facts are that in positive international law this is an unsupported claim; on the contrary, the law is emphatic in prohibiting any use or threat of force other than self-defence or as authorised by the UNSC.[314] Such violations have consequences: not only in terms of positive law (e.g. Charter obligations), but also the extent to which students should study current UKGBNI conduct when determining customary international law in this area (i.e. I suggest it is a methodological error when ascertaining the contents of a law to presume that the behaviour of the violators of that law is lawful).

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311 UN Doc A/AC.119/L.2 page 138. In addition, it is relevant to note that in the USA's suggestion to the UKGBNI of a legal formulation of the principle, it suggested at operative paragraph 6: that "The Strict Observance Of These Obligations Is An Essential Condition To Ensure That Nations Live Together In Peace With One Another Since The Practice Of Any Form Of Intervention Not Only Violates The Spirit And Letter Of The Charter Of The United Nations But Also Leads To The Creation Of Situations Which May Threaten International Peace And Security." (original in all caps). FCO 58/139 (9 May 1967) marked "22".

312 As found by, for example, the Independent International Commission on Kosovo (2000) and O'Connell (2004)

313 As found by the ICJ in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*.

314 See also Bernard and Oppenheim in Chapter VI for denying such a right. More recently, see Heller (2021).

In conclusion, anyone who would claim that the UKGBNI is not bound by the principle as embodied in the Friendly Relations Declaration would need to explain convincingly how its obligations changed, and on what authority.

8. Evaluation

If one does not agree with, and consequently disregards, my analysis that the practice of States leading up to, and at the point of adoption of, the Friendly Relations Declaration regarding the status of the principle as a legal obligation was general enough to satisfy the usual standards for identifying evidence of customary international law, the reader must still acknowledge that most States, including the UKGBNI and USA, explicitly considered that the obligation derived not only from the Charter, but from some other source of international law (whether custom, general principles, or 'inherently'). In addition, the argument made in this Chapter is separate to that for regarding the Friendly Relations Declaration as an authoritative elaboration of the principles of the Charter, which are binding on UN members in treaty law (see Chapter II Part 7). Furthermore, the reader might wish to note that I have not claimed that this or any other UNGA resolution is or is not 'legislative' with regard to general international law.[315]

Accordingly, it seems insurmountable to achieve the contrary task of claiming that the principle, as represented in the Friendly Relations Declaration, was *not* a binding obligation. It also seems implausible (I would say impossible on the basis of my further reading) to claim that the principle as elaborated in the Friendly Relations Declaration *was* law, but has since stopped being law, given that the Charter is still in force, and States are still States.

I suppose one, especially a non-lawyer, might ask: notwithstanding that the behaviour of member states in the process of declaring the elaboration of these principles is 'state practice', even 'general', is this not outweighed by the fact that at least some states have not always followed the principle?[316] To which the answer, I suggest, is that just because a law is violated does not mean that that law does not exist,[317] (and furthermore, evidence

315 cf e.g. Netherlands, UKGBNI, and Sloan (1988)

316 For example, see the comments of Mr. Liang, representing China (ROC) UN Doc A/C.6/SR.1183 pages 36 and 37 paragraph 18.

317 For example, just because certain States violate the peremptory norm prohibiting torture, does not mean that torture is not prohibited. So too, just because certain States engage in illegal inter(ference/vention), does not mean that it somehow becomes lawful for them to do so. Cf Phillimore

of *not* inter(fering/vening) can be taken as examples of 'negative practice' relevant to the identification of evidence of customary international law).[318]

9. Conclusion

The meaning of the principle

With regards to the meaning of the terms 'interference' and 'intervention', in Part 5 Section (i) this Chapter found that "all interference" is prohibited by the principle of "non-intervention" as elaborated in the Friendly Relations Declaration, and in that document interference and intervention are used interchangeably.

With regards to the definition of a prohibited inter(ference/vention), in Part 5 Section (ii) this Chapter found that "any" measure used to coerce another State is given as an example of what is prohibited, but that on an ordinary reading of the Friendly Relations Declaration this is not given as a limit to that which is prohibited.

The status of the principle

With regards to the principle's status in law, in Part 4 this Chapter found not only that the text is *prima facie* binding but that the conduct of State representatives in the Sixth Committee satisfies the conditions for being considered as evidence in itself of customary international law.

With regards to the entities to which the principle applies, this Chapter found not only that the principle protects States, but that it was used expressly to protect the rights of "peoples".

The importance and associations of the principle

With regards to the outcomes of adhering to the principle, in Part 6 this Chapter found that the principle is essential for attaining the aims of the United Nations and for ensuring the international rule of law.

With regards to associated principles, this Chapter noted the principle is associated with the other principles of the Charter of the UN[319] and the principle of good-neighbourliness,

(1879, vi-vii) in Chapter VI.

318 ILC 2016 A/71/10 page 91 commentary paragraph 3.

319 viz (paraphrased): the prohibition of the threat or use of force, the duty to settle disputes peacefully, the duty to cooperate, the principle of equal rights and self-determination of peoples, the principle of

and that according to the Friendly Relations Declaration (paragraph 2) "the above principles are interrelated and each principle should be construed in the context of the other principles."

sovereign equality of States, and the principle of fulfilling obligations in good-faith.

IV. Is The Principle 'A General Principle Of Law Recognized By Civilized Nations'?

1. Introduction

In this chapter I study whether the principle of non-inter(ference/intervention) is a 'general principle of law recognized by civilized nations' (hereafter, 'GPOLRBCN') and, if so, what its meaning and significance is as such. In this part (Part 1) I review the structure of the chapter. In Part 2 I introduce the materials that are studied. In Part 3 I introduce the methods used to study the materials. In Parts 4, 5, and 6 I study the materials to ascertain whether the principle is recognised in general international law, European Union law, and English common law and, if and where the principle is recognised, to ascertain what its meaning and importance appear to be. In Part 7 I consider the legal consequences of Her Majesty's Government's (hereafter 'HMG') violations of the principle. In Part 8 I critically evaluate the limitations of this study. Finally, in Part 9 I review the conclusions that can be taken from the chapter and carried forward to Chapter VIII, which is the conclusion of this thesis.

2. Materials

In this chapter I study the meaning and importance of the principle of non-interference/vention as a potential GPOLRBCN. I study this because GPOLRBCN are regarded as one of the formal sources of international law according to Article 38(1)(c) of the Statute of the ICJ in light of the Preamble of the Charter of the UN.[320]

320 The fourth preambular recital of the UN Charter states that the authors of that document created the organisation to, inter alia, "establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained". Although the Statute of the ICJ has no preamble per se, it is annexed to the UN Charter through Article 92 of the latter, which refers to the Statute of the ICJ as "based upon the Statute of the Permanent Court of Justice and form[ing] an integral part of the present Charter". Since the Charter's preamble establishes that it was intended there were sources (plural) of law besides treaties, and that the ICJ was to be the principal judicial organ of the UN, it is logical to deduce that Article 38(1) must be interpreted as containing at least three sources of law, even though Article 38 does

The literature with which I engage does not currently consider the principle as a GPOLRBCN. That the literature had not considered the principle as a potential GPOLRBCN is evidenced by, for example, Higgins' exclusion of its relevance,[321] Jamnejad and Wood's non-consideration of it, and Crawford's only brief consideration of the topic (despite 'principles of international law' appearing in the title of his edited work).

However, I claim that it is reasonable to consider the principle as a potential GPOLRBCN. This is not only because GPOLRBCN are one of the three Article 38(1) 'sources' of international law (see above), but also because there are clear signs that the principle might be a GPOLRBCN (for example, the renowned 1970 Declaration refers to the principle as a "basic principle of international law")[322]. I had two reasons for thinking that the literature's conclusions about the principle might have been different had they also considered the principle as a GPOLRBCN. The first is simply that opening the field of enquiry to an additional source of international law might reveal new information. The second is that considering the principle from a new perspective—irrespective of whether there is new information—can affect the perceiver's understanding of the object of study and its context.

Selecting the materials

It is apparent from the literature that there is debate whether GPOLRBCN are principles arising in the international legal order (and thereby recognised and applied by the civilized subjects of that order) or are those which are common to municipal legal

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not refer to them as sources. Familiarity with the preparatory work of the PCIJ (in accordance with Article 32 of the VCLT) confirms that it would be "manifestly absurd or unreasonable" to suppose that academic works were to be considered as a source of law but general principles of law not, and the same for judicial decisions (notwithstanding *res judicata*) since the decisions of the ICJ are expressly confirmed as having "no binding force except between the parties and in respect of that particular case" (Article 59 of the Statute of the ICJ)

321 Higgins wrote (2009, 272): "International lawyers perceive the source of international law, (that is to say where we look for international law), as comprising treaties—multilateral and bilateral, but importantly multilateral treaties; custom, which is the habit evidenced in state practice of doing something through a period of time with the belief that one is obliged to act in that way; and judicial decisions. [Footnote 3: Along with general principles of international law and (as a subsidiary source) the writings of leading jurists, see Art. 38 of the Statute of the International Court of Justice] Each of these is relevant in the context of intervention." However, Higgins' claim does not quite match the source provided for it (Article 38); if Article 38 were applied, 'judicial decisions' would be relegated to the footnotes and described as 'subsidiary', and 'general principles' would enter the body text alongside treaties and custom. Lest this criticism be regarded as mere quibbling, the important point to note is that Higgins does not consider the meaning or significance of the principle as a general principle of law (whether or not recognised by civilized nations).

322 Friendly Relations Declaration Annex paragraph 2.

orders.[323] Examples of debate are provided by, for example, Herczegh and Sinclair, and are found referenced in the International Law Commission's recent deliberations on the topic.[324] Accordingly, the materials I select for the study are legal texts from the international, EU, and UKGBNI legal orders. I select these materials because they come from sufficiently diverse orders to ascertain whether or not the principle is a general principle recognised in *foro domestico* and/or the international legal order, and therefore capable of meeting both claimed tests for the identification of GPOLRBCN. A limitation of this selection is that I only consider the UKGBNI as a *foro domestico*. However, since the EU legal order both reflects (to the extent identified) and is transposed within the *foro domestico* of its member states my consideration of it does extend to the *foro domestico* of an additional twenty-seven states. To be more rigorous I could have selected other states for consideration, but the limit selected seems proportionate for a single PhD nonetheless. Materials from the international legal order are considered in Part 4, materials from the EU's legal order are considered in Part 5, and materials from the UKGBNI's legal order are considered in Part 6. I hope thereby to contribute a sufficient basis to determine whether or not the principle does or does not exist in each of these legal orders.

3. Methods

The method of selecting these materials was not as systematic as for Chapter II: materials recognizing the principle as found in the general international legal order were found mostly incidentally through the course of researching the rest of this thesis; materials from the European Union's legal order were found in the process of teaching EU law at undergraduate level whilst conducting the thesis; and material from the UKGBNI was

323 See, for example, Lord Lloyd Jones's 2018 speech, and the ILC draft conclusions on the topic. The Oxford Encyclopaedic Dictionary of International Law (3rd edition, 2009) uncritically quotes (only) the 9th edition of *Oppenheim's International Law*: "The legal principles which find a place in all or most of the various national systems of law naturally commend themselves to states for application in the international legal system, as being necessarily inherent in any legal system within the experience of states. ... The intention [of art. 38(1)(c)] is to authorize the Court to apply the general principles of municipal jurisprudence, insofar as they are applicable to relations of states. ... The Court has seldom found occasion to apply "general principles of law", since as a rule conventional and customary international law have been sufficient to supply the necessary basis of decision". See also Lord Philimore's opinion that his interpretation of the general principles in what is now Article 38(1)(c) were "these which were accepted by all nations in *foro domestico*, such as certain principles of procedure, the principle of good faith, and the principle of *res judicata*, etc." (p.335 of the proceedings of the committee of advisory jurists). Brownlie (1990, 16) favours Oppenheim's interpretation.

324 Vázquez-Bermúdez (2019)

accumulated from my LLB and LLM studies, searches of online legal repositories such as Hein Online, and a supplementary non-exhaustive search of Hansard.

The method of analysing those materials is to ascertain from the materials considered whether the principle appears as a principle in the international legal order, the EU legal order, and the municipal legal order of the UKGBNI, and thereby ascertain whether it meets usual tests for being considerable as a GPOLRBCN. Accordingly I look in the three legal orders for evidence of the principle: if I find the principle in only one of the orders, then I risk not having established to both sides of the debate the proposition that the principle is a GPOLRBCN. In the course of considering these materials to ascertain the principle's possible status as a GPOLRBCN, I also consider some of the other questions in this thesis, in particular the associations of the principle, the distinction between interference and intervention (and when either are lawful or not), and whether or not the principle itself is binding.

4. The Principle As Recognized In General International Law

(i) The principle as a foundation of the international legal order

The principle is recognised as a foundational principle of international law *and* of the Charter of the United Nations (see Chapter III). It is also recognised in the seventh preambular recital of the Vienna Convention on the Law of Treaties,[325] which refers to the principle of "non-interference" embodied in the Charter of the UN. Because the Charter of the UN only refers explicitly to "intervention" (e.g. Article 2(7)), this is evidence for the synonymity of the two terms, in contradiction of, for example *Oppenheim's International Law* which assumes the two are separate (see Chapter VI).

In the third preambular recital of the Friendly Relations Declaration,[326] the principle is associated with the principle of good-neighbourliness (cf also in the English common law,

325 "Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all" As of 9 June 2022 there are 116 parties to the VCLT.

326 "Recalling that the peoples of the United Nations are determined to practise tolerance and live together in peace with one another as good neighbours"

below), which in turn is recognised in Article 74 of the Charter of the UN as applying also to instances of mandates (*mutatis mutandis* trusts, see 'Intervention Orders' below).[327]

The principle is recognised in Article 62 of the Statute of the ICJ, where it implicitly protects the court and the interests of a parties to a case and is explicitly defined in terms of consent rather than coercion.[328]

(ii) The principle as a human right

The principle is recognised in certain human rights guaranteed by customary international law. For example, in Article 12 of the Universal Declaration on Human Rights (hereafter UDHR) the principle protects a human's right to privacy,[329] and in Article 19 the principle protects a human's right to freedom of opinion and expression.[330] The principle is also, I claim, indirectly recognised in Article 28 of the UDHR, which guarantees that "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."[331] What is such an order? There seems no better expression than that provided by the Charter of the UN, whose purposes include "to achieve international co-operation [...] in promoting and encouraging respect for human rights and for fundamental freedoms"[332] and "[t]o maintain international peace and security"[333] through the application of the principles elaborated in the Friendly Relations Declaration (see Chapter III), and whose human rights bodies and mechanisms are without parallel in their scope and authority within the international legal order. Because the principle of non-inter(ference/vention) is one of the principles of that order (see Chapter III), it therefore appears that Article 28 implies a human right for States to "strictly observe"[334] the principle of non-

327 "Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness"

328 "1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene. 2 It shall be for the Court to decide upon this request."

329 "No one shall be subjected to arbitrary interference with his privacy [...] Everyone has the right to the protection of the law against such interference"

330 "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference"

331 "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized"

332 Article 1(3)

333 Article 1(1)

334 Annex of the Friendly Relations Declaration paragraph 1

inter(ference/vention). According to Article 30 of the UDHR no one may engage in any activity aimed at destroying the Article 28 right,[335] and in light of the preamble to the UDHR, if Article 28 is not guaranteed by law then people will as last resort be "compelled" to rebellion.

In addition to the individual human rights elaborated in the UDHR, there is also the group right of peoples to self-determination without interference (Annex of the Friendly Relations Declaration paragraph 1).

(iii) The principle in more specific examples

The principle is also recognised in other specific instances. For example, Article 44(2) of the Vienna Convention on Consular Relations protects consular staff from the host state,[336] and Article 55(1) protects that host state from interference by consular staff.[337] Article 37(4) of the Vienna Convention on Diplomatic Relations (hereafter VCDR) implies that exercising jurisdiction over private servants of mission members is an interference (and requires it to not be "undue");[338] a similar provision is at Article 38(2).[339] The interpretation by the International Law Commission of the draft that led to the VCDR included "participation in political campaigns" as a prohibited diplomatic interference.[340]

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335 "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein"

336 "The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing."

337 "Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of the State."

338 "Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission."

339 "Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission."

340 "The ILC—the body which developed the text on which today's VCDR is based—sought to provide some clarification in its commentary on the Draft Article dealing with the rule against diplomatic interference: It found, for instance, that participation in political campaigns was to be seen as a form of diplomatic interference, whereas the making of representations to protect interests of the sending State or its nationals 'in accordance with international law', was not.[fn 41: YILC 1958/II, 104, art 40, commentary, para3.]"

The principle is also found in intra-Korean agreements,[341] which is particularly interesting because the legal status of those agreements has been described by the parties to those agreements as being not those of States.[342] This contradicts claims (such as in the Tallinn Manual 2.0) that the principle only applies between States. The same point can be made with regards to Article 2(2)(b) of the 1974 Charter of Economic Rights and Duties of States,[343] which protects States from transnational corporations.[344] The concept is also recognized in international finance law.[345]

5. The Principle As Recognized In The European Union

(i) The principle as a general principle of EU law (insofar as it protects human rights)

The principle of non-inter(ference/vention) appears to be a general principle of EU law (insofar as it protects human rights). According to Article 6(3) of the Treaty of the European Union (hereafter TEU), "fundamental rights" constitute "general principles of the Union's law" if they are "guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms" (hereafter CFREU) or "result from the constitutional traditions common to the Member States". In this regard it is relevant to note that the CFREU recognises the principle of non-interference in the rights guaranteed

341 Although the phrase 남북관계 is usually translated into English as 'inter-Korean relations', I suggest that would describe the relations between the DPRK and ROK as two separate States, whereas 'intra-Korean' relations describes the relations between two parts of one Korea which is the sense given by 남북관계/ 북남관계 ('South-North Relations'/'North-South Relations').

342 "Recognizing that their relations, not being a relationship between states, constitute a special interim relationship stemming from the process towards reunification" seventh preambular recital of the Agreement on Reconciliation, Non-Aggression and Exchanges and Cooperation between the South and the North (signed 13 December 1991, came into effect 19 February 1992). UN Doc CD/1147.

343 UNGA Res 3281 (XXIX)

344 "Transnational corporations shall not intervene in the internal affairs of a host State"

345 For example, with regards to law pertaining to international finance Philip Wood stated: "In both camps there seems to be a tendency to recognise that a pre-existing contract to set-off is effective against interveners." Wood (2008), pages 241-244. According to my interpretation, expressed consent (in the form of a contract) against an intervention from (for example) an undisclosed principal or undisclosed beneficiary is recognised as precluding a successful intervention against set-off; for all other cases—described as "colossally complicated" by Wood—I venture to suggest that the issues are viewable as issues of whether or not consent for the intervention can be taken as implied (e.g. by the practice of the jurisdiction, be it Roman-Germanic or English, or Napoleonic etc) or not. The application of 'coercion' to the situation does not work at all if one interprets it so narrowly as physical coercion (and not merely the action without consent of the other.

by it in Article 11[346] and Article 32.[347] As for "constitutional traditions common to the Member States", in the case of *Mangold* the Court of Justice of the European Union (hereafter CJEU) found "equal treatment in the field of employment and occupation" to be a general principle of law as it was "in the constitutional traditions common to the Member States" through, for example, being reflected in the UDHR:[348] it was noted in the preceding Part 4 that the principle of non-interference is found expressed in the universal rights declared in the UDHR directly (Articles 12 and 19) and indirectly (through Article 28). Furthermore, the European Convention on Human Rights recognises the principle in Article 8[349] and Article 10;[350] though the ECHR is separate from the legal order of the EU, as with the UDHR it is recognised in common by the constitutional traditions of the Member States. Therefore, the principle of non-inter(ference/vention) as expressed in the guarantee of these human rights is not only recognised by the EU but, applying the reasoning in *Mangold* (subsequently reaffirmed by the Court), constitutes a general principle of its law. It therefore becomes relevant to consider the status of 'general principles of law' in the EU legal order. The CJEU said in *Internationale Handelsgesellschaft* that general principles of law are binding as an integral part of the EU legal order:[351] any domestic provisions within the EU that conflict with

346 "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers"

347 "Young people admitted to work must [...] be protected against [...] any work likely to [...] interfere with their education."

348 C-144/04 Mangold v Helm [2006] 1 CMLR 43 [74]

349 "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

350 "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

351 "The system of deposits, as it is instituted by the provisions criticized, is contrary to the principle of proportionality which forms part of the general principles of law, recognition of which is essential in the framework of any structure based on respect for the law. As these principles are recognized by all the Member States, the principle of proportionality forms an integral part of the EEC Treaty." [...] "In fact, respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives

general principles of law are accordingly "set aside".[352] General principles have direct effect (vertical and horizontal) within the EU, which means that they can be used as the basis of claims and responsibilities in cases heard before national courts and tribunals.[353] I am not aware if an EU citizen has ever tried to pursue their UDHR Article 28 right through a national court on this basis; it seems an interesting area to study further.

(ii) The principle in EU foreign policy

The principle of non-inter(ference/vention) as incorporated in the Charter of the UN (and as elaborated in the Friendly Relations Declaration; see Chapters II and III) is not only recognised within the EU legal order with regards to its external affairs but is indirectly and explicitly binding on it. There are three treaty provisions directly relevant to this. According to Article 3(5) of the Treaty of the European Union, the Union "shall contribute to [...] the strict observance and the development of international law, including respect for the principles of the United Nations Charter". Article 21(1) of the TEU makes the point more clearly: "[t]he Union's action on the international scene shall be guided by [...] the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law." Furthermore, Article 21(2) of the TEU states that the EU "shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations [...] in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris."[354] As with the Friendly Relations Declaration (see Chapter III), the Helsinki Final Act does not limit the principle of non-inter(ference/vention) to "military, [...] political, economic or other coercion" but includes such conduct in an open list of prohibitions.[355]

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of the Community." *Internationale Handelsgesellschaft* (1970, 1128-1129). For details of which have been upheld by the ECJ as general principles within the EU's legal order, see Tridimas (2021).

352 *Mangold* (2005, paragraph 77), citing Case 106/77 *Simmenthal* [1978] ECR 629 (paragraph 21) and Case C-347/96 *Solred* [1998] ECR I-937 (paragraph 30).

353 Craig and de Búrca (2015, 220).

354 The Charter of Paris states *inter alia* "We recall that non-compliance with obligations under the Charter of the United Nations constitutes a violation of international law." Charter Of Paris For A New Europe (1990, 5)

355 "Non-intervention in internal affairs. The participating States will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating State, regardless of their mutual relations. They will **accordingly** refrain from any form of armed intervention or threat of such intervention against another

(iii) The principle as a basis for inter-State cooperation

As noted above, the principle of non-inter(ference/vention) as recognised within the EU and is binding as primary law (both general principles of law and treaty law) in regards to the protection of human rights and, *inter alia*, the adherence to the principle of the Charter of UN, which includes the duty of cooperation (see Chapter III). The identification of the principle as inter-related with the duty of cooperation was noted by Advocate General Bobek in *Grundza*, where Bobek asserted that the principle is a "fundamental element" of cooperation between States. In so doing, Bobek treated interference and intervention as essentially synonymous without elaboration, which contradicts claims in the literature that the two words represent different concepts—see Chapter I Part 4.[356] Bobek's claim, which tallies with the legal materials considered in other chapters of this thesis (particularly Chapter III) contradicts Cooper (2000) who, while not a lawyer (so far as I am aware) is a diplomat and former Special Adviser for the European Commission, and who described the EU as a system of "mutual interference" that represents a "post-modern" world which rejects ideas of state sovereign and non-interference.[357]

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participating State. They will **likewise** in all circumstances refrain from any other act of military, or of political, economic or other coercion 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. Accordingly, they will, **inter alia**, refrain from direct or indirect assistance to terrorist activities, or to subversive or other activities directed towards the violent overthrow of the regime of another participating State." (emphasis added)

356 "The double criminality requirement is embedded in the principles of sovereignty, reciprocity and non-intervention, which constitute the fundamental elements of cooperation between States enshrined in instruments of international public law. This cooperation essentially aims at avoiding interference in the domestic affairs of the States involved." c-289/15, *Grundza* (Opinion, paragraph 33), cited in Daillier and Pellet, *Droit International Public* (7th ed., Paris 2008, 515)

357 "An important characteristic of the modern order (which I call 'modern' not because it is new – it is in fact very old-fashioned – but because it is linked to that great engine of modernisation, the nation state) is the recognition of state sovereignty and the consequent separation of domestic and foreign affairs, with a prohibition on external interference in the former. [...] The post-modern system does not rely on balance; nor does it emphasise sovereignty or the separation of domestic and foreign affairs. The European Union, for example, is a highly developed system for mutual interference in each other's domestic affairs, right down to beer and sausages. [...] Outside Europe, who might be described as post-modern? Canada certainly; the USA up to a point perhaps. The USA is the more doubtful case since it is not clear that the US government or Congress accepts either the necessity and desirability of interdependence, or its corollaries of openness, mutual surveillance and mutual interference to the same extent as most European governments now do." (pp17, 20, 29)

6. The Principle As Recognized In The UKGBNI

(i) Good neighbourliness, and the principle found therein

The principle of non-inter(ference/vention) is most clearly found within the English common law in relation to the principle of good-neighbourliness. In their commentary on maxims of law, Bloom noted that "from the maxim *Cujus est solum ejus est usque ad coelum*, it follows, that a person has no right to erect a building on his own land which interferes with the due enjoyment of adjoining premises";[358] in other words, "[e]njoy your own property in such a manner as not to injure that of another person" ("*Sic utere tuo ut alienum non laedas*")[359]—a formulation that closely resembles Kant's categorical imprative and 'The Golden Rule'.[360] Lord Selborne's judgment in *Goodson v. Richardson* (1874) accords with Bloom's commentary, and defined the concept of the principle in terms of consent, not coercion.[361] Lord Selborne's use of consent as defining the principle within good-neighbourliness is supported by the maxim "*Volenti non fit Injuria*. That to which a person assents is not esteemed in law an injury."[362]

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358 Bloom (1874, 395)

359 Bloom (1874, 364)

360 That which is referred to by the phrase 'the Golden Rule' is found common to major religions of the world. The following examples, among others, have been collected by 'Scarboro Missions', a Canadian society of Roman Catholic priests (www.scarboromissions.ca): "Lay not on any soul a load that you would not wish to be laid upon you, and desire not for anyone the things you would not desire for yourself." (Bahai Faith); "In everything, do to others as you would have them do to you; for this is the law and the prophets." (Christianity); "One word which sums up the basis of all good conduct... loving kindness. Do not do to others what you do not want done to yourself." (Confucianism); "This is the sum of duty: do not do to others what would cause pain if done to you." (Hinduism); "Not one of you truly believes until you wish for others what you wish for yourself." (Islam); "One should treat all creatures in the world as one would like to be treated." (Jainism); "What is hateful to you, do not do to your neighbour. This is the whole Torah; all the rest is commentary." (Judaism); ""Regard your neighbour's gain as your own gain, and your neighbour's loss as your own loss." (Taoism); "Do not do unto others whatever is injurious to yourself." (Zoroastrianism). See further the 1993 'Declaration of the Parliament of the World's Religions': "We affirm that a common set of core values is found in the teachings of the religions, and that these form the basis of a global ethic [...] We must treat others as we wish others to treat us." That which is referred to by the term is also found in philosophy in Kant's Categorical Imperative and Gewirth's Principle of Generic Consistency (see eg Edward Regis Jr., 'Gewirth's Ethical Rationalism: Critical essays with a reply by Alan Gewirth', The University of Chicago Press, 1984). For the principle in law, see e.g. Cicero, St Germain, Grotius, and Blackstone.

361 "It is said that the objection of the plaintiff to the laying of these pipes in his land is an unneighborly thing, and that his right is one of little or no value, and one which Parliament if it were to deal with the question, might possibly disregard. [...] But with respect to the suggested absence of value of the land in its present situation, it is enough to say that the very fact that no interference of this kind can lawfully take place without his consent, and without a bargain with him, gives his interest in this land, even in a pecuniary point of view, precisely the value which that power of veto upon its use creates, when such use is to any other person desirable and an object sought to be obtained." Goodson v. Richardson (1874) L. R. 9 Ch. App. 221, 223. Cited in Hohfeld (1917, 748)

362 Bloom (1874, 267)

Lord Atkin in *Donoghue v. Stevenson* (1932) also found the principle as an inherent to the principle of good-neighbourliness and did so by application of "the rule that you are to love your neighbour", which became in law “you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure...persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected”.[363] In *Sedleigh-Denfield v. O’Callaghan* (1940), cited with approval by Lord Denning in *Miller v Jackson* (1977), Lord Wright found a balance to be struck between the right of one "to do what he likes with his own", and the right of the neighbour "not to be interfered with", unreasonable violation of the latter constituting a "nuisance".[364]

When Lord Atkin referred to "the rule that you are to love your neighbour", he followed a long line of credible sources that this was an essential part of the English common law. St. Germain (writing in the sixteenth century)[365] had found it integral to the common law:

> *[Doctor to student] And I counfel thee alfo that though love that is good, and fly that is evil, and that thou do do another, as thou wouldeft fhould be done to thee, and that thou do nothing to other, that thou wouldeft not fhould be done to thee, that thou do nothing againft Truth, that thou live peaceably with thy Neighbour, and that thou do Juftice to every Man as much as in thee is. And alfo that in every general Rule of the Law thou do obferve and keep Equity. And if thou do thus, I truft the Light of the Lantern, that is, the Confcience, fhall never be extincted.*[366]

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363 Following Lord Esher in *Le Lievre v. Gould* [1893] 1 QB 491

364 "Held, (1) (Lord Denning M.R. Dissenting) that the defendants, so long as they played cricket on that ground, were guilty of negligence every time a ball came over the fence and caused damage, for the risk of injury to person and property was continuous and no reasonable method of eliminating that risk had been produced; they were also guilty of nuisance since their use of their land involved an unreasonable interference with their neighbours' use and enjoyment of their house and garden; and the neighbours were under no duty to mitigate that risk." *Miller v. Jackson* (1977, 967).
Per Geoffrey Lane L.J. "Nuisance is not confined to negligence, for it may involve deliberate acts, such as discharging effluent into a river. It is difficult to draw the line between negligence and nuisance, but the correct approach to nuisance was stated in *Sedleigh-Denfield v. O'Callaghan* [1940] A.C. 880, 903, per Lord Wright, referring to the ordinary usages of mankind living in a particular society. [...] The line between negligence and nuisance may be difficult to draw but this is a private nuisance; see the definition in Clerk & Lindsell on Torts, 14th ed. (1975), para. 1397 and the three ways in which private nuisance can arise: (1) encroachment on a neighbour's land: (2) physical damage to neighbours' land; and (3) undue interference with a neighbour's convenience and enjoyment of his land." *Miller v. Jackson* (1977, 972, 974-975)

365 Saint German (1751, ii)

366 Saint German (1751, 47). Incidentally, immediately following the quote given the author described equity as "a right Wifenefs that confidereth all the particular Circumftances of the Deed, the which alfo is tempered with the Sweetnefs of Mercy."

Preceding Saint German's treatise by several centuries,[367] the author of *Mirrors of Justice* (or *Mirror for Justices*) too noted that love and equality with one's neighbour were central parts of the English common law, and claimed that this went back to ancient times.[368]

(ii) The principle found in foreign policy

The principle of non-inter(ference/vention) has been presented to and recognised by Parliament with regards to its binding status in determining the foreign policy of the UKGBNI. It has been recognized in Parliament over many generations that HMG's foreign policy had been based on respect for the principle.[369] In 1831 the King's Speech described the principle on which recent Conferences were conducted as being:

> *of not interfering with the right of [a] people [...] to regulate their internal affairs, and to establish their government according to their own views of what may be most conducive to their future welfare and independence, under the sole condition, sanctioned by the practice of nations, and founded on the principles of public law, that in the exercise of that undoubted right, the security of neighbouring States should not be endangered.*[370]

This is significant for identifying that the principle was itself derived from 'principles of public law' and sanctioned by custom, and that the only exception to the principle was if security was threatened: a situation comparable to today with respects to the formulation of the Friendly Relations Declaration in light of the security exception provided by Article 2(7) of the Charter. In 1919 the Prime Minister declared:

> *It is very easy to say about Russia, "Why do you not do something?" [...] What is the alternative? Does anyone propose military intervention? I want to examine that*

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367 Maine criticised Plowden (1550) for claiming that the *Mirror of* [or 'for'] *Justices* predated the Norman conquest, and Coke for attributing this "very ancient and learned treatise of the laws and usages of this kingdom" as being "the law of King Arthur's day", saying instead that it "could not as a whole have been compiled before the reign of Edward I" (Whittaker 1873, ix-x). Nonetheless, it is an old work.

368 "The law of which this summary is made is extracted from ancient customs warranted by Holy Writ, and because it is given to all in common it is called common law. And for that there is no other law than this, it exists as one from old, and in general councils or parliaments it is suffered to be observed by way of holy usages. And these differ from place to place according to the different qualities of the folk of divers regions and places. And in certain places, cities and boroughs, these usages are varied by ancient privileges, to the easement of the folk of those places. All our customs are also founded for the salvation and exaltation of the Holy Peace of god; and the knowledge and wisdom that comes from god is to judge the folk, not at will by by analogies and precedents that are not canonised, but by love of peace and chastity and temperance, and by friendly admonition towards mercy and good works. [...] And it was ordained [...] that each should judge his neighbour as he would himself be judged in a like case at another time". Whittaker (1873, 5-6, 9)

369 According to Viscount Massereene and Ferrard, "Our record has always been based on non-interference in internal affairs. After all, it was handed down to us from the Roman Empire." HL Deb 25 July 1962, vol 242, col 1983

370 HL Deb 24 June 1831, vol 4 cols 297-8, reaffirmed eg HL Deb 15 June 1847, vol 93, cols 540-96

> *carefully and candidly. I will not say before the House, but before any individual commits his conscience to such an enterprise, I want him to realise what it means. First of all there is* ***the fundamental principle of all foreign policy in this country*** *—a very sound principle—that* ***you should never interfere in the internal affairs of another country****, however badly governed; and whether Russia is Menshevik or Bolshevik, whether it is reactionary or revolutionary, whether it follows one set of men or another, that is a matter for the Russian people themselves. We cannot interfere, according to any canon of good government, to impose any form of government on another people, however bad we may consider their present form of government to be.*[371] (emphasis added)

The same conclusion had been made by Bernard in 1860, though Bernard called it non-intervention rather than non-interference: again showing the synonymous usage of the term in the UKGBNI.[372] Westlake's 1914 review of British policy and interpretation of the law was the same.[373] It was noted that there had been violations of the principle but these were regarded as exceptional and to be rectified.[374]

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371 HC Deb 16 April 1919, vol 114, col 2939. It is relevant to note, however, that of course the UKGBNI did intervene in Russia at that time, notwithstanding the Prime Minister's assurances. Blum (2014, 7) quotes Winston Churchill, "who had directed the invasion of the Soviet Union by the Allies (Great Britain, the US, France, Japan, and several other nations)" since before the PM's 1919 statement, as writing in 1929:
"Were they [the Allies] at war with Soviet Russia? Certainly not; but they shot Soviet Russians at sight. They stood as invaders on Russian soil. They blockaded its ports, and sunk its battleships. They earnestly desired and schemed its downfall. But war—shocking! Interference—shame! It was, they repeated, a matter of indifference to them how Russians settled their own internal affairs. They were impartial—Bang!"

372 Bernard (1860, 35): "There is hardly any kind of intervention in defence of which it would not be possible to cite some unconsidered words that have fallen from an English statesman; yet, for all that, non-intervention is an established tradition of the English Government; the current of English public opinion sets permanently in the same direction; and even the petty transgressions of it which we can remember within the last twenty years—transgressions soon checked for the most part, and always censured—are just such exceptions as prove a rule." cf also Mr Disraeli (HC Deb 24 January 1860, vol 156, cols 75-116), Sir Edward Grey (HC Deb 27 November 1911, vol 32, cols 160-1), and Lord Ahmed (HL Deb 3 February 2022, vol 818, col 323GC). For evidence that proposing an armistice was regarded as an interference see the UKGBNI of Wellington (HL Deb 24 June 1831, vol 4, col 318), for offering mediation and good offices as an interference see Mr. Thomas Duncombe (HC Deb 31 May 1836, vol 33, col 1191), and for non-recognition of a foreign king as precluded by "the British nation" as "dictation to an independent State" see Mr. Hume (HC Deb 18 February 1831, vol 2, cols 696-697).

373 See Westlake on Castlereigh and Canning's statements in Oppenheim (ed) (1914, 125-126).

374 "It is true that France has interfered in the internal affairs of Mexico and Rome, and that England has interfered in the internal affairs of China, but in these instances it has been declared that the intervention was exceptional and temporary, and was contrary to the general principles on which the foreign policy of England and France was founded." Cited in Stapleton (1866, 11).

cf the King's Speech of 1927, which stated: "My Government have caused proposals to be made to the Chinese authorities which should convince public opinion in China and throughout the world that it is the desire of the British people to remove all real grievances, to renew Our treaties on an equitable basis, and to place Our future relations with the Chinese people on a footing of friendship and good will. My Government will maintain, Our traditional policy of non-interference in the internal affairs of China." HC Deb 8 February 1927, vol 202, col 9
Nonetheless, the withering criticism of HMG made by Mr Urquhart in 1848 is today truer than ever: HC Deb 4 July 1848, vol 100, cols 126-30

In 1970, the Final Communiqué of a North Atlantic Council Ministerial Session was presented to Parliament, and in that document NATO Ministers agreed that the principle of "non-interference and non-intervention" should "govern relations between States".[375] That statement is significant for this thesis not only as an example of treating non-interference and non-intervention as essentially synonymous, but because the example came from NATO Ministers: this contradicts current claims in the literature with regards to the separation of "interference" and "intervention" being maintained by non-WEOG states only (e.g. Moynihan 2019, Pomson 2022, and the Tallinn Manual). The previous year, at NATO's twentieth anniversary meeting, the Council had said that "member governments recall that any lasting improvement in international relations presupposes full respect for the principles of the independence and territorial integrity of States, non-interference in their domestic affairs, the right of each people to shape its own future, and the obligation to refrain from the threat or use of force."[376]

(iii) Other expressions of the principle

So far we have seen the principle as recognised in the principle of good-neighbourliness (and the Golden Rule) within the English common law, and as recognised as binding HMG and the UKGBNI's foreign policy by international law and the principles of public law. In this section I observe three other expressions of the principle as has been recognised in law.

In 1156 the King ordered that:

> *The prior and monks of Canterbury Cathedral Priory are to hold their lands and men as well and freely as they held them in the time of king Henry, the king's grandfather. No-one is to interfere in the priory's jurisdiction unless it is on its behalf. The priory may remove its servants when it wishes and appoint others as it did in the time of King Henry I. The priory is not to be unjustly disturbed by anyone.*[377]

The reader will note that the writ provides that the exception to the order prohibiting interference is "unless it is on [the priory's] behalf", which supports the idea of consent as defining the principle, or the possibility of a trust arrangement (see eg intervention orders below) or superior authority (in this case, presumably the Pope). Furthermore, the final sentence of the order suggests the synonymity of alternate expressions instead of

375 HC Deb 7 December 1970, vol 808, col 27

376 HC Deb 28 April 1969, vol 782, col 924

377 Henry II (1156)

"interference" (here "unjustly disturbed"), which supports my claim that students of the principle should not nitpick between the subtleties of word choice such as might be implied in colloquial English between "interference" and "intervention" (or "meddling"; see Chapter VIII Part 4).

The principle is more recently recognised in the concept of 'Intervention Orders', which permit "a person to act and take a one-off action or make decisions on behalf of an adult with incapacity" and which must be sure to "benefit the adult".[378] Presented as such, this is a permitted exception to what otherwise appears as a general rule that a person may not otherwise act or make decisions on behalf of another. This requirement to act in the interests of another is likewise reflected in the mandates system of the Charter of the UN (Articles 73 and 74, which speak of the "sacred trust" to "promote to the utmost [...] the well-being" of those for whom one assumes responsibilities, and which "must be based on the general principle of good-neighbourliness", which I noted above to be explicitly regarded (in the English common law at least) as connected to the Golden Rule).

The principle is recognised in section 1 of the Torts (Interference with Goods) Act 1977: the inclusion of the word 'wrongful' as found in the Torts Act 1977 supports my thesis findings that some inter(ference/vention)s are accepted and some are not, and that the conduct must be in harmony with the existing operation of the target.[379] Such construction is supported by the meaning of 'undue interference' in section 115 of the

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378 "What is an intervention order? This is a court appointment which authorises a person to act and take a one-off action or make decisions on behalf of an adult with incapacity. Anyone with an interest can make an application for an intervention order. When we refer to an adult, this is someone who is aged over 16 who is not able to look after their own affairs. The order allows the person appointed to do certain one-off things such as signing legal documents or to sell the adult's house or sign forms agreeing where someone can live. The Code of Practice provided by the Scottish Government gives further information and guidance in relation to the powers that may be sought. Before applying for an intervention order, you should seek legal advice to make sure the appointment will benefit the adult and is appropriate under the circumstances. The application will include a list of the powers you need to allow you to look after the adult's affairs. Powers can be requested to deal with the adult's property and/or financial affairs and/or make decisions about their personal welfare." <http://www.publicguardian-scotland.gov.UKGBNI/intervention-orders> accessed 9 November 2021

379 "Definition of wrongful interference with goods", which states that "In this Act "wrongful interference", or "wrongful interference with goods" means—(a) conversion of goods (also called trover), (b) trespass to goods, (c) negligence so far at it results in damage to goods or to an interest in goods (d) subject to section 2, any other tort so far as it results in damage to goods or to an interest in goods."

Wireless Telegraphy Act 2006.[380] It is relevant to note that the schemata developed in the Annex is capable of describing such interference also (eg interfometry).

Finally, the principle is recognised in the general concept of a medical interventions. Again, a medical intervention may be lawful if conducted with the fully informed and free consent of the individual; coercion does, of course, obviate such consent and so the presence of coercion is capable of being regarded as essentially synonymous with the absent of consent, but it does not define the distinction between lawful and unlawful conduct *per se*. With regards to medical experiments, it is clear from the first principle of The Nuremberg Code that consent of the subject is "absolutely essential."[381]

7. Case-Study: Is The UKGBNI A 'Civilized Nation'?

(i) What is 'civilized'?

The term 'GPOLRBCN' explicitly includes the word 'civilized', but there are reasons to consider dropping reference to that word.[382] Đorđeska decides that the term should be

380 "For the purposes of this Act, wireless telegraphy is interfered with if the fulfilment of the purposes of the telegraphy is prejudiced (either generally or in part and, in particular, as respects all, or as respects any, of the recipients or intended recipients of a message, sound or visual image intended to be conveyed by the telegraphy) by an emission or reflection of electromagnetic energy. (4) Interference with any wireless telegraphy is not to be regarded as undue for the purposes of this Act unless it is also harmful. (5) For the purposes of this Act interference is harmful if— (a) it creates dangers, or risks of danger, in relation to the functioning of any service provided by means of wireless telegraphy for the purposes of navigation or otherwise for safety purposes; or (b)it degrades, obstructs or repeatedly interrupts anything which is being broadcast or otherwise transmitted— (i)by means of wireless telegraphy; and (ii)in accordance with a wireless telegraphy licence, regulations under section 8(3) or a grant of recognised spectrum access or otherwise lawfully."

381 "The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment. The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs, or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity." 'The Nuremberg Code (1947)' (1996) 313 British Medical Journal 1448

382 See for example Vázquez-Bermúdez (2019, 53): "Today there is wide agreement in the literature that there is no need to attribute any particular meaning to the term “civilized nations” in Article 38, paragraph 1 (c), of the Statute of the International Court of Justice. It is often considered that the term is anachronistic and should therefore be avoided."

regarded as equivalent to "law-abiding" and, on the assumption that all members of the UN are law-abiding, finds the term "civilized" to be redundant.[383]

The term 'civilized' is after all a very sensitive one. One reason is that the term has been used to justify the most grotesque and inhumane abuses perpetrated against humanity by racist colonialists such as Winston Churchill.[384] However, just because a potentially good concept has been so badly abused does not mean that we should place no store in that concept: for example, a great deal of horrific abuse has been done under false banners of 'love' and 'democracy', yet to let the abusers of such concepts corrupt the meaning of those words would, I think, be a travesty. If we are to abandon the word "civilized" we face the difficulty that it is twice referenced in the ICJ Statute: not only in Article 38(1) ("general principles of law recognized by civilized nations") but also in Article 9 ("the representation of the main forms of civilization and of the principal legal systems of the world should be assured"). Furthermore, the "sacred trust of civilization" is referred to by the ICJ as a general principle.[385] Trying to understand the meaning of the concept from looking at the Charter of the UN, to which the Statute is attached, I think that the term can be regarded as equivalent to 'peace loving', following UN Charter Article 4(1).[386] This is almost the same as Đorđeska's proposal of "law-abiding", but I have some slight reservations about that term because so many lawyers (regrettably) equate "law" in a narrow Austinian sense of that which a sovereign commands:[387] those found guilty at the Nuremberg tribunal tried the "just following orders" defence, which was rightly rejected. Until it is more widely understood that the meaning of law contains a moral quality beyond 'one should do what one is told by one's purported superiors' (if that is indeed a moral quality at all), I think it would be better to let the term 'civilized' remain in place and interpret it in the context of the Charter which does, I think, include that moral

383 Đorđeska (2020, 346)

384 For substantiation see eg Ali (2022) generally. For example (at 360-361), Ali reports Churchill's testimony that: "I do not admit [...] that a great wrong has been done to the Red Indians of America, or the black people of Australia. I do not admit that a wrong [such as extermination] has been done to these people by the fact that a stronger race, a higher-grade race, or at any rate, a more worldly-wise race, to put it that way, has come in and taken their place."

385 Đorđeska (2020, 442-443)

386 "Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations."

387 See Westlake (1914, 11-16) for a good refutation of Austin's narrow interpretation of law.

dimension (see Chapter VII). I think both Đorđeska's position and my own are consistent with, for example, Oppenheim.[388]

(ii) Does the UKGBNI meet that standard?

Proceeding then with that interpretation of the word 'civilized', we face the question: if a principle (such as that of non-inter(ference/vention) is a general principle of law (as it appears to be) but is denied by one or more 'nations',[389] then is that general principle no longer a GPOLRBCN, or is the denying nation not civilized? In short, is the UKGBNI a "civilized" nation as defined, if it can be shown to persistently violate or deny the principle of non-inter(ference/vention)?

On the one hand, the UKGBNI does recognise the principle domestically and internationally and so does meet the definition taken above of 'civilized'. For example, the Golden Rule is an essential part of the English common law, and has been since at least the teachings of Christ were incorporated within the common law.[390] The bearer of the Crown, upon their Coronation, promises to *inter alia* be a good Christian and follow God, and if the monarch sincerely lived the teachings of Christ, it would surely be a civilizing influence upon HMG.[391] Furthermore, the UKGBNI has recognised the principles of the Charter of the United Nations as binding (see Chapter III), did quite a lot to help them get them embodied into treaty law through the Charter of the UN, and the principle

388 "I take it for granted that the organisation of a new League of Nations should start from the beginning made by the Hague Peace Conferences. Therefore the following seven principles ought to be accepted: First principle: The League of Nations is composed of all civilised States which recognise one another's external and internal independence and absolute equality before International Law." Oppenheim (1919, 39)

389 I leave aside here the point that the UKGBNI formally comprises several nations: England, the northern part of Ireland, Scotland, and Wales.

390 See eg the laws of Alfred and Æthelred. Griffiths (1995, 55 and 83-84). See also Grotius (2019, 29): having quoted Isiah's prophecy that 'when nations shall beat their swords into plow-shares, and turn their spears into pruning hooks. Nation shall not lift up sword against nation, neither shall they learn war any more.", Grotius writes: "For it is certain, that if all people were Christians, and lived like Christians, there would be no wars, which Arnobius expresses thus: "If all men, knowing that it is not their corporeal form alone which makes them men, but the powers of the understanding, would lend a patient ear to his salutary and pacific instructions, if they would trust to his admonitions rather than to the swelling pride and turbulence of their senses, iron would be employed for instruments of more harmless and useful operations, the world enjoy the softest repose and be united in the bands of inviolable treaties.""

391 "When a state or a legislature called itself Christian, it supplied all mankind with a test by which to judge of its professions and its conduct. To do good unto all men, and to love one's neighbour as one's self, were vital principles of Christianity. To do good to a whole community, and in doing that, to do good to all mankind—for the benefit of the emancipation would not be limited to the Jews, while no evils could arise from it to any other persons—was undoubtedly a Christian duty, and so sacred, that he might say, it had been placed by the Divine Author of our religion amongst his first precepts." Sir James Mackintosh, HC Deb 5 April 1830, vol 23, col 1323

of non-inter(ference/vention) has been formally recognised several times by HMG in Parliament over the centuries as binding upon it and the UKGBNI (see Part 6 of this chapter).

However, on the other hand the UKGBNI persistently violates the principle. HMG's hypocrisy in this regard was complained of in Parliament as long ago as 1848,[392] though the situation appears to have since worsened since HMG today claims, in the face of orthodox international law, a novel right to intervene militarily when it chooses. For example, a recent Foreign Secretary, in a public speech, showed no regard for the illegality of HMG's war of aggression against Iraq, merely the methods used:

> *In Iraq, the West chose to intervene militarily for the sake of security. However, underpinning the interventions was the idea that we could depose antagonistic regimes and install democracies that would act as bastions of stability in troubled regions. This neoconservative ambition was founded on laudable values, but its methods were deeply misguided.*[393]

The incumbent Defence Secretary:

> *Some remain firmly opposed to particular forms of military intervention. However, we cannot ignore the value we bring by getting involved when it's in our interests to do so. Not only does it maintain our important engagement with other great powers at the top table, for example, the United Nations Security Council. But it also helps extend our influence to countries whose political systems are in flux.*[394]

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392 "The difficulty with which I have to cope, and on mastering which depends the direction of the future course of this country, is to bring home to the House the **consciousness** that our acts are in direct opposition to our avowed maxims, and that it is our business to prevent what we acknowledge to be wrong." The speech speaks to HMG of "reducing your practice to conformity with **the old law** [....or] admitting that **you undertake to govern the world**. [...] [B]y the law of nations" HMG's practice of interfering abroad "is not only unlawful, but [...] **a crime**. [...] To the private individual it is lawful to do whatever the law does not forbid; but the **Government can do only that which the law permits**. There is no law which sanctions such interference; but there is a law which in the most express, detailed, and stringent manner forbids it. Such acts are no less repugnant to common sense, than they are to the very fundamental maxims of the faith which we profess—that **"we should do unto others as we wish others should do unto us."** They are, moreover, in **direct violation of all the traditions of this country**". The speaker goes on to say that "In each such act England has **violated the law of nations**, and the Minister has **violated the laws of England**. I defy the noble Lord to controvert either of the two positions. The noble Lord can give no answer. [...] He has reversed the practice of England, in **defiance of the will of the people**, of the decision of this House, and of the laws of the land! Why then, it may be asked, if the law forbids such acts, is a resolution of this House requisite? For this reason, that **no virtue remains in the land to enforce the law**. The penalties, which are its preventive means, no one dreams of enforcing, and thus the law slumbers disregarded. Further, the **consequences** of evil acts no one comprehends, for we day by day conclude on events and form opinions, so that it becomes impossible to connect consequences with their causes. The utmost then that this House can do is to throw obstacles in the path of those who possess **irresponsible power.**" After calling for the priori assent of Parliament in matters of foreign policy, the speaker claims HMG practice has prepared Europe for **a relapse into barbarism**. By this illegal course of England, Europe has been brought into the present confusion." Urquhart HC Deb 4 July 1848, vol 100, cols 126-30 (emphasis added)

393 Foreign and Commonwealth Office and Alistair Burt (2011)

394 Ministry of Defence and Ben Wallace (2020)

Furthermore, HMG has for some years claimed the right to attack another State if it aims to relieve humanitarian need.[395] This is a clear violation of international law, and has been demonstrated as such by Professor Kevin Jon Heller.[396] Apart from these public claims, examples of secretive violations of international law in this area abound; one authority is Curtis (2003), who refers to extensive declassified documents in detailing the crimes committed.[397]

(iii) The consequences of not following the law

What are the consequences, in terms of the standard of civilization, if the UKGBNI does not follow the principle of non-inter(ference/vention) as incorporated in the Charter of the UN?

One consequence, according to Blackstone, is that in such a situation the UKGBNI "must cease to be a part of the civilized world."[398] (I contend that the reason for this can be understood by appreciating that both international law and the common law were understood to derive first from reason.)[399] According to Maine, "it would probably be that

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395 House of Commons Defence Committee (2014)

396 Heller (2021)

397 See also e.g. Fenton (2003)

398 Blackstone (1825, 66-67): "THE law of nations is a system of rules, deducible by natural reason, and established by universal consent among the civilized inhabitants of the world; in order to decide all disputes, to regulate all ceremonies and civilities, and to insure the observance frequently occur between two or more independent states, and the individuals belonging to each. This general law is founded upon this principle, that different nations ought in time of peace to do one another all the good they can; and, in time of war, as little harm as possible, without prejudice to their own real interests. And, as none of these states will allow a superiority in the other, therefore neither can dictate or prescribe the rules of this law to the rest; but such rules must necessarily result from those principles of natural justice, in which all the learned of every nation agree: or they depend upon mutual compacts or treaties between the respective communities; in the construction of which there is also no judge to resort to, but the law of nature and reason, being the only one in which all the contracting parties are equally conversant, and to which they are equally subject.

"IN arbitrary states this law, wherever it contradicts or is not provided for by the municipal law of the country, is enforced by the royal power: but since **in England no royal power can introduce a new law, or suspend the execution of the old**, therefore the law of nations (wherever any question arises which is properly the object of its jurisdiction) is here adopted in its full extent by the common law, and is held to be a part of the law of the land. And those acts of parliament, which have from time to time been made to enforce this universal law, or to facilitate the execution of its decisions, are not to be considered as introductive of any new rule, but merely as **declaratory of the old fundamental constitutions** of the kingdom; without which it must cease to be a part of the civilized world."

399 See eg Blackstone on international law above. On the common law, Saint German wrote (1751, 20): "THE third Ground [after the law of reason and the law of God] of the Law of *England* ftandeth upon divers general *Cuftoms* of old time ufed through all the Realm, which have been accepted and approved by our Sovereign Lord the King, and his Progenitors, and all his Subjects. And becaufe the faid Cuftoms be neither againft the Law of God, nor the Law of Reafon, and have been alway taken to be good and neceffary for the common wealth of all the Realm; therefore they have obtained the Strength of a Law, infomuch that he doth againft them, doth againft Juftice. And thefe be the Cuftoms that properly be

the State which disclaims the authority of International Law places herself outside the circle of civilised nations."[400] More recently, on the subject of general principles of law, Lord Lloyd-Jones concluded that "there is a common unifying thread [between general principles in international law and the common law] in that there are certain general principles of law—those underlying legal principles which reflect the requirements of justice—which, however they are arrived at and whether or not they are a point of departure in legal reasoning, are an essential part of every legal system worthy of the name."[401]

Applying the conclusion of Lord Lloyd-Jones to the observation in Part 6 of this chapter that the principle of non-interference, being an aspect of the principle of good-neighbourliness, itself an aspect of 'the Golden Rule' which has in turn been part of the English common law for more than a thousand years, it would seem that HMG is not only assaulting the international legal order[402] when it violates the principle of non-inter(ference/vention), and is not only denying the rights of its people to a peaceful international order through which their human rights can be fulfilled,[403] but assaults a central part of the English common law as well.[404] An assault by HMG on the English common law is significant, not least because the common law predates the Crown's prerogative,[405] but also because the only way (it seems to me) that use of the prerogative power as an act of governance in a manner consistent with the requirement of Article 21 of the UDHR that "the will of the people shall be the basis of the authority of government" is if, in the absence of "periodic and genuine elections", the Crown respects

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called the *Common Law*. [...] And therefore our Sovereign Lord the King, at his Coronation, among other things, taketh a folemn Oath that he fhall caufe all the Cuftoms of his Realm faithfully to be obferved."

400 Cited in Lauterpacht (1939, 65). Although HMG has not disclaimed the authority of international law *per se*, its novel and unsupported claims that violate such clear codes as the Charter of the UN amounts, I think it is reasonable to claim, to the same substantive effect.

401 Lloyd-Jones (2018, 11): "I have attempted to say something about the role of general principles in two very different legal systems: in international law and in the common law. Clearly, the role they play in those systems differs greatly. However, it seems to me that there is a common unifying thread in that there are certain general principles of law—those underlying legal principles which reflect the requirements of justice—which, however they are arrived at and whether or not they are a point of departure in legal reasoning, are an essential part of every legal system worthy of the name."

402 cf Ohlin (2015)

403 cf UDHR Article 28

404 cf Urquhart HC Deb 4 July 1848, vol 100, cols 126-30

405 Blackstone (1765, 74): "THAT ancient collection of unwritten maxims and customs, which is called the common law, however compounded or from whatever fountains derived, had subsisted immemorially in this kingdom; and, though somewhat altered and impaired by the violence of the times, had in great measure weathered the rude shock of the Norman conquest."

the common law.[406] Indeed, the Queen promised to abide by the common law as a condition of ascension to the throne.[407]

That acts of the Crown remain subject to the common law has been recently upheld by the UKGBNI Supreme Court in *Rahmatullah (No 2) (Respondent) v. Ministry of Defence and another (Appellants)* [2017] UKSC 1 [4].[408] The position that international rights and duties were cognizable by the courts was supported by Lord Chief Justice in *Franconia Case,*[409] and Lauterpacht has argued that Acts of Parliament must be interpreted "so as not to be in conflict with International Law; they must be interpreted against the background of International Law in the same way as they must be construed by reference to the principles of International Law."[410] Although Sir Ivor Jennings has taken issue with some aspects of Oppenheim's claim (criticisms which I do not entirely agree with), he nonetheless agreed that "[English courts] will [...] assume that [the Queen] has not the powers whose exercise will be contrary to international law".[411] Consistent with that view, but in a more considered text, Holdsworth has observed:

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406 Assuming Blackstone is correct in saying; "And indeed it is one of the characteristic marks of English liberty, that our common law depends upon custom, which carries this internal evidence of freedom along with it, that it probably was introduced by the voluntary consent of the people" (1765, 74)

407 "Archbishop. Will you solemnly promise and swear to govern **the Peoples** of the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand, the Union of South Africa, Pakistan, and Ceylon, and of your Possessions and the other Territories to any of them belonging or pertaining, according to **their** respective laws and customs?
"Queen. I solemnly promise so to do." 'The Queen's Coronation Oath', <https://www.royal.UKGBNI/coronation-oath-2-june-1953> accessed 29 June 2022 (emphasis added: ie the laws by which the Crown purports to govern are the laws belonging to the people, not laws belonging to the Crown)

408 "The starting point is that English law "does not recognise that there is an indefinite class of acts concerning matters of high policy or public security which may be left to the uncontrolled discretion of the Government and which are outside the jurisdiction of the courts" (H Street, *Governmental Liability, A Comparative Study*, Oxford University Press, 1953, p 50). That there is no general defence of state necessity to a claim of wrongdoing by state officials was firmly established in the landmark case of *Entick v Carrington* (1765) 19 St Tr 1029, following on from *Leach v Money* (1765) 19 St Tr 1001 and *Wilkes v Wood* (1763) 19 St Tr 1029. This principle was reiterated by Viscount Finlay in *Johnstone v Pedlar*, at 271: "It is the settled law of this country, applicable as much to Ireland as to England, that if a wrongful act has been committed against the person or the property of any person **the wrongdoer cannot set up as a defence that the act was done by the command of the Crown**. The Crown can do no wrong, and the Sovereign cannot be sued in tort, but the person who did the act is liable in damages, as any private person would be." (emphasis added)

409 "Whatever has received the common assent of civilised nations must have received the assent of our country, and that to which we have assented along with other nations in general may properly be called International Law, and as such **will be acknowledged and applied by our municipal tribunals when legitimate occasions arise** for those tribunals to decide questions to which doctrines of International Law may be relevant." Cited in Lauterpacht (1939, 57) (emphasis added)

410 Lauterpacht (1939, 57)

411 Jennings (1959, 173-174)

> *In the sixteenth and seventeenth centuries this question* [of the relationship between English common law and international law] *had not begun to be considered by the common lawyers. The rules of international law were regarded as matters which concerned the Crown, and fell within its wide prerogative in relation to foreign affairs. But after the Revolution it was necessary to reconcile this wide prerogative with the principles of English constitutional law which had prevailed as the result of the Revolution. One of these principles was that the prerogative could not be used in anyway which conflicted with those principles.*[412]

In this regard it becomes relevant to consider the maxim "*Rex non potest peccare*" ("the king can do no wrong"). With regards to that maxim of law, Bloom explained:

> *It is an ancient and fundamental principle of the English constitution, that the king can do no wrong. But this maxim must not be understood to mean that the king is above the laws, in the unconfined sense of those words, and that everything he does is of course just and lawful. Its true meaning is, First, that the sovereign, individually and personally, and in his natural capacity, is independent of and is not amenable to any other earthly power or jurisdiction; and that whatever may be amiss in the condition of public affairs is not to be imputed to the king, so as to render him answerable for it personally to his people. Second, the above maxim means, that the prerogative of the Crown extends not to do any injury, because, being created for the benefit of the people, it cannot be exerted to their prejudice, and it is therefore a fundamental general rule, that the king cannot sanction any act forbidden by law; so that, in this point of view, he is under, and not above the laws,—and is bound by them equally with his subjects. If, then, the sovereign, personally command an unlawful act to be done, the offence of the instrument is not thereby indemnified; for though the king is not himself under the coercive power of the law, yet in many cases his commands are under the directive power of the law,* ***which makes the act itself invalid if unlawful****, and so renders the instrument of execution thereof obnoxious to punishment. As in affairs of state the ministers of the Crown are held responsible for advice tendered to it, or even for measures which might possibly be known to emanate directly from the sovereign,* ***as may the agents of the sovereign be civilly or criminally answerable for lawless acts done****—if that may be imagined—****by his command.*** (emphasis added)

Accordingly to the preceding analyses, violations of international law are invalid in UKGBNI domestic law (because the Crown is incapable of violating the law), and any agents of the Crown who commit a violation of international law are "civilly or criminally answerable" for their lawless acts.[413] The formal position appears to be that the Crown has no authority to commit an unlawful act, and so any acts done in the name of the Crown which are in fact unlawful, are to be attributed to improper advice to the Crown

412 Holdsworth (1942, 141)

413 This is consistent with the principles of international law recognized by the International Law Commission in the jurisdiction of the Nürnberg tribunal (including that domestic law offers no defence to crimes committed against international law), see below.

and/or improper execution of the will of the Crown.[414] If this is applied to those provisions of HMG's National Security Bill 2022 which claim to absolve its agents of criminal responsibility for serious crimes such as torture,[415] we see that such absolution is in fact (of course!) invalid, and the offender remains personally liable.[416]

There are many interesting questions that flow from the commentaries considered so far. But there is one which I would like to present here for discussion. Since (i) the population of the UKGBNI enjoys the human right "to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized",[417] and since (ii) strict adherence to the principle of non-inter(ference/vention) is one of the necessary principles for achieving that order,[418] and since (iii) HMG has not been strictly observing that principle but on the contrary has planned and executed operations in violation of that principle and in violation of other principles of the Charter of the UN[419] thereby preventing the order described in Article 28 of the UDHR from being realised, and since (iv) the Crown can do no wrong and therefore any violation of international law cannot be defended by the claim of 'superior orders' but is the personal responsibility of the agent(s) involved,[420] and since (v) the English courts have long held the power to apply international law, then it would seem that (vi) under the common law every person in the

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414 Bloom (1874, 52-53). See also "The principal attributes of the Crown are sovereignty or pre-eminence, perfection, and perpetuity; and these attributes are attached to the wearer of the crown by the constitution, and may be said to form his constitutional character and royal dignity. On the other hand, the principal duty of the sovereign is to govern his people according to law; and this is not only consonant to the principles of nature, of liberty, of reason, and of society, but has always been esteemed an express part of the common law of England, even when prerogative was at the highest." Bloom (1874, 47), and "*Rex non debet esse sub homine, sed sub Deo et sub lege, quia lex facit regem*. The king is under no man, yet he is in subjection to God and to the law, for the law makes the king." Bloom (1874, 47)

415 Part 1 Section 23

416 A counterpoint is that the National Security Bill is not exercised under the Royal Prerogative of defence of the realm, but as a Statute of Parliament has supremacy over both the common law and the prerogative. However, to be a valid statute it requires the Crown's assent, and since "the Crown can do no wrong", the Crown cannot, in law, assent to an Act of Parliament that violates the aforementioned principles, and any such assent is invalid. The alternative is to abandon the maxim that the Crown can do no wrong, but the legal repercussions of that could be most severe.

417 Article 28 UDHR

418 per Article 1 of the Charter of the UN, in light of the Friendly Relations Declaration (see above and Chapter III).

419 Including Article 2(4) of the Charter, which is widely recognised as *jus cogens*.

420 See eg Principle I of 'Formulation of the Nürnberg Principles' [1950] 2 Yearbook of the International Law Commission 374: "**Any person** who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment". Principle VI states "The crimes hereinafter set out are punishable as crimes under international law: a. Crimes against peace: (i) Planning, preparation, initiation or waging of a war of aggression or **a war in violation of international treaties, agreements or assurances;** (ii) **Participation in a common plan** or conspiracy for the accomplishment of any of the acts mentioned under (i)." (emphasis added)(376)

UKGBNI has enforceable rights against any and all those under the direction of the Crown who have violated international law including, I claim here, the principle of non-inter(ference/vention). I do not claim this analysis to be definitive; perhaps I am mistaken in some important aspect. But the line of reasoning appears to be based on accepted authorities, and as it offers one way to help correct HMG's apparent violations of international law, it seems sensible to open it up for consideration and discussion.

8. Evaluation

This Chapter suffers from several major weaknesses that prevent it from being considered as a comprehensive assessment of the principle as a GPOLRBCN. The main weakness is that the study was only conducted in English, whereas a comprehensive study would be conducted in at least all six of the official languages of the United Nations. The second weakness is that the jurisdictions in which legal materials were sought was very narrow; apart from general international law, the study only considered the legal order of the EU and, with regards to the UKGBNI, focused mostly on the English common law. The third weakness is that there was not a systematic method for collecting legal materials within those few jurisdictions that were considered: I merely referred to what I was already aware of or what was near to hand. Therefore, there is considerable potential for bias in the materials selected.

However, at least I considered the possibility that the principle exists as a GPOLRBCN; none of the literature on the principle considered its potential as such, and therefore this study is an original contribution to that literature. Furthermore, the legal materials considered include what are generally regarded as foundational legal texts (e.g. the Charter of the UN, the founding treaties of the EU, and consistent jurisprudence regarding the principle of good-neighbourliness as a fundamental part of the English common law going back several hundred years). In addition, those materials consulted all tended to overlap: the principle was found to be associated with good-neighbourliness in both the general international legal order and the English common law, and its importance for cooperation was noted in the EU legal order as well as the general international legal order.

In their review of GPOLRBCN as found in the jurisprudence of the ICJ, Đorđeska found the principle to be a GPOLRBCN on the basis of the ICJ's decision in *Military and Paramilitary*

Activities in and Against Nicaragua [1984, 1986] and *Armed Activities on the Territory of the Congo* [2005].[421] This Chapter's study accords with that finding, and complements it by considering primary legal materials outside of ICJ jurisprudence. It therefore seems that this Chapter provides limited but reliable further evidence for the existence of the principle as a GPOLRBCN.

9. Conclusion

The meaning of the principle

With regards to the meaning of the terms 'interference' and 'intervention', this Chapter found no distinction between the two terms, and that the two are sometimes used interchangeably.

With regards to the definition of a prohibited inter(ference/vention), this Chapter found that in all instances that which is prohibited can be understood in terms of consent (occasionally explicitly so), but that coercion does not serve so well.

The status of the principle

With regards to the principle's status in law, this Chapter found that the principle is a "general principle of law recognized by civilized nations" and that as such it is not only binding on all States (according to the Friendly Relations Declaration), but is an autonomous source of law (according to the Preamble of the Charter of the United Nations). Separately, the Chapter also found that the principle is binding in general international law as a principle of the Charter of the UN, binding in the European Union not only through treaty law but also as a judicially-discoverable Article 6(3) TEU general principle of law, and binding in the English common law as an essential part of "the rule that you are to love your neighbour".

With regards to the entities to which the principle applies, this Chapter found the principle protects not only States, but also peoples, court proceedings, individual humans, and neighbours.

The importance and associations of the principle

421 Đorđeska (2020, 385-387)

With regards to the outcomes of adhering to the principle and its associated principles, this Chapter found them to be the aims and principles enshrined in the Charter of the United Nations, including the principle of good-neighbourliness.

V. The Principle According To The International Court Of Justice

I. Introduction

In this chapter I study the meaning and significance of the principle of non-inter(ference/vention) according to the statute and decisions of the International Court of Justice (hereafter ICJ). In this part (Part 1) I review the structure of the chapter. In Part 2 I introduce the materials that are studied: these are Article 62 of the Statute of the ICJ, the ICJ's decision in *Military and Paramilitary Activities In and Against Nicaragua*, and its decisions in various other cases (such as *'Barcelona Traction, Light and Power*' and '*Corfu Channel*'). In Part 3 I introduce the methods used to study the materials: these methods are to use an ordinary reading of the text, and to not 'beg the question' (the *petitio principii* fallacy) by excluding from consideration expressed examples of inter(ference/vention). In Part 4 I consider the ICJ's decision in *Military and Paramilitary Activities in and against Nicaragua*, focusing on the frequently-missed caveat to the definition provided by the ICJ in that case and considering the definition in context of the rest of the court's discussion. In Part 5 I consider the meaning of the intervention described in Article 62 of the Statute of the ICJ, and find that it supports understanding the principle in terms of consent rather than coercion. In Part 6 I review other decisions of the ICJ to see what light they can shed on the meaning and significance of the principle: I find they support the idea of the principle as binding, as better understood in terms of consent than coercion, and as being essential to the international legal order. In Part 7 I consider the UKGBNI's record at the ICJ regarding the principle: I observe that the UKGBNI has a history at the ICJ of 'pushing the boat' with the principle and its inter-related principles, and that there are various examples of PONI violations by the UKGBNI that have not gone to the ICJ. In Part 8 I critically evaluate the limitations of this study. Finally, in Part 9 I review the conclusions that can be taken from the chapter and carried forward to Chapter VIII, which is the conclusion of this thesis.

2. Materials

In this chapter I study the ICJ's decisions regarding the meaning and importance of the principle of non-interference/vention in international law. I study this because court decisions are regarded as a subsidiary means for determining international law.[422] I study the ICJ in particular, rather than looking at other courts, for several reasons. The first is pragmatic: there is only so much time for one researcher to dedicate to this aspect of the thesis. The second reason is principled: the ICJ is the most representative, well-established, and authoritative international court,[423] and so by focusing on the ICJ I aim to avoid parochial limitations that might arise from looking at a regional or national court's practice.

The materials I consider are the *Military and Paramilitary Activities In and Against Nicaragua* decision of 1986, the statute of the ICJ, and other decisions of the ICJ. I look at *Military and Paramilitary Activities in and against Nicaragua* because several authorities in the literature elided the caveat to the definition of the principle given by the World Court in that case, and I hypothesised that this might have affected their conclusions regarding the principle. For example, Jamnejad and Wood noted that "the International Court considered only those aspects of the principle that appeared relevant to the dispute before it",[424] but did not actually apply that caveat to their interpretation of the definition. The first version of the Tallinn Manual missed the caveat entirely, and stated:

> *As noted by the Court in Nicaragua, "intervention is wrongful when it uses methods of coercion". It follows that cyber espionage and cyber exploitation operations lacking a coercive element do not per se violate the non-intervention principle.*[425]

Philip Kunig writing for the Max Planck Encyclopedia of Public International Law also missed the caveat when quoting the definition in *Military and Paramilitary Activities in and against Nicaragua* as authority for defining the principle by the presence of coercion.[426] The omission of the court's caveat is potentially significant, because the decision in *Military and Paramilitary Activities in and against Nicaragua* is one of the three main evidence

422 Article 38(1)(d) of the Statute of the ICJ.

423 See for example Article 4 and Article 9 of the Statute of the ICJ, the latter of which states: "[T]he electors shall bear in mind [...] that in the body [of the court] as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured."

424 Jamnejad and Wood (2009, 367)

425 Schmitt (2013, 47). The Tallinn Manual 2.0 carries the same conclusion implicitly rather than explicitly: Schmitt and Vihul (2017, 312)

426 Kunig (2008, A.1.1.)

bases in the literature for interpreting the meaning of the principle (the others being *Oppenheim's International Law* and reasoning from first principles). Because the literature is relied upon for foreign policy (e.g. the Tallinn Manual informing NATO cyber policy), such omissions have indirect but close and clear human consequences.

I also look at the Statute of the ICJ because it is an important legal document containing binding obligations on parties and, in Article 62, directly references an example of a prohibited 'intervention' in a court case. To ignore what the statute means in that regard would be to beg-the-question regarding the meaning of the term (the *petitio principii* fallacy). This is also significant for establishing that the principle can apply between legal creatures other than States. The Tallinn Manual 2.0 claims that the principle only applies between States,[427] and so by implication (*reductio ad absurdum*) would presumably consider it acceptable for a State to conduct disruptive cyber operations against the ICJ since the latter is not a State.[428] I supplement these materials by looking at other decisions of the ICJ to see whether these support or contradict my findings.

3. Methods

Selecting the material

The choice of *Military and Paramilitary Activities* presented itself from reading the secondary literature (see above). I selected Article 62 of the Statute from a keyword search of the Charter. The other cases selected after searching on the court's website the texts of judgments, advisory opinions, and separate opinions for occurrences of the words 'interfere(nce)' and 'interven(e/tion)'. Although I read and coded a majority of those instances, for the sake of time and balance I did not conduct an exhaustive enquiry. Therefore I am confident that there will be additional material available for deeper study, but from my wider reading am doubtful that such material would affect the conclusions of this chapter to a significant degree.

How I analysed the material

I use an ordinary reading of the decisions, but only in English. I do not 'beg the question' by excluding some types of inter(ference/vention) from consideration. For example,

427 Schmitt and Vihul (2017, 313). The Manual rests its claim on a USA internal memo from 1961.

428 The idea might not be regarded by some as so absurd; cf 22 USC 7427 ('Authority to free members of the Armed Forces of the United States and certain other persons detained or imprisoned by or on behalf of the International Criminal Court').

rather than just looking at the meaning of a sentence in the decision, I look at the whole paragraph in which that sentence occurs, and consider other parts of that decision also (see Part 4). I check my findings by searching the ICJ database for a few other examples of "interference" and "intervention" considered by the court (it would have been more thorough to conduct a systematic study of all decisions and opinions of the court, and other courts, but there was not enough time and it did not seem necessary to establish the point).

4. Question: What Is The Meaning Of The Principle As Articulated In *Military And Paramilitary Activities*?

In this section I claim that a close, ordinary reading of the *Military and Paramilitary Activities in and against Nicaragua* confirms my hypothesis.

(i) The Court defined the principle only so far as it overlaps with the principle prohibiting force

The caveat to the definition

It is already noted in the literature note that the Court defined intervention as requiring the element of coercion. However, the immediately preceding and critical caveat given to that definition by the Court is generally not so noted.

The critical part of the judgment detailing the court's partial definition of the content of the principle as considered in that case is paragraph 205, quoted here in full with emphasis added:

> *Notwithstanding the multiplicity of declarations by States accepting the principle of non-intervention, there remain two questions: first, what is the exact content of the principle so accepted, and Second, is the practice sufficiently in conformity with it for this to be a rule of customary international law? As regards the first problem—that of the content of the principle of non-intervention—**the Court will define only those aspects of the principle which appear to be relevant to the resolution of the dispute**. In this respect it notes that, in view of the generally accepted formulations, the principle forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. **The element of coercion, which defines, and indeed forms the very essence***

> ***of, prohibited intervention, is particularly obvious in the case of an intervention which uses force****, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State. As noted above (paragraph 191), General Assembly resolution 2625 (XXV) equates assistance of this kind with the use of force by the assisting State when the acts committed in another State "involve a threat or use of force".* ***These forms of action are therefore wrongful in the light of both the principle of non-use of force, and that of non-intervention.*** *In view of the nature of Nicaragua's complaints against the United States, and those expressed by the United States in regard to Nicaragua's conduct towards El Salvador, it is primarily acts of intervention of this kind with which the Court is concerned in the present case.* (emphasis added)

My first observation is that this decision is not binding on anyone other than parties to the case: it is 'subsidiary means' for determining the law, per Article 38(1)(d) of the Statute of the ICJ. Furthermore, in this instance the court provides no law or reasoning for its definition, which it merely asserts to be the case. It therefore has some authority as subsidiary means for determining the law, but cannot by itself be regarded as doctrinally persuasive.

My second observation is that even disregarding the caveat, the court is clearly saying that coercion is broader than the use of force ("coercion ... is particularly obvious in the case of ... force"). This contradicts not only Pomson, but also Vincent and the Tallinn Manual 2.0, all of whom limit their interpretation of the principle to the use of force.[429] In this regard it is relevant to note that the Friendly Relations Declaration (referred to by the court) recalled "the duty of States to refrain in their international relations from military, **political**, **economic** or **any other** form of coercion...", which on an ordinary reading is broader than the usual interpretation in international law regarding the threat or use of force.

My third observation is somewhat pedantic but nonetheless legitimate. The court said it would "define only those aspects of the principle which appear to be relevant to the resolution of the dispute", and "those aspects" were where the principle overlapped with the principle prohibiting the use or threat of force. This is evidenced by the only reference to the principle in the court's decision (paragraph 292, sub-paragraphs (3)[430]

429 The Tallinn Manual 2.0 takes the ICJ's mention of coercion, and then interprets this undefined concept of coercion against a State as "not limited to physical force, but rather [...] an affirmative act designed to [...] force that State to act in an involuntary manner or involuntarily refrain from acting in a particular way", which seems like defining the concept in terms of force.

430 The Court "Decides that the United States of America, by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State". This is already covered under the prohibition of "the threat or use of force against the territorial integrity or

and (6)[431]) being also expressly prohibited by the 1970 Declaration's examples of what is prohibited by the prohibition of the use or threat of force.[432] Therefore the definition, on an ordinary reading of its construction, is limited to those aspects of the principle that overlap with the use or threat of force. However, those aspects are separately prohibited by the prohibition on the threat or use of force (see Chapter III).[433] It is not surprising that an action can be forbidden by two or more different principles, since as the 1970 Declaration notes (Annex paragraph 2): "In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles." The mistake made, I claim, has been to take an example of one principle (that forbidding the use or threat of force) and claiming that it defines another principle (that of non-intervention).

My fourth observation is more contextual. The court said that the principle ensures that State's choices on their political, economic, social, and cultural systems and foreign policy

political independence of any State or in any other manner inconsistent with the purposes of the United Nations" found in the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation in Accordance with the Charter of the United Nations, which states: "[e]very State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands including mercenaries, for incursion into the territory of another State" and "[e]very State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force." In this sense, the principle prohibiting the use or threat of force can be seen as implied by the principle of non-inter(ference/vention).

431 The Court "Decides that, by laying mines in the internal or territorial waters of the Republic of Nicaragua during the first months of 1984, the United States of America has acted, against the Republic of Nicaragua, in breach of its obligations under customary international law not to use force against another State, not to intervene in its affairs, not to violate its sovereignty and not to interrupt peaceful maritime commerce."

432 "Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands including mercenaries, for incursion into the territory of another State." And "Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force."

433 Confusion on this point extends even to Jennings and Watts' 9th edition of *Oppenheim's International Law* (which is ironic as Jennings was one of the judges in the case). Jennings and Watts identify from the Military and Paramilitary Activities in and against Nicaragua judgment that support for opposition forces within another state is capable of graduating from an intervention, to a threat or use of force, to an armed attack, and aggression (2008, 431-432):

"In the light of the Court's judgment in that case it seems that action in support of opposition forces within another state may constitute **intervention**, even if the support itself is of a non-military kind [footnote 5: "E.g. financial support: ICJ Rep (1986), p 124."]; if it has a military character but is limited to such indirect support as the supply of weapons or logistic support, it may constitute not only intervention but **also** an unlawful threat or use of force, but would not amount to an armed attack; and if it involves direct military action by the supporting state (whether on the part of its regular forces or through the despatch of armed bands on a significant scale) it is **in addition** likely to constitute an armed attack (so giving rise to the right of self-defence on the part of the attacked state) and may well **also** constitute aggression."

"must remain free ones". "Coercion" (which is undefined not only here but also seemingly elsewhere in international law) must be understood in that context: ie that States must have free choices regarding those policies. In my concluding Chapter VIII I observe that 'presence of coercion' can be read as synonymous with 'absence of (full and free) consent' but even if we take this non-intuitive interpretation (I say non-intuitive because of how secondary literature has interpreted it as force),[434] I claim it is not preferable as a test because it (i) unjustifiably privileges the right to do what one likes vis a vis others (the perspective of the intervener) over the right to do what one likes vis a vis one's self (the perspective of the victim), (ii) has proven ambiguous and very difficult to define in practice[435] therefore denying justice to the victim, and (iii) favours the intervener in terms of evidence collection (e.g. Tallinn Manual's 'lack of intent') rather than the victim). This is confirmed by considering the court's examples of intervention such as the discriminatory provision of aid. Furthermore, just because the court did not find itself able to determine economic coercion in this case does not mean that economic coercion is not possible.

(ii) Other examples of the principle volunteered by the Court are more consistent with terms of consent than coercion

The discriminatory provision of humanitarian aid

The significance of the Court's caveated definition is underscored by the ICJ volunteering elsewhere in the judgment that even the (hypothetical) discriminatory provision of humanitarian aid can be a violation of the principle of non-intervention:

> *In the view of the Court, if the provision of "humanitarian assistance" is to escape condemnation as an intervention in the internal affairs of Nicaragua, not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely "to prevent and alleviate human suffering", and "to protect life and health and to ensure respect for the human being"; it must also, and above all, be given without discrimination to all in need in Nicaragua, not merely to the contras and their dependents* [243]

Such discriminatory provision of humanitarian aid does not easily fit the definition of coercion given by, for example, the ILC.[436] Therefore, either 'the element of coercion' test

434 eg Vincent (1974, 7)

435 eg Aloupi (2015, 576-577)

436 ILC Draft Articles on State Responsibility, Commentary on Article 18 paragraphs 1-7. "Coercion 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*

is incapable of describing the essence of the principle in its entirety (rather than one or more aspects of it, such as when it uses force, as considered by the ICJ in *Military and Paramilitary Activities in and against Nicaragua*), or we must interpret the meaning of coercion to such breadth that one must question whether it is still an appropriate term to use. This is significant to my thesis' sub-question of whether it is consent or coercion that distinguishes a prohibited inter(ference/vention) from permitted, since it is possible to imagine such discriminatory provision of aid to groups within Nicaragua as taking place without the use of "coercion" or "dictation" of Nicaragua (for example, by being delivered in secret) but not, in the context of the ICJ's decision quoted above, without the consent of Nicaragua.

Comparison with the discriminatory provision of aid to Greece

Supporting my interpretation regarding the provision of aid in the case of *Military and Paramilitary Activities in and against Nicaragua*, I note that consideration of when aid might or might not be considered as "interference" had elsewhere been considered in relation to activities regarding Greece:

> *272. When the General Assembly considered the Greek question at its third session in the light of the reports of the United Nations Special Committee on the Balkans, two conflicting points of view emerged. [...]*
>
> *273. The majority view, on the other hand, shared in varying degrees by twenty nine Member States, among them China, France, Greece, the United Kingdom and the United States, was that the Special Committee [...] had shown itself to be an impartial body whose work had furnished complete proof that Albania, Bulgaria and Yugoslavia were, in fact, interfering in the internal affairs of Greece by giving important aid to the Greek guerrillas, thus threatening both the political independence and territorial integrity of the country. The charges of United States interference in the internal affairs of Greece were ludicrous; the aid being provided by the United States had been requested by the recognized authorities of Greece.*[437]

In both occasions—*Military and Paramilitary Activities in and against Nicaragua* and *The Greek Frontier Incidents Question*—the distinction of aid as prohibited or not can only be accurately determined by the question of consent of the host State, rather than the use of coercion by the donating State.[438]

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comply with the wishes of the coercing State" (paragraph 2). [i.e. the obviation of 'free choice' or 'free will'] Curiously, this seems a little less strict than paragraph 3: "coercion could possibly take other forms, e.g. serious economic pressure, provided that it is such as to deprive the coerced State of *any possibility* of conforming with the obligation breached" (emphasis added).

437 A/AC.119/L.2 page 130

438 I would add that the fact that the ICJ referred to the discriminatory provision of aid in the case of *Military and Paramilitary Activities in and against Nicaragua* was "intervention in the internal affairs [of

(iii) The Opinions of Jennings and Singh

Incidental to the main points considered in this section is the observation that in their separate opinions Jennings and Singh made interesting comments on the principle. Jennings said: "There can be no doubt that the principle of non-intervention is an autonomous principle of customary law; indeed, it is much older than any of the multilateral Treaty regimes in question. "[439] This contradicts Pomson's claim that the principle in customary international law was formed in the 1960s-1980s.[440] It also contradicts Aloupi's claim that the principle is not autonomous.[441]

Of the importance of the principle, Singh wrote:

> *I cannot conclude this opinion without emphasizing the key importance of the doctrine of non-intervention in the affairs of States which is so vital for the peace and progress of the international community. To ignore this doctrine is to undermine international order and to promote violence and bloodshed which may prove catastrophic in the end. The significant contribution which the Latin American treaty system along with the United Nations Charter make to the essentials of sound public order embraces the clear, unequivocal expression given to the principle of non-intervention, to be treated as a sanctified absolute rule of law whose non-observance could lead to disastrous consequences causing untold misery to humanity. The last subparagraph (16) of the operative paragraph 292 of the Judgment,[442] which has been adopted unanimously by the Court, really rests on the due observance of the basic principles of non-use of force and non-intervention in the affairs of States. The Court has rightly held them both as principles of customary international law although sanctified by treaty law, but applicable in this case in the former customary manifestation to fully meet the viewpoint of the Respondent which the Court has rightly respected. However, the concepts of both these principles do emerge in their manifestation here fully reinvigorated by being further strengthened by the express consent of States particularly the parties in dispute here. This must indeed have all the weight that law could ever command in any case and no reservations could ever suppress this pivotal fact of inter-state law, life and relations. This in my view is the main thrust of the Judgment of the Court, rendered with utmost sincerity in the hope of serving the best interests of the international community.*[443]

Nicaragua]", while the UN General Assembly referred to it as "interference in the internal affairs [of Greece]", underscores the synonymity in international law of that which is prohibited of interference and intervention.

439 Dissenting Opinion [534]

440 Pomson (2022, 185-186). It also contradicts many State representatives, including legal discussions between UKGBNI and USA: see Chapter Three.

441 Aloupi (2015)

442 "Unanimously, Recalls to both Parties their obligation to seek a solution to their disputes by peaceful means in accordance with international law."

443 *Military and Paramilitary Activities in and against Nicaragua* (Sep. Op. Nagendra Singh) [156-157]

Therefore, it seems my hypothesis was right, namely that the ICJ did not set out to define the principle in *Military and Paramilitary Activities in and against Nicaragua*, and that its use of examples in that decision better supports consent rather than coercion as distinguishing permitted from prohibited action. This directly contradicts important pieces of literature which have assumed the opposite. It is also significant to note that the court treats interference and intervention as equivalently prohibited (as also found by Singh, and as also found from comparing the question of discriminatory provision of aid in Greece and (hypothetically) Nicaragua):

> *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 parcel of customary international law. [106]*

5. Question: Is An Article 62 Intervention Defined By Consent Or Coercion?

(i) The Statute of the ICJ confirms that consent defines a prohibited intervention

The concept of prohibited and permitted "intervention" in court proceedings supports the 'consent' interpretation for defining a prohibited inter(ference/vention). The concept of "intervening" in the ICJ's proceedings is expressed in Article 62 of the Statute of the ICJ:

> *"1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.*
>
> *"2. It shall be for the Court to decide upon this request."*

Two points of relevance for this thesis emergence from that provision. One point is that it is consent which distinguishes prohibited and permitted interventions (or inter(X) and inter(O) as I prefer to refer). The second point is that here a 'case' is capable of being intervened in, which contradicts claims in the literature that the principle only applies between States.[444]

444 e.g Schmitt and Vihul (2017)

(ii) This is affirmed in its decisions

The court has held that the right "to bring before the Committee an objection to a judgement of the Tribunal" was "a right of intervention by a third party."

> *The very according of a right, in Article II of the Statute of the United Nations Administrative Tribunal, not only to the Secretary-General, or the person in respect of whom a judgement has been rendered by the Tribunal, but also to any member State of the United Nations, to bring before the Committee an objection to a judgement of the Tribunal, suggests of itself that the procedure before the Court was not intended to be part of a procedure of appeal on the merits of the case. Such a right of intervention by a third party is only explicable on the assumption that the advisory opinion is to deal with a different question from that submitted to the Tribunal, and a question in which the intervening member State may well have a legitimate interest (see paragraph 24 above).*[445]

6. Question: Do Other Decisions Confirm Or Contradict This Thesis' Findings?

In this section I claim that findings from other chapters in this thesis were also found in other decisions of the ICJ.

(i) Regarding the meaning of the principle

The synonymity of interference and intervention

That the Court raised no issue with interference and intervention being presented as synonymous is found in several instances.

For example, in its Advisory opinion of 30 March 1950 (first phase) ('Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (first phase)')[446] the court made reference to written statements in the proceedings with essentially interchangeable treatment of "interfering" and "intervening" with no attempt made at distinguishing their substance.[447]

445 Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal (Advisory Opinion) [1982] ICJ Rep 325

446 Interpretation of Peace Treaties, Advisory Opinion: I.C.J. Reports 1950, p. 65. <https://www.icj-cij.org/files/case-related/8/008-19500330-ADV-01-00-BI.pdf>

447 "The power of the Court to exercise its advisory function in the present case has been contested by the Governments of Bulgaria, Hungary and Romania, and also by several other Governments, in the communications which they have addressed to the Court. This objection is founded mainly on two arguments. It is contended that the Request for an Opinion was an action ultra vires on the part of the General Assembly because, in dealing with the question of the observance of human rights and fundamental freedoms in the three States mentioned above, it was "interfering" or "intervening" in

In *Asylum (Colombia v. Peru)*[448] the ICJ used intervention and interference interchangeably.

> *[A] quite general protection of asylum to any person prosecuted for political offences [...] would lead to foreign **interference** of a particularly offensive nature in the domestic affairs of States.*

and that

> *The Court cannot admit that the States signatory to the Havana Convention intended to substitute for the practice of the Latin American republics, in which considerations of courtesy, good neighbourliness and political expediency have always held a prominent place, a legal system which would guarantee to their own nationals accused of political offences the privilege of evading national jurisdiction. Such a conception, moreover, would come into conflict with one of the most firmly established traditions of Latin America, namely, non-**intervention**. It was at the Sixth Pan American Conference of 1928, during which the Convention on Asylum was signed, that the States of Latin America declared their resolute opposition to any foreign political **intervention**. It would be difficult to conceive that these same States had consented, at the very same moment, to submit to intervention in its least acceptable form, one which implies foreign interference in the administration of domestic justice and which could not manifest itself without casting some doubt on the impartiality of that justice. (emphasis added)*

In *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*[449] Romania treated "interference" and "intervention" as synonymous, and the Court did not distinguish them.[450]

In *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, the ICJ treated interference and intervention as synonymous:

> *Uganda has violated the sovereignty and also the territorial integrity of the DRC. Uganda's actions equally constituted an **interference** in the internal affairs of the DRC and in the civil war there raging. The unlawful military **intervention** by Uganda was of such a magnitude and duration that the Court considers it to be a grave violation of the prohibition on the use of force. (emphasis added)*[451]

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matters essentially within the domestic jurisdiction of States."

448 *Colombian-Peruvian asylum case* (1950, 266)

449 *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations* (1989, 177)

450 "The Under-Secretary-General reported that in these contacts the Chargé d'affaires had stated that any intervention by the United Nations Secretariat and any form of investigation in Bucharest would be considered interference in Romania's internal affairs."

451 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (2005, 227)

It is relevant to note the court "considers that the obligations arising under the principles of non-use of force and non-intervention were violated by Uganda even if the objectives of Uganda were not to overthrow President Kabila, and were directed to securing towns and airports for reason of its perceived security needs, and in support of the parallel activity of those engaged in civil war."[452]

The principle prohibits more than the threat or use of force, and is better understood in terms of consent than coercion

That the principle prohibits more than the threat or use of force, and is better understood in terms of consent than coercion is found in several cases. First, there is the example above of an Article 62 intervention in court proceedings, which is defined by consent not coercion.

In *Armed Activities on the Territory of the Congo* the court confirmed that the principle prohibits intervention *without* force too:

> *the principle of non-intervention prohibits a State 'to intervene, directly or indirectly, with or without armed force, in support of an internal opposition in another State*[453]

In addition, there is reference to the non-coercive 'intervention' in the *Barcelona Traction, Power and Light* case:

> *The Belgian Government made representations to the Spanish Government on the same day as the Canadian Government, in a note of 27 March 1948. It continued its diplomatic intervention until the rejection by the Spanish Government of a Belgian proposal or submission to arbitration (end of 1951).*[454]

It is relevant to note that this intervention, which was initially accepted by Spain, is of course not only considered lawful but in practice encouraged in international relations. In this case consent fits as an accurate description, but the general interpretation of coercion does not. Yet, according to *Oppenheim's International Law*, and the prevailing view in the UKGBNI literature on the principle, including the Friendly Relations Declaration (1970), any intervention at all is to be prohibited. There is therefore a discord between the use of language by the UKGBNI literature which rejects any form of intervention, and the ICJ which describes here an accepted intervention as a matter of course. We cannot say that this type of intervention is to be excluded from our analysis

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452 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (2005, 227)

453 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (2005, 227)

454 *Barcelona Traction, Light and Power Company, Limited* (1970)

of the meaning of intervention in international law, because to do so would be begging the question, i.e. we would have already decided that this is not' real' intervention, that is we would have already decided what intervention means. It can be rationalised, however, by accepting that what is forbidden is not a word, but what is meant by a word; and what is meant by this word, I suggest, is an accepted involvement within the sovereign realm of Belgium (viz., the making of accepted representations), rather than unaccepted involvement.

In *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*,[455] the inter(ference/vention) in question was the sweeping of mines, and the element which made it prohibited was the lack of consent rather than the presence of coercion:

> *The United Kingdom Government does not dispute that "Operation Retail" was carried out against the clearly expressed wish of the Albanian Government. [...] The United Kingdom Government states that the operation was one of extreme urgency, and that it considered itself entitled to carry it out without anybody's consent. [...] The Court does not consider this argument convincing.*

That inter(ference/vention) is prohibited but at times accepted

That inter(ference/vention) is prohibited but at times accepted is shown in several cases.

In *Ambatielos (Greece v. United Kingdom)* the Court referred to Greece's claim that a right to exercise "diplomatic intervention" was included in Article 10 of the [UKGBNI's] Treaty of Commerce with Bolivia, of August 1st 1911.[456] However, as noted in my analysis of *Barcelona Traction* in the Annex, such diplomatic intervention can include even the accepted receipt of a note, and so it is difficult to square with the definition of intervention in *Oppenheim's International Law* (see Chapter VI).

In *Nottebohm Case (Liechtenstein v. Guatemala)* the Court said:

> *Although the request sent by Nottebohm Hermanos to the Minister of Finance and Public Credit on September 13th, 1940, with reference to the inclusion of the firm on the British Statutory List, referred to the fact that only one of the partners was "a national of Liechtenstein/Switzerland", this point was only made incidentally, and the whole request was based on the consideration that the firm "is a wholly Guatemalan business" and on the interests of the "national economy". It was on this basis that the matter was discussed, and no reference whatsoever was made to any intervention by the Government of Liechtenstein at that time.*

455 *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)* (1949, 4)

456 *Ambatielos (Greece v. United Kingdom)* (1953, 10)

> *Similarly unconnected with the exercise of protection was the Note addressed on October 18th, 1943, by the Minister of External Affairs to the Swiss Consul who, having understood that the registration documents indicated that Nottebohm was a Swiss citizen of Liechtenstein, requested, in a Note of September 25th, 1943, that this matter might be clarified*[457]

The "exercise of protection" in question refers to the right of diplomatic protection as a national of the State of Liechtenstein and is a question about the basis of jurisdiction. It is quite clear that such intervention is not prohibited, and so therefore it contradicts statements that in international law all intervention is prohibited.

In *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[458] the court referred to the right to requested intervention found in Article 52 of the Fourth Geneva Convention, which states:

> *No contract, agreement or regulation shall impair the right of any worker, whether voluntary or not and wherever he may be, to apply to the representatives of the Protecting Power in order to request the said Power's intervention.*

This shows that intervention far from being prohibited, is in fact capable of being a right that is protected: here it is consent ("request") that defines the lawful character of the conduct described as "intervention".

(ii) Regarding the status of the principle

That the principle is sometimes implicitly found to be binding

In *North Sea Continental Shelf* the court affirmed that where a treaty does not mention a principle, is not to say that that principle is not in operation:

> *It has however been suggested that the inference drawn at the beginning of the preceding paragraph is not necessarily warranted, seeing that there are certain other provisions of the Convention, also not excluded from the faculty of reservation, but which do undoubtedly in principle relate to matters that lie within the field of received customary law, such as the obligation not to impede the laying or maintenance of submarine cables or pipelines on the continental shelf seabed (Article 4), and the general obligation not unjustifiably to interfere with freedom of navigation, fishing, and so on (Article 5, paragraphs 1 and 6). These matters however, all relate to or are consequential upon principles or rules of general maritime law, very considerably ante-dating the Convention, and not directly connected with but only incidental to continental shelf rights as such. They were mentioned in the Convention, not in order to declare or confirm their existence, which was not necessary, but simply to ensure*

457 *Nottebohm Case (Liechtenstein v. Guatemala)* (1955, 18)

458 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004, 136)

that they were not prejudiced by the exercise of continental shelf rights as provided for in the Convention. (emphasis added)[459]

It is relevant to note in the example above that the principle of non-interference is a principles of general maritime law, and that there were times when it could be justified.

(iii) Regarding the importance of the principle

In *Corfu Channel*, the Court said:

> *"According to [the United Kingdom] Government, the* corpora delicti *must be secured as quickly as possible, for fear they should be taken away, without leaving traces, by the authors of the minelaying or by the Albanian authorities. This justification took two distinct forms in the United Kingdom Government's arguments. It was presented first as a new and special application of the theory of intervention, by means of which the State intervening would secure possession of evidence in the territory of another State, in order to submit it to an international tribunal and thus facilitate its task.*
>
> *The Court cannot accept such a line of defence. The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself.*[460]

Therefore although findings from this chapter could only in the words of Article 38(1)(c) be "supplementary" they are at least compatible with and at best strongly supportive of specific findings in other chapters.

7. Case-Study: The UKGBNI's (Non-)Record At The ICJ

In this section I review the UKGBNI's experience at the ICJ regarding the principle, and shall claim that these experiences show that as students of law we should not accept uncritically the UKGBNI's overt positions regarding its claimed rights regarding the principle.

In *Corfu Channel* the Court had found that the People's Republic of Albania was responsible for the explosions in its waters that had damaged the UKGBNI's ships and crew, and that

459 *North Sea Continental Shelf (Federal Republic of Germany/Denmark)* (1969, 3)

460 *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)* (1949, 4)

the UKGBNI had violated the PRA's sovereignty the following month by sending ships to clear the waters of mines ('Operation Retail'). The UKGBNI knew that Operation Retail "was carried out against the clearly expressed wish of the Albanian Govemment"[461] but that "it considered itself entitled to carry it out without anybody's consent."[462] The UKGBNI offered two lines of defence. The first was "a new and special application of the theory of intervention, by means of which the State intervening would secure possession of evidence in the territory of another State, in order to submit it to an international tribunal and thus facilitate its task."[463] The ICJ saw no possibility of this:

> *The Court cannot accept such a line of defence. The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself.*[464]

The second line of defence was that the UKGBNI was trying to protect itself. The Court could not accept this either:

> *Between independent States, respect for territorial sovereignty is an essential foundation of international relations. The Court recognizes that the Albanian Government's complete failure to carry out its duties after the explosions, and the dilatory nature of its diplomatic notes, are extenuating circumstances for the action of the United Kingdom Government. But to ensure respect for international law, of which it is the organ, the Court must declare that the action of the British Navy Constituted a violation of Albanian sovereignty.*[465]

More recently, the ICJ has delivered its opinion that the UKGBNI is violating on an ongoing basis the right of self-determination of the people of Mauritius through its unlawful separation of the Chagos Archipelago. In that Advisory Opinion the court did not mention the principle of non-inter(ference/vention), but the absence of consideration by the ICJ does not mean that the principle is not engaged. As the Friendly Relations Declaration notes, "[i]n their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles." In other words, to understand the principle of equal rights and self-

461 *Corfu Channel* (1949, 33)

462 *Corfu Channel* (1949, 35)

463 *Corfu Channel* (1949, 34)

464 ibid

465 *Corfu Channel* (1949, 35)

determination of peoples, we must also understand the relation to it of the principle of non-inter(ference/vention). In fact, the principle of non-inter(ference/vention) is explicitly presented by the Friendly Relations Declaration as part of the principle of equal rights and self-determination of peoples, since it states:

> *By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.*

How could this aspect of the principle of non-inter(ference/vention) be relevant in the examples of the detachment of the Chagos Archipelago? As noted by the Court, "the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power."[466] Because the detachment by the UKGBNI of part of Mauritius was not based on the freely expressed and genuine will of the people of the territory concerned, it violated the right of all Mauritians to self-determination in relation to the territory as a whole. In other words, the act of the UKGBNI in detaching part of the territory of Mauritius was an external interference with the right of Mauritians to self-determination in relation to their whole territory.[467]

The point is underscored if we consider the UKGBNI's covert positions regarding such experiences at the ICJ. After the finding of the Court in *Corfu Channel*, the Foreign Secretary of the UKGBNI tried, but failed, to undermine the Government of the PAR:

> *"The head of the British Military Mission in Greece, Monty Woodhouse [...] recalled that [Foreign Secretary Ernest] Bevin was "uncompromising, having never forgiven the communist government for mining British destroyers in the Corfu Strait in 1946'. He thus "gave tacit sanction" to mounting "a disastrously unsuccessful attempt to infiltrate anti-communist agents into Albania in the hope of undermining the Government". Dorril (2001, 369)*

Although the UKGBNI failed to undermine the Government of PAR after *Corfu Channel*, it was successful in attempts to undermine the Government of Iran after the ICJ declined its arguments in *Anglo-Iranian Oil Company.* On 1st May 1951 Iranian Oil Nationalization Act

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466 *Legal Consequences of the Separation of the Chagos Archipelago* (2019, [160])

467 For the centrality of consent in determining the lawfulness of this detachment-as-interference, see *Chagos* at [172].

came into force, which jeopardised the future income of the Anglo-Iranian Oil Company (known as BP today) in that country. The UKGBNI government was displeased and asked the ICJ to declare that the Imperial Government of Iran was under a duty to arbitrate with the Anglo-Iranian Oil company, or that the nationalisation was unlawful, or that the Anglo-Iranian Oil company should be compensated. The ICJ, by nine votes to five, held that it had no jurisdiction. The UKGBNI did not like that outcome, and so prepared for illegal use of force which, according to the Foreign Secretary:

> *[w]ould demonstrate once and for all to the Persians British determination not to allow the [...] AIOC to be evicted from Persia and might well result in the downfall of the [democratically-elected] Musaddiq regime and its replacement by more reasonable elements prepared to negotiate a settlement [...] It might be expected to produce a salutary effect throughout the Middle East and elsewhere, as evidence that United Kingdom interests could not be recklessly molested with impunity.*[468]

The quote reveals the casual attitude towards an unlawful use of force by a Foreign Secretary, and that it thereby regards the profit of an oil company as a more important "interest" for the country than, say, upholding an international legal order whereby the human rights of its citizens can be guaranteed (see Article 28 of the UDHR in light of Articles 1 and 2 of the UN Charter). The USA opposed overt military action, and it was instead decided to covertly change the leader of Iran ('Operation Ajax'), led by the USA but with HMG in a supporting role. Winston Churchill would have preferred "a splutter of musketry" and "would have loved nothing better than to have served under [the CIA officer responsible's] command in this great venture [of an unlawful coup]".[469] Of this unlawful episode Curtis notes:

> *As in every other British and US military intervention until the collapse of the USSR, the 'communist threat' scenario was deployed as the Official Story. Much subsequent academic work and media commentary plays to the same tune. The real threat of nationalism (and dirtier aims like protecting oil profits) was downplayed or removed from the picture presented to the public. In the words of a secret Foreign Office telegram to the embassy in Washington: "It is essential at all costs that His Majesty's Government should avoid getting into a position where they could be represented as a capitalist power attacking a Nationalist Persia"*[470]

Which is, the records show, apparently exactly what it was; after the coup, oil rights were divvied up mostly between the British and Americans.[471]

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468 Curtis (2003, 307)

469 Curtis (2003, 304-307)

470 Curtis (2003, 312)

471 Blum (2014, 71)

There is also now evidence of further unlawful activity regarding the Chagos Archipelago, though it is from the UKGBNI's partner the USA.

> *Seychelles' president, France-Albert René, was threatening to expose facts about Diego Garcia that Washington wanted to keep secret, facts that could have forced the United States to close down a facility that was essential to its operations in the Middle East, Africa, and parts of Asia. My job would be to bribe and threaten René into changing his mind. [...] An undercover agent who had gotten close to René concluded that, like Roldós and Torrijos [Presidents of Ecuador and Panama, assassinated by the CIA "because they wouldn't play our game"--Perkins, page 225], the president would not be corrupted. I was called off the job, and in 1981, a team of jackals was sent to assassinate René."*[472]

The assassination attempt was interrupted however and did not execute its mission.

> *On the surface, it seemed like a failure, but in fact it ended up accomplishing everything Washington could possibly have wanted. Better than actually killing a president, it had scared and bribed him into cooperating. He became a docile servant of empire. Key operatives had been caught—but they were soon back in business. And anyone who happened to read or hear about [the interruption of the assassination plot] believed it was the work of terrorists—Communists—out to overthrow a legitimate government. The public had no idea it was a CIA plot gone sour.*[473]

8. Evaluation

It is a limitation of this study that I only consider English-language text and the conclusions are caveated accordingly, but nonetheless English is an official language of the court and so the limitation does not seem too severe.

The decision to limit the material to the ICJ was explained in Part 2 on grounds of impartiality. Nonetheless, it is clearly a major limitation of the study. However, since court decisions are considered a 'subsidiary' source for determining the law, such limitations in this regard are not as consequential as a deficiency in analysis of an Article 38(1)(a)-(c) 'source' of law. Clearly, if one wished to identify the obligations of a particular State, other courts' decisions would also be relevant, whether those decisions are universal, regional, or municipal (see e.g. some very limited use of this regarding the UKGBNI in Chapter IV Part 6).

472 Perkins (2016, 222)

473 Perkins (2016, 225)

9. Conclusion

The meaning of the principle

With regards to the meaning of the terms 'interference' and 'intervention', in Part 6 Section (i)(a) this Chapter found that the two terms have not been distinguished but have been used interchangeably at the International Court of Justice.

With regards to the definition of a prohibited inter(ference/vention), in Part 5 Section (i) this Chapter found that the lack of the court's consent defines the type of intervention prohibited by Article 62 of the Statute of the ICJ, and in Part 4 Section (iii) and Part 6 Section (i)(b) found that other examples of prohibited inter(ference/vention) are better understood in terms of consent than coercion.

The status of the principle

With regards to the principle's status in law, throughout this Chapter it was found that the principle is binding in international law and in Part 6 it was observed that the ICJ has held that the principle has autonomous binding status in customary international law.

With regards to the entities to which the principle applies, in Part 5 this Chapter found that court proceedings are protected by the principle.

The importance and associations of the principle

This Chapter did not consider the importance and associated principles of non-inter(ference/vention). However, with regards to the outcomes of following the UKGBNI's claimed right of intervention, this Chapter did note that the ICJ held it was "the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law."

VI. The Principle According To 'Teachings Of The Most Highly Qualified Publicists' Of The UKGBNI

1. Introduction

In this chapter I study the meaning and importance of the principle of non-inter(ference/vention) according to "the teachings of the most highly qualified publicists" of the UKGBNI. In this part (Part 1) I review the structure of the chapter. In Part 2 I introduce the materials that are studied. In Part 3 I introduce the methods used to study the materials. In Part 4 I review the meaning of the principle according to texts of publicists which preceded Lassa Oppenheim's *International Law*, from the reign of George IV through to Victoria inclusive. In Part 5 I study the principle according to Oppenheim and his peers in the reign of Edward VII to George VI inclusive. In Part 6 I study the principle according to texts of publicists which were published in the reign of Elizabeth II. In Part 7 I critically evaluate the status of *Oppenheim's International Law* in legal discourse within the UKGBNI, focusing on the revealed attitude towards it of certain former legal advisers of the UKGBNI's Foreign and Commonwealth Office (hereafter FCO), and compared the definition in *Oppenheim's International Law* with HMG's interpretation of the principle as elaborated in the National Security Bill 2022. In Part 8 I critically evaluate the limitations of this study. Finally, in Part 9 I review the conclusions that can be taken from the chapter and carried forward to Chapter VIII, which is the conclusion of this thesis.

The primary aim of this study is to trace the route of the definition of the principle as stated in the 9th edition of *Oppenheim's International Law*, which is taken as the prevailing definition in the literature today, and to evaluate the strength of that definition. The secondary aim is to see how that definition (and publicists' interpretation of that definition) converges or diverges from the teachings of other publicists.

2. Materials

Which materials I study within this category of information

I study this category of knowledge because such teachings are regarded as part of the subsidiary means for determining international law according to Article 38(1) of the Statute of the ICJ. The material I consider includes all nine editions of *Oppenheim's International Law*, the peers he praised in the preface of the first edition and their own peers, and leading contemporary jurists, the principle jurists they refer to and their peers. The reason I consider all nine editions to see how the meaning or its phrasing might have changed over time, and if so why.

Why I chose these materials for study

I focus on Oppenheim's *International Law* and its subsequent editions because leading publicists today rely on Oppenheim's ninth edition with regards to the meaning of the principle, but it seems that they are incorrect to do so. For example, Jamnejad and Wood wrote:

> *"According to* Oppenheim [sic][474]*, 'the interference must be forcible or dictatorial, or otherwise coercive, in effect depriving the State intervened against of control over the matter in question. Interference pure and simple is not intervention.'*
>
> *"Thus, the essence of intervention is coercion."*

Furthermore, the Tallinn Manual 2.0 cites just two authors in its claims regarding the principle of non-intervention: *Oppenheims International Law* and Vincent's *Nonintervention and International Order*.

3. Methods

Method for selecting the materials

Initially I started with Oppenheim's 9th edition, traced its formulation of the principle back to the first edition, from the preface of which I found Hall (1884) and Phillimore (1879), and in a similar manner found Mackintosh (1828). I found their peers such as Bernard (1860) and Stapleton (1867) from a university library search. Initially I

474 Actually, Lassa Oppenheim did not use the word coercion or coercive to define the principle. The term was only introduced to *Oppenheim's International Law* by Robert Jennings and Arthur Watts, editors of the 9th edition, from which Jamnejad and Wood quote. See Chapter Seven for discussion of this.

structured this chapter as a detailed study of *Oppenheim's International Law* to show how the contextual meaning of its relied-upon definition had changed between the first and ninth edition, though the wording had barely changed at all, and to show how contradictory the definition had become of international legal materials. However, on reflection such focus seemed unnecessary and it did not leave much space to consider other authors. So at the end of my research I rebalanced the chapter to include a review of other author's formulations too, which I had already read and considered but not incorporated into the thesis. I considered grouping these authors by theme, or by their position, but decided that chronologically would be best. The manner of dividing them by the reign of monarch is slightly arbitrary, but I could not see an obviously better way, and it helps underscore a prominent role of the Crown in this debate as awarder of honours (many authors are Sirs, and there is one Dame), and recipient of advice (many were Privy Councillors, or FCO Legal Advisers). The upshot of this explanation is a *mea culpa* apology that the authors and works considered is not exhaustive, and there will be many good authors who are missing from the list. Nonetheless, it includes four Presidents of the ICJ (Lauterpacht, Jennings, Higgins, and Crawford) and several holders of the Chichele and Whewell Professorships of International Law, so seems suitable for the task of presenting an overview of the 'teachings of the most highly qualified publicists of the UKGBNI' in this period.

Method for analysing the materials

When I study the definitions used by authors, I use the ordinary meaning of the words (noting that positive law has changed over the years, and so too has the meaning of certain words in the English language) in context. This might be taken as common sense, but I note it is also consistent with *mutatis mutandis*, the VCLT (see Chapter II).

4. Teachings In The Reigns Of George IV (1820-30), William IV (1830-37), and Victoria (1837-1901)

In this period we see ambiguity within the teachings of publicists regarding the meaning of the terms interference and intervention and the difference (or not) between them. Some authors use the terms interchangeably: generally, the teachings interpret 'force' as being that which is prohibited by the principle and that not all interference includes

force.[475] However, it is important to note that the prohibition on the threat or use of force has today come to be prohibited as a separate principle:[476] it was not understood as a separate principle in this period, when international law was relatively uncodified compared to today.[477] Furthermore, 'force' was interpreted broadly, and from their examples given publicists were keen to emphasise that offering advice and mediation—which they also termed 'interference'—were not prohibited, because they did not involve force. For example, Mountague Bernard's[478] use of the term 'force' left available "intercession or advice",[479] and Augustus Stapleton's[480] use of the term was to leave available "sound and friendly advice, or measures even evincing marked displeasure".[481]

William Edward Hall,[482] being one who treated the two terms as interchangeable, thought the concepts were best understood in terms of consent:

> ***Intervention*** *takes place when a State interferes in the relations of two other States without the* ***consent*** *of both or either of them, or when it* ***interferes*** *in the domestic affairs of another State irrespectively of the will of the latter for the purpose of either maintaining or altering the actual condition of things within it.*[483] (emphasis added)

Robert Joseph Phillimore[484] implicitly did so too ("without her permission"):

> *A State in the lawful possession of a territory has an exclusive right of property therein, and no stranger can be entitled,* ***without her permission****, to enter within her boundaries, much less to* ***interfere*** *with her full exercise of all the rights incident to*

475 See Bernard and Stapleton below.

476 See the Friendly Relations Declaration (Chapter III).

477 Stapleton (1866): "Although, according to the principles of truth and justice, the non-intervention principle ought to be engrossed in the code of international law [NB it now clearly is, especially since the adoption of the UN Charter and Friendly Relations Declaration], and to be acknowledged by all nations, yet it cannot be denied that certain European States have constantly refused to recognise its validity."

478 Chichele Professor of International Law, a High Commissioner in Alabama, and member of the Judicial Committee of the Privy Council. Lobban (2004)

479 Bernard (1860, 1): "By intervention I mean the interference, forcible or supported by force, of one independent State in the internal affairs of another; and, by the principle of non-intervention, the rule which forbids such interference. [...] These definitions shut out [...] every interference which limits itself to mere intercession or advice."

480 Private secretary to Prime Minister Canning, later Commissioner of Customs. Courtney and Wolffe (2004)

481 Stapleton (1866, 9): "[s]ound and friendly advice, or measures even evincing marked displeasure—such as the cessation of diplomatic intercourse—are therefore perfectly compatible with the most complete respect for the rights of an independent nation.

482 Member of the Institut de Droit International, and an arbitrator for HMG. Holland and Pease-Watkin (2004)

483 Hall (1884, 240)

484 QC, MP, privy councillor, and a judge of the High Court of Admiralty. Doe (2004)

> *that supreme dominion, which has obtained from jurists the appellation of* domain eminens.*"*[485] (emphasis added)

It should be noted here that Lassa Oppenheim,[486] whom will be considered shortly, singled out Hall and Phillimore authors for praise at the start of their work:[487] and years later still, Robert Jennings[488] evaluated Hall's treatise more highly than Oppenheim's, regarding it as the best one used in teaching international law at the University of Cambridge.[489]

Before moving on to see how Oppenheim adapted Hall's formulation, it is worth observing a few more general points on writings of this period. First, as clear as publicists were in this period about the principles of international law, they were also as clear that States often strayed from those principles in favour of 'sword-law', and thereby risked sending humanity out of civilization and back to barbarism. For example, Stapleton wrote:

> *Every nation [...] has a right to manage its own concerns as it pleases, so long as it injures not its neighbours. This is* ***the one great principle of international law*** *on which, far more than on any other, depends the free and independent existence of all the less powerful States which form part of the great family of nations. It is one which every Government and every people having a proper sense of law and justice ought resolutely to maintain. Repeated violations of it can only lead to the re-establishment of that law—if law it can be called—which marked* ***the barbarous ages*** *of the world, viz., the law of the strongest; a law which, it has been proudly boasted, had been stamped out and extinguished by the united influences of Christianity and civilization.*[490] (emphasis added)

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485 Phillimore (1879, 221)

486 Later to be Whewell Professor of International Law. Brierly and Wells (2004).

487 Oppenheim (1912, vii): "That I have everywhere quoted Phillimore, Twiss, and Hall, and have as regards the detail of many points referred my readers to these classics of international jurisprudence was a matter of course."

488 Former Whewell Professor of International Law and former President of the ICJ. Berman (2008)

489 Cassese (2011, 134): "[Cassese:] So there was no textbook on public international law [at Cambrige]? [Jennings:] Oh yes, several, both English and American (the lack was just in some aspects of legal history and jurisprudence). There was Oppenheim of course, and there was Lawrence and there was Hall, the last still the best written."

490 Stapleton (1866, 14-15). See also Phillimore (1879, vi-vii): "The violence, oppression, and sword-law, which have prevailed in part of Europe, ought not to shake conviction in the truth of these [cardinal principles of international law] [...].

"There have always been, and always will be, a class of persons who deride the notion of International Law, who delight in scoffing at the jurisprudence which supports it, and who hold in supreme contempt the position that a moral principle lies at its root.

"The proposition that, in their mutual intercourse, States are bound to recognise the eternal obligations of justice apart from considerations of immediate expediency, they deem stupid and ridiculous pedantry. They point triumphantly to the instances in which the law has been broken [fn: "*Sed nimirum historiae non tantum quae juste, sed et quae inique, iracunde, impotenter faca sunt memorant.*"—

Second, natural law had a significant influence in teachings in this period;[491] the relations between States were emphasised as the same as the relations between humans,[492] and the same fount of justice was seen as the source of a unified law for humanity.[493] Third, the principle of non-inter(ference/vention) was given considerable or prominent coverage in treatises, and great importance was attached to it;[494] Bernard, for example, did not admit that humanitarian intervention was permissible however superficially desirable it might appear.[495]

Grotius, De J.B. 1. 2, c. xviii. s.7], in which might has been substituted for right, and ask if Providence is not always on the side of the strongest battalions. "Let our strength," they say, "be the law of justice, for that which is feeble is found to be nothing worth"[fn: Wisdom of Solomon, c. ii. v. 11.].

"But in truth these objections are as old as they are shallow; they leave untouched the fact that there is, after all, a law to which States, in peace and war, appeal for the justification of their acts; that there are writers whose exposition of that law has been stamped as impartial and just by the great family of States, that they are only slighted by those upon whose crimes they have by anticipation passed sentence; that Municipal as well as International Law is often evaded and trampled down, but exists nevertheless, and that States cannot, without danger as well as disgrace, depart in practice from doctrines which they have professed in theory to be the guide of their relations with the Commonwealth of Christendom."

491 Phillimore (1879, 15): "In 1753, the British Government made an answer to a memorial of the Prussian Government which was termed by Montesquieu r'eponse sans r'eplique, and which has been generally recognized as one of the ablest expositions of international law ever embodied in a state paper. In this memorable document, "The Law of Nations" is said to be "founded upon justice, equity, convenience, and the reason of the thing, and confirmed by long usage.""

492 Phillimore (1879, 220): "A State, like an Individual, is capable of possessing property. The property of a State is marked by the same characteristics relatively to other States, as the property of Individuals relatively to other Individuals; that is to say, it is exclusive of all foreign interference and susceptible of free disposition [fn: Heffters, s. 64]." cf good-neighbourliness in the English common law, considered in Chapter IV Part 6.

493 eg James Mackintosh (1828)

494 eg Hall (1884), Phillimore (1879). See also Bernard (1860, 9-10): "The doctrine of non-intervention is therefore a corollary from a cardinal and substantial principle of international law, and as such has a *primâ facie* claim to a place in the system; and the burden of proof lies with those who would dislodge it." See also Stapleton (1866, 6): "Of all the principles in the code of international law, the most important—the one on which the independent existence of all weaker States must depend—is this: no State has a right FORCIBLY to interfere in the internal concerns of another State, unless there exists a causus belli against it. For, if every powerful State has a right at its pleasure forcibly to interfere with the internal affairs of its weaker neighbours, it is obvious no weak State can be really independent. The constant and general violation of this law would be, in fact, to establish the law of the strongest."

495 Bernard (1860): "It would not be enough, for this purpose, to allege a general probability that good would in many cases be done by intervention. But, in fact, good is hardly ever done by it—good, I mean, in any degree commensurate with the evil. On the contrary, even when it dethrones a tyrant, puts an end to a ruinous anarchy, or staunches the effusion of blood in a civil war, it has a direct tendency to produce mischiefs worse than it removes. It encourages a proneness to resort to those violent measures which are only justifiable in cases of extreme necessity. It destroys national self-respect and self-reliance. It interrupts the natural process by which political institutions are matured through the ripening of political ideas and habits. What it plants does not strike root; what it establishes does not endure. The true educations of nations, as of men, is in the hard but wholesome school of experience and self-assistance, and it is no real service to them to try to forestall its results." (9-10)

"Go a little further, and let the invader be held justified who obtains, when the thing is done, a popular demonstration in his favour, and unscrupulous ambition has, as it seems to me, nothing left to desire."

5. Teachings In The Reigns Of Edward VII (1901-10), George V (1910-36), Edward VIII (1936), and George VI (1936-52)

The most significant publication in this period came to be that of Oppenheim, whose monograph *International Law*—first published in 1905, subsequently edited through nine editions—has come to be relied upon so much more than a hundred years later (see Part 7). As noted, Oppenheim had praised Hall at the start of his work. It is therefore no surprise that on intervention, Oppenheim adopted Hall's definition almost verbatim, stating:

> *Intervention is dictatorial interference by a State in the affairs of another State for the purpose of maintaining or altering the actual condition of things.*[496]

It seems pertinent to note that Oppenheim had chosen virtually the same formulation as Hall regarding the motive of the intervening State, namely: "for the purpose of either maintaining or altering the actual condition of things." In this context it might seem strange that Hall had identified the element of consent as the critical threshold defining the principle's prohibition, while Oppenheim emphasised the 'dictatorial' manner (it is important to note that Oppenheim did not use the phrase "or otherwise coercive": that would only come much later, inserted by Jennings and Watts in the 9th edition of *International Law*).[497] If we applied the current leading interpretation of the principle in the UKGBNI, which is that the element of coercion defines intervention, then Hall's formulation looks extremely broad, and we would be left with the conclusion that for some unspecified reason, Oppenheim chose to borrow one half of Hall's formulation and discard the other without explanation. However, it seems more correct to conclude—especially in light of the great breadth that Oppenheim gave to the terms 'dictatorial' and 'interference'—that in fact Oppenheim's 'dictatorial' can and should be read in its context as being essentially synonymous with Hall's element of consent. With regards to Oppenheim's examples of "dictatorial" interference, we should note that as with writers of previous years, Oppenheim's interpretation was that not all interference was

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(17-18)

"We arrive, therefore, at the conclusion that these exceptions are all inadmissible, and that the principle of non-intervention, so far as we have examined it, is universally true." (23)

496 Oppenheim (1912, 181)

497 This contradicts Jamnejad and Wood (2009, 348), who claimed (presumably inadvertently) that the 'coercion' based definition in the 9th edition of *Oppenheim's International Law* was authored by Oppenheim himself.

prohibited. His examples show that he followed previous writers in assuming that the principle did not prohibit the offering of advice or of protests, which he called "interference pure and simple":

> *[I]t must be emphasised that intervention proper is always dictatorial interference, not interference pure and simple. Therefore intervention must neither be confounded with good offices, nor with mediation, nor with intercession, nor with co-operation, because none of these imply a dictatorial interference*[498]

That Oppenheim included "co-operation" as a type of "pure and simple" interference is very significant, because the Friendly Relations Declaration states that all forms of interference violate international law, and co-operation is a "duty" (see Chapter III).[499] Therefore, the meaning of the word "interference" used by Oppenheim is different from the meaning of the word as subsequently elaborated in international law.[500] In contrast, an example of a "dictatorial" interference included, for Oppenheim, when a third State "requests" two other States include certain provisions or not when negotiating a treaty.[501] Such examples of interference are distant from later writers such as Vincent and Pomson who claim that there must be force involved to engage the prohibition, and even from other writers who say that there must be coercion (even if it is short of force).[502]

As for the status of the principle in law, Oppenheim was clear that there was "no doubt" that intervention was "forbidden" in international law.[503] Like Bernard before him, Oppenheim could find no basis in law for intervention "in the interest of humanity",

498 Oppenheim (1912, 181). Although Oppenheim noted that "many writers constantly commit this confusion", he did not define the difference.

499 Although, Oppenheim (at 183) defines co-operation as "the appellation of such interference as consists in help and assistance lent by one State to another at the latter's request for the purpose of suppressing an internal revolution", which again is very different to the interpretation of the word today.

500 For an example of a UKGBNI publicist still conflating interference with co-operation, see Cooper (2000).

501 Oppenheim (1912, 544-545)

502 e.g. Jamnejad and Wood (2009).

503 Oppenheim (1912, 183). Cf Pomson (2022) who claims it emerged in customary international law from the 1960s.

notwithstanding the attitude of certain powers being in favour of it.[504] He also denied the right of "interventions in favour of legitimacy", and said:

> *It is neither to be feared, nor to hoped, that they should occur again in the future. But if they did, they would hamper the Law of Nations in the future as they have done in the past.*[505]

It seems that Oppenheim's interpretation of the principle was slow to take root among his peers: ten years after the second edition of his *International Law*, and despite Oppenheim joining him as a Professor of Law at the University of Cambridge, Percy Winfield[506] complained in 1922 that no writer had defined the term, saying that this was natural given the difficulty of the subject, which was "at no time clear".[507] However, Winfield proceeded to apply Hall's definition (as above) without comment or criticism.[508] Unlike Oppenheim, Winfield did not distinguish "pure and simple" interference from "dictatorial" interference, and addressed the concept in terms much more compatible with the Friendly Relations Declaration some years later: "Every state has the right to manage all its affairs, whether external or internal, without interference by other states".[509] Although Winfield treated intervention as being interference without consent in his 1922 article,[510] in his 1941 monograph Winfield distinguished interference from intervention by associating the latter with "force or the threat of force" (which is in international law today a prohibition of its own—see Chapter III).

Before moving to the next period to see how Oppenheim's formulation became increasingly relied upon by the literature, it is relevant to make a few remaining

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504 Oppenheim (1912, 186-187): "Many jurists maintain that intervention is likewise admissible, or even has a basis of right, when exercised in the interest of humanity for the purpose of stopping religious persecution and endless cruelties in time of peace and war. That the Powers have in the past exercised intervention on these grounds, there is no doubt. Thus Great Britain, France, and Russia intervened in 1827 in the struggle between revolutionary Greece and Turkey, because public opinion was horrified at the cruelties committed during this struggle. And many a time interventions have taken place to stop the persecution of Christians in Turkey. But whether there is really a rule of the Law of Nations which admits such interventions may well be doubted. Yet, on the other hand, it cannot be denied that public opinion and the attitude of the Powers are in favour of such interventions, and it may perhaps be said that in time the Law of Nations will recognise the rule that interventions in the interests of humanity are admissible provided they are exercised in the form of a collective intervention of the Powers."

505 Oppenheim (1912, 73-74)

506 Rouse Ball Professor of English Law at the University of Cambridge. Bailey (2004)

507 Winfield (1922, 130). Winfield makes no mention of Oppenheim's work at all in his paper.

508 Winfield (1922, 146). Interestingly, Winfield made no reference to Oppenheim's definition or work.

509 Winfield (1941, 31-32)

510 For example, in applying Hall's definition, which treats the two as synonymous.

observations on other writings in this period. The posthumous papers of John Westlake,[511] edited by Oppenheim, continued an increasingly minority tradition of referring to a 'right of intervention' to be interpreted as representing a limited number of exceptions to the general rule that States were independent and that, implicitly, no interference could be admitted. Westlake's treatment of the subject seems limited to considering the statements of interpretation by Lord Castlereigh in 1821 and Canning in 1822,[512] endorsing the interpretation of the latter. The fact that the statement of 1822 was deemed accurate by Westlake so much later on indicates that the principle can be regarded as fairly stable. Indeed, it seems fairly close to the situation today (*mutatis mutandis*, in light of Article 51 of the UN Charter), so I include that statement here in full with Westlake's commentary:

> *In his despatch of 31st March 1823 to the British ambassador at Paris Canning wrote: "No proof was produced to his majesty's plenipotentiary of the existence of any design on the part of the Spanish government to invade the territory of France, of any attempt to introduce disaffection among her soldiers, or of any project to undermine her political institutions; and so long as the struggles and disturbances of Spain should be confined within the circle of her own territory, they could not be admitted by the British government to afford any plea for foreign* ***interference****. If the end of the last and the beginning of the present century saw all Europe combined against France, it was not on account of the internal changes which France thought necessary for her own political and civil reformation, but because she attempted to propagate first her principles, and afterwards her dominion, by the sword." The right of* ***intervention*** *in a foreign state, with the motive of self-preservation against the effects of its internal troubles, was here put on its true basis and with its true limits. Those limits have not always been since observed, but at last they are generally admitted.*[513]

The reader will note that in Westlake's work too, interference and intervention are not distinguished as concepts in law but are presented as having equivalent meanings (see highlights in the previous quote).

6. Teachings In The Reign Of Elizabeth II (1952-)

In this period the principle, once considered at the start of general treatises and placed at the heart of understanding the international legal order, is now found increasingly relegated to a few lines at the back of general textbooks.[514] There is very little, if any,

511 Whewell Professor of International Law. For a biography, see Oppenheim (1914, vii).

512 NB Canning's private secretary was Stapleton.

513 Westlake (1914, 125-126)

514 In their 2019 edition of *Brownlie's Principles of International Law* Crawford (Former Whewell Professor of International Law at the University of Cambridge, and former President of the ICJ) does not provide

reference to the eternal fountain of justice that applies to humans and States in their mutual relations.[515] There is perhaps though a surviving tendency for Chichele Professors of International Law (Oxford) to retain that classical approach more than Whewell Professors of International Law (Cambridge).[516] It is in this period that Oppenheim's formulation in *International Law* slowly develops into the most relied upon of all publicists' formulations.

Oppenheim's monograph was renovated substantially by Lauterpacht, one of its subsequent editors,[517] but he and other editors (until the 9th edition, see below) left its descriptions of intervention stand: presumably it seemed satisfactory to them. Some publicists echoed Oppenheim's "dictatorial" formulation (such as Waldock),[518] but others did not seem to regard the work as particularly authoritative on the principle: Wright found that the term "dictatorial" did not clarify matters much,[519] and Brownlie explicitly rejected it.[520] The problem of an assumed but unknown difference between interference and intervention continued as an unresolved thorn. One novel twist was taken by

much coverage of the principle. Despite the foundational importance of the principle (see Chapter III) and the title of Crawford's book, its index does not contain “principles”, “the principle of non-intervention”, “interference”, or “intervention”. In the text itself, I could not find the meaning or significance of interference or intervention much explored anywhere, though the text does mention the term under Article 2(7) of the UN Charter and the prohibition of states interfering with aircraft in flight under Article 4 of the Tokyo Convention (2019, 438 and 450). As with Crawford, so too with Shaw: in a monograph of almost a thousand pages, the principle gets just three sentences near the back under the use or threat of force. See Shaw (2017, 874).

515 Indicated by Lassa Oppenheim dropping the 'natural law' of previous years for the science of positivism; notwithstanding subsequent editors Arnold McNair and Hersch Lauterpacht successively pulling back on Oppenheim's anti-naturalism. Reisman (1994, 264-268).

516 See e.g. Lowe (2007, 105) cf Crawford (2019).

517 Reisman (1994)

518 In their 1963 completion of Brierly's The Law of Nations, An Introduction To The International Law Of Peace, Waldock (who authored the last chapter of the work) stated: "Intervention is a word which is often used quite generally to denote almost any act of interference by one state in the affairs of another; but in a more special sense it means dictatorial interference in the domestic or foreign affairs of another state which impairs that state's independence." Brierly and Waldock (ed) (1963, 402)

519 Wright (1962, 5-6)

520 Brownlie (1990, 294): "[...] the term 'intervene' is not to be conceived of only as dictatorial intervention in this context [of Article 2(7) of the UN Charter]. Member States have proceeded empirically with an eye to general opinion and a clear knowledge that precedents created in one connection may have a boomerang effect in another."

Rosalyn Higgins,[521] who in a chapter titled 'Intervention and International Law'[522] advised not defining terms at all, claiming:

> *that not only is it not profitable to seek such a definition, but that really one is dealing with a spectrum. This spectrum ranges from the notion of any interference at all in the State's affairs at the one end, to the concept of military intervention at the other. And if one is choosing to deal with all of these as intervention, that choice is immediately complicated by the fact that not every maximalist intervention is unlawful and not every minimalist intrusion is lawful. One cannot simply indicate a particular point along the spectrum and assert that everything from there onwards is an unlawful intervention and everything prior to that is a tolerable interference, and one of the things we put up with in an interdependent world. It is not that simple. The purpose of the international law doctrine of intervention is, it seems to me, to provide an acceptable balance between the sovereign equality and independence of states on the one hand and the reality of an interdependent world and the international law commitment to human dignity on the other.*[523]

An inflection point regarding *Oppenheim's International Law* and the wider debate appears to have emerged however when Raymond John Vincent[524] published his 1974 monograph *Intervention and International Order*. After noting that interference and intervention were synonyms,[525] Vincent (an international relations scholar) proposed taking the formulation in *Oppenheim's International Law* and adding 'coercion'--by which Vincent deliberately and explicitly meant force.[526] This was nothing other than a personal proposal of Vincent's, which involved misconstruing several authors in finding authority for it. For example, Vincent cited Ann Van Wynen Thomas and A. J. Thomas Jr[527] as supporting the idea of coercion but did not cite their consent-based definition of the principle,[528] and on the following page discussed Hall's consideration of the principle but without reference to his opening statement on the principle (which had defined it in

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521 Professor of International Law at the University of Kent and the LSE, and is former President of the ICJ. 'Higgins, Dame Rosalyn', Who's Who 2022 (2019) <https://doi.org/10.1093/ww/9780199540884.013.U20097>

522 Published in 2009 but apparently written some years previously, for it does not reference the *Military and Paramilitary Activities in and Against Nicaragua* decision.

523 Higgins (2009, 273)

524 At the time of publication a Research Associate with the International Institute for Strategic Studies in London, later a Professor at the LSE.

525 Vincent (1974, 7): "Many scholars have sought to define intervention by using the synonym "interference.""

526 Vincent (1974, 7-8): "Interference might be defined as action taken to affect the actions of others, dictatorial interference as action taken to prescribe the actions of others. The crucial, but in international relations elusive, distinction for Oppenheim's definition is that between affecting some action and prescribing its course. The notion of coercion might clarify this distinction by introducing the idea of force. To coerce is to "constrain or restrain by application of superior force or by authority resting on force; to constrain to compliance or obedience by forcible means." [fn 14: OED]"

527 Professors at Southern Methodist University USA

terms of consent—see above). Whether it was Vincent's proposal that affected the next (9th) edition of *Oppenheim's International Law* is difficult to say. However, its editors—Robert Jennings[529] and Arthur Watts[530]—added Vincent to the list of authorities at the front of that chapter, and for the first time since the first edition changed the formulation along the lines of Vincent's proposal. Thus, where Hersch Lauterpacht had left it in the 8th edition as Oppenheim had originally formulated it:

> *Intervention is dictatorial interference by a State in the affairs of another [....] intervention proper is always dictatorial interference, not interference pure and simple*[531]

Jennings and Watts changed it in the 9th edition to:

> *[I]ntervention is* ***forcible*** *or dictatorial interference by a state in the affairs of another state [...] to constitute intervention the interference must be* ***forcible*** *or dictatorial,* ***or otherwise coercive****, in effect depriving the state intervened against of control over the matter in question. Interference pure and simple is not intervention. [emphasis added]*[532]

We therefore see how Oppenheim had started off with Hall's 'consent' based definition, modified it to 'dictatorial', and then how by the 9th edition 'dictatorial' was assumed to be a form of coercion: all by assertion. We also see how the long-running confusion about the precise meanings of interference and intervention (which authors like Hall treated as synonymous, and Vincent explicitly so) survived into the 9th edition of *Oppenheim's International Law* with the assumption that not all interference was unlawful, despite the Friendly Relations Declaration explicitly stating that since 1970 (at least) "all [...] forms of interference [...] are in violation of international law."[533]

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528 Thomas and Thomas (1956, 71): "Reasoning from principles and sources of the law of nations and evaluating acts and declarations of states, one may say that intervention occurs when a state or group of states interferes, in order to impose its will, in the internal or external affairs of another state, sovereign and independent, with which peaceful relations exist and without its consent, for the purpose of maintaining or altering the condition of things." This clear definition was on the page previous to the one cited by Vincent.

529 Former Whewell Professor of International Law and former President of the ICJ. Berman (2008)

530 A former Legal Adviser at the FCO. Berman (2013)

531 Lauterpacht (1955, 305)

532 Jennings and Watts (2008, 430, 432)

533 First sub-paragraph of Principle C, Paragraph 1 of the Annex of the Friendly Relations Declaration.

The coercion-based formulation of the 9th edition became popular, and was taken up by Maziar Jamnejad and Michael Wood[534] (2009), Harriet Moynihan[535] (2019), the Tallinn Manual 2.0 (2017) and, more recently, Ori Pomson[536] (2022). In its support, defining the principle in terms of coercion tallies with the ICJ's definition in *Military and Paramilitary Activities in and against Nicaragua*, and matches one of the prohibitions identified by the Friendly Relations Declaration: though see Chapters IV and III for refutation of these points (namely, that the decision in *Military and Paramilitary Activities in and against Nicaragua* defined the principle only insofar as it overlapped with principle prohibiting the threat or use of force, and coercion is just one example in the Friendly Relations Declaration of what is prohibited by the principle).

However, the prevalence of *Oppenheim's International Law* 9th edition's formulation has not ended the practice in the literature of advancing contrary formulations. For example, although Jamnejad and Wood relied on the formulation,[537] they noted that "[w]hat constitutes an 'intervention' is nowhere set out clearly" and that "[t]he more common term is 'non intervention', although 'non-interference' is also used. The two seem to be interchangeable":[538] both points tending to contradict their assumption that the formulation in *Oppenheim's International Law* is correct. Moynihan proceeded to advance her own formulation:

> *The element of coercion in the non-intervention principles describes pressure on the victim State to deprive the target of its free will in relation to the exercise of its sovereign powers in order to compel an outcome in, or conduct with respect to, a matter reserved to the target State.*

Moynihan continues:

> *It is the fact of the coercive behaviour applied in relation to the sovereign functions of another State that is the key to the non-intervention principle. The coercive behaviour*

534 Michael Wood KCMG is a barrister, former Legal Adviser to the Foreign and Commonwealth Office, a Senior Fellow at the Lauterpacht Centre for International Law, and a member of the International Law Commission. 'Wood, Sir Michael (Charles)', Who's Who 2022 (2019)

535 A former Legal Adviser at the FCO and at the time of publication a research visitor and visiting Fellow at the University of Oxford, and Associate Fellow at Chatham House. The report states it was written with the guidance and support of Elizabeth Wilmshurst (also a former FCO Legal Adviser) and thanks, among others, the then Legal Director of GCHQ (Doug Wilson) for their time and insights.

536 PhD candidate at the University of Cambridge and former Assistant Legal Adviser for Cyber Affairs in the Israel Defence Forces. Pomson (2022, 180)

537 Jamnejad and Wood (2009, 348): "According to Oppenheim, 'the interference must be forcible or dictatorial, or otherwise coercive [...].' Thus, the essence of intervention is coercion." (NB it was not Oppenheim that wrote that formulation, but the editors of the 9th edition of his *International Law*.)

538 Jamnejad and Wood (2009, 348)

> *does not need to succeed in depriving the target State of its free will in relation to its sovereign functions. Nor does the State need to know of the interference at the time it takes place. [...] Where there are state cyber operations affecting another State's powers, but there is no coercion, the principle of non-intervention does not apply.*[539]

Moynihan's claim that "[t]he coercive behaviour does not need to succeed" in order to violate the principle seems to contradict Wood's assertion that pressure which can be "reasonably resisted" does *not* violate the principle,[540] though it is difficult to evaluate the strength of either claim as both claims are made by assertion without reference to legal materials.

Furthermore, as noted in the Introduction (Chapter I), coercion is also very difficult to define: while Vincent used the Oxford English Dictionary to equate it with force, a conclusion shared by Pomson (see below), Jamnejad and Wood considered that it is not limited to force;[541] the Tallinn Manual 2.0 notes that "coercion is not defined in international law" and assumes that with regards to the principle, "coercion is not limited to physical force, but rather refers to an affirmative act designed to [...] force [sic] that State to act in an involuntary manner or involuntarily refrain from acting in a particular way."[542] Besides the difficulty of agreeing on what coercion actually means, there is the broader problem, it seems to me, that a coercion-based formulation privileges the freedom of the intervenor to affect others as they like (so long as they do not coerce) over the freedom of the target to determine their own affairs.

In their article *The Prohibition on Intervention Under International Law and Cyber Operations*, Pomson states that the principle is defined by coercion,[543] and that it only prohibits the use of force, support for violently overthrowing a foreign regime, and perhaps lately also a "prohibition on hampering another State's ability to hold an election or the manipulation of election results."[544] "This argument", states Pomson, "is supported by the fact that the Western European and Other States Group (WEOG) generally refrained from

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539 Moynhihan (2019, 57).

540 Jamnejad and Wood (2009, 348)

541 Their article explicitly looks at "the application of the principle to areas other than the use of force". Jamnejad and Wood (2009, 345).

542 Schmitt and Vihul (2017, 317)

543 Pomson states that "a few skeptical voices" are likely to disagree that the principle is defined by coercion and that "during the Cold War, Soviet bloc and developing States" interpreted the principle in terms of consent. Pomson does not explain why they regard such an interpretation as unsafe, and proceeds to interpret the principle in terms of coercion—apparently on the basis of Jamnejad and Wood's article and the Tallinn Manual. Pomson (2022, 181-185)

544 Pomson (2022, 218)

recognizing a prohibition applying to a broader range of acts."[545] Notwithstanding Pomson's claim that the principle was formed in customary international law between the 1960s and 1980s but not earlier,[546] I regard Pomson's interpretation as problematic for at least two reasons. Firstly, the prohibition of the use of force (or the threat of it) is a separate principle to the principle of non-intervention (see paragraph 1 of the Friendly Relations Declaration). Therefore to equate the principle of non-inter(ference/vention) with that aspect of the principle prohibiting the use or threat of force is to effectively deny the existence of the former. Secondly, WEOG States explicitly agreed that the principle is broader than Pomson's definition: this is shown not only in Chapter III of this thesis, but also in Pomson's own quotations of several of their views (see below).

Parts of Pomson's article do however correspond with the findings of this thesis. For example, Pomson observes that:

> *it does not appear that WEOG States came around to embrace the formulation of the prohibition on intervention in Resolution 2625 (XXV) in the years following the Resolution's adoption. Rather, at times, when discussion of non-intervention occurred, they appear to have simply ignored its detailed formulation in the Friendly Relations Declaration, instead recalling the purported elusive or narrow definition of the concept of intervention.*[547]

This matches my finding that the UKGBNI (at least) has ignored its obligations in the Friendly Relations Declaration (see e.g. Chapter IV, Part 7). Pomson then adds:

> *Otherwise, WEOG States adopted what could be considered a revisionist interpretation of the provision on non-intervention. Thus, in 1987, the United States opined that, "[w]here the Declaration spoke of 'coercion', [it] understood that term to mean 'unlawful force' within the meaning of the Charter."*[548]

This corresponds with my finding that in the English language coercion is typically understood in terms of the use of force—see for example Vincent.[549] However, Pomson does not note that the principle prohibiting the use or threat of force is expressly inter-

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545 Pomson (2022, 183)

546 Pomson (2022, 186): "it is doubtful—and, in fact, was doubted—that prohibition on intervention was part and parcel of customary international law prior to the 1960s, due to the varied practice of States." However, that statement not only contradicts the ICJ's finding in *Military and Paramilitary Activities in and against Nicaragua* (which is a focus of Pomson's article), where it was noted that the principle pre-dated the treaties in question, but it also contradicts the statements of WEOG States in the Sixth Committee when approving the Friendly Relations Declaration prepared by the Special Committee (see Chapter III)

547 Pomson (2022, 197-198)

548 Pomson (2022, 198)

549 Vincent (1974, 7)

related to but distinct from the principle of non-intervention (e.g Annex to the Friendly Relations Declaration), nor does Pomson then question whether coercion should be used to define the principle after all.

Pomson also noted that several WEOG States have explicitly defined coercion as something much broader than the use of force (though Pomson did not incorporate this point into their proposed definition of the meaning of the principle):

> *The Netherlands, Switzerland, Estonia, Norway, and Romania considered coercion to connote compelling a State to act in an involuntary manner. However, the Netherlands underlined that "[t]he precise definition of coercion ... has not yet fully crystallised in international law," whereas Romania considered that this is an assessment to be made "on a case-by-case basis." Additionally, Australia-and similarly New Zealand-stated that "[c]oercive means are those that effectively deprive the State of the ability to control, decide upon or govern matters of an inherently sovereign nature.*
>
> *Germany went into the greatest detail to date regarding the element of "coercion." While adding caveats regarding activities such as "pointed commentary and sharp criticism," it stated that "[c]oercion 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."*[550]

These reported State comments support my claims that the meaning of 'coercion' is very vague and not agreed upon (clearly the States cited were referring to something broader than 'force' as commonly understood in international law, as in the principle which prohibits it). However, it contradicts Pomson's claim that "the prohibition on intervention only applies to acts amounting to a use of force or constituting support for the violent overthrow of a foreign regime" (above).

7. Case-Study: A Comparison Of The Principle In *Oppenheim's International Law*, The Publications Of Former HMG Legal Advisers, and HMG's National Security Bill 2022

There has been at times a tendency in the literature to rest on the opinions of earlier writers which themselves did not substantiate their foundations. For example, in Part 6 we saw that Vincent took Oppenheim's formulation (which asserted a difference between interference and intervention, though these were taken by Vincent to be synonyms) and added coercion (by which he meant force) as a proposal for defining the principle. Then,

550 Pomson (2022, 214-215)

the 9th edition of *Oppenheim's International Law* for some reason added "or otherwise coercive" to its distinction of prohibited interference from non-prohibited "pure and simple" interference (even though it was well-known since 1970 that "all [...] forms of interference [...] are in violation of international law").[551] Jamnejad & Wood then relied on Oppenheim for their premise that the principle was defined by coercion,[552] as did Moynihan,[553] and Pomson rested his claims in that regard on Oppenheim and on the Tallinn Manual:[554] while the Tallinn Manual only referenced *Oppenheim's International Law* and Vincent in its chapter on the principle.[555] We thus see the beginnings of a somewhat circular set of referencing, at the heart of which lies Oppenheim's original dubious and law-contradicting formulation and Vincent's proposed interpretation of force.

The problems of the Oppenheim's original formulation, its amendment in its 9th edition, and of Vincent's proposed element of coercion-as-force have already been noted in the preceding Parts 5 and 6. What I would like to add here is that these aspects also contradict HMG's own interpretation of the meaning of prohibited interference in its National Security Bill 2022.[556] This is a little surprising because Moynihan, Watts (one of the editors of the 9th edition of *Oppenheim's International Law*) and Wood were HMG Legal Advisers (at the FCO), and the Tallinn Manual 2.0 is taken as describing the legal interpretation for NATO cyber-operations (and the UKGBNI is part of NATO).

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551 See Chapter III for the Friendly Relations Declaration status in law.

552 Jamnejad and Wood (2009, 348): "According to Oppenheim, 'the interference must be forcible or dictatorial, or otherwise coercive [...].' Thus, the essence of intervention is coercion."

553 Moynihan (2019, 27): "This paper uses the term 'intervention' in the sense of coercive intervention in the internal or external affairs of another state. [fn14 This reflects the definition of intervention in Oppenheim's International Law (Vol 1: Peace): p.432]"

554 Pomson (2022, 182-183): "Save a few skeptical voices, there appears to be quite a wide-ranging consensus in scholarship on the scope of the prohibition on intervention. According to this scholarship, an act constitutes prohibited intervention if it coerces a State in regard to its internal or external affairs. A State's internal or external affairs-also termed domestic jurisdiction or *domaine reserve*"-are matters which "are not, in principle, regulated by international law." In regard to the element of coercion, scholarship-particularly on the subject of cyber operations-appears to generally follow the opinion of **Maziar Jamnejad and Sir Michael Wood**, who, in a heavily cited article, opined that for an act to amount to coercion, it must "to some degree 'subordinate the sovereign will' of another state." Thus, to cite but one example of such scholarship, for the authors of the **Tallinn Manua**l, the element of "coercion" is defined as "an affirmative act designed to deprive another State of its freedom of choice, that is, to force that State to act in an involuntary manner or involuntarily refrain from acting in a particular way." Such tests lead to conclusions that the respective cyber incidents mentioned above can plausibly constitute violations of the prohibition on intervention."

555 Schmitt and Vihul (2017, 312-327)

556 Notwithstanding the fact that *Oppenheim's International Law* and Vincent's formulation contradict UKGBNI statements regarding the Friendly Relations Declaration—see Chapter III.

On the one hand, according to the National Security Bill 2022 (see Annex), conduct involving coercion is a prohibited foreign interference: this seems to match the definition given by those former Legal Advisers and the Tallinn Manual 2.0. However, according to the Bill coercion is not all that is prohibited:[557] anything that "constitutes an offence or, if it takes place in a country or territory outside the United Kingdom, would constitute an offence if it took place in England and Wales" is also prohibited, and so too is misrepresentation (which includes "presenting information in a way which amounts to a misrepresentation, even if some or all of the information is true").[558] No distinction between interference "pure and simple" and any other type is discernible in the Bill in contradiction of *Oppenheim's International Law*. The degree of connection between the prohibited conduct and a foreign power is much weaker than that which the Tallinn Manual 2.0 claims is required: for the latter, only conduct that could be attributed to a State was prohibited, but according to the National Security Bill the prohibition extends to conduct which a person "intends"[559] or "ought reasonably to know"[560] would benefit any foreign power, even if that foreign power is not identified.[561] Therefore, with regards to its foreign operations HMG appears to have been hitherto advised that the principle's prohibition is relatively narrow, but now that it seeks to protect the UKGBNI with the principle it has decided that the principle is in fact much broader.

8. Evaluation

As noted in Part III, this chapter did not conduct an exhaustive review of all publications in the UKGBNI, still less all publicists of "the various nations" as described in Article 38(1)(d) of the Statute of the ICJ. However, it was considered neither practical nor necessary to do so. The primary aim was to review *Oppenheim's International Law* within the context of other teachings of publicists of the UKGBNI. With regards to the principle of non-inter(ference/vention), it seems that this was the first time that this has been done, and so constitutes a small original contribution to the literature despite its limitations. That

557 And even the examples of what constitutes coercion is much broader than described by, for example, Vincent: such as "undue spiritual pressure"--see s.13(5)(e).

558 s.13(9)(b)

559 s.24(5)

560 s.24(1)(b)

561 s.24(6)

Oppenheim's International Law is so relied upon in the literature today makes this contribution of particular relevance.

9. Conclusion

The meaning of the principle

With regards to the meaning of the terms 'interference' and 'intervention', this Chapter found that UKGBNI publicists for the past two hundred years have often[562] presumed a distinction between interference and intervention, but that compelling evidence for such a distinction in international law was never presented: it was generally just an assumption that the two words had different meanings in law.

With regards to the definition of a prohibited inter(ference/vention), this Chapter found that the principle was variously defined in terms of force, consent, and coercion, but that confusion was caused by the presumption that interference and intervention were different in international law, and existence of an inter-relationship between the principle prohibiting inter(ference/vention) and the principle prohibiting the threat or use of force.

The status of the principle

With regards to the principle's status in law, this Chapter found general agreement that the principle was binding in law, notwithstanding confusion about the meaning of interference which it has generally been presumed is not always prohibited, but is in fact to be encouraged.

With regards to the entities to which the principle applies, this Chapter found that it has generally been considered only in relations between States and nations; however, the nineteenth century publicists identified the same principle as applying to all moral persons (including humans, not just States) and Vaughan Lowe made an analogy to inter-human relations when describing the principle.

The importance of the principle

The Chapter noted that the outcomes of adhering to the principle appear to have fallen somewhat in the teachings of publicists. Initially it was clearly associated with good-

562 But not always: see e.g. Hall (1884) for treating them synonymously.

neighbourliness and the realisation, to paraphrase, of God's kingdom on earth (the golden rule as the direction of society and human law); the alternative was the policy of the sword and 'might is right', ie a complete anathema to the rule of law. Recently, however, the principle is presented as a "tool" that can be useful for "regulating" state relations.

VII. Conclusion

1. Introduction

In this chapter I present my research findings from this thesis' study of the meaning and significance of the principle of non-inter(ference/intervention) (hereafter 'the principle') in international law. In this part (Part 1) I introduce the structure of the chapter. In Part 2 I review the materials that were studied. In Part 3 I review the methods used to study the materials. In Part 4 I review the thesis' findings regarding the meaning of the terms (non-)'interference' and 'intervention', and what best defines that which is prohibited by the principle. In Part 5 I review the thesis' findings regarding the status of the principle: the extent to which it is binding, and the entities which it binds and protects. In Part 6 I review the thesis' findings regarding the importance of the law, specifically the ends and principles with which it is associated. In Part 7 I review the thesis' findings regarding the UKGBNI. In Part 8 I critically evaluate the limitations of this study. Finally, in Part 9 I present the thesis' main conclusions.

2. Materials

To test my hypothesis, I studied treaty law, customary law, GPOLRBCN, decisions of the ICJ, teachings of the most highly qualified publicists of the UKGBNI, and 'natural' law. Specifically, in Chapter II I studied over 200 treaties, in Chapter III I studied the practice of states at UNGA's Sixth Committee's adoption of the Friendly Relations Declaration, in Chapter IV I studied legal materials in the international, EU, and UKGBNI legal orders, in Chapter V I studied the statute of the ICJ and a variety of its decisions, and in in Chapter VI I studied the teachings of the most highly qualified publicists of the UKGBNI over the past two centuries.

3. Methods

The approach I took to studying those materials was a *lex lata* study including only those means which were nominally included by the literature as relevant to a doctrinal determination of the law. In doing so I tried to be as objective as possible within the limits of my own position (for example, my consideration of legal materials outside the English language was minimal). I used ordinary doctrinal techniques relevant to an orthodox and rigorous study of the materials selected: this included application of the 1969 Vienna Convention on the Law of Treaties in Chapter II, the draft conclusions of the International Law Commission on the identification of customary international law in Chapter III, both sides of the debate for identifying 'general principles of law recognized by civilized nations' in Chapter IV, and an ordinary meaning of words in context in Chapters V and VI.

4. Finding: The Meaning Of The Principle Of Non-Inter(ference/vention)

(i) There is no difference in international law between 'interference' and 'intervention'

Chapter II Part 4 found not only that the two terms are undefined and undistinguished, but also that the two are often treated as synonymous, and in fact that according to the VCLT method of treaty-language analysis the two must generally be considered as equivalent. Chapter III Part 5 Section (i) found that "all interference" is prohibited by the principle of "non-intervention" as elaborated in the Friendly Relations Declaration, and in that document interference and intervention are used interchangeably. Chapter IV found no distinction between the two terms, and that the two are sometimes used interchangeably. Chapter V Part 6 Section (i)(a) found that the two terms have not been distinguished but have been used interchangeably at the International Court of Justice. Chapter VI found that UKGBNI publicists for the past two hundred years have presumed a distinction between interference and intervention, but that compelling evidence for such a distinction in international law was never presented: it was generally just an assumption that the two words had different meanings in law.

(ii) Lack of consent defines a prohibited inter(ference/vention) (of course coercion precludes consent)

Chapter II Part 5 Section (ii) found no definition of the principle in the treaty texts, but that in the examples given the prohibited conduct could always be understood in terms of 'the absence of consent', but not in terms of 'the presence of coercion'. Chapter III Part 5 Section (ii) found that "any" measure used to coerce another State is given as an example of what is prohibited, but that on an ordinary reading of the Friendly Relations Declaration this is not given as a limit to that which is prohibited. Chapter IV found that in all instances that which is prohibited can be understood in terms of consent (occasionally explicitly so), but that coercion does not serve so well. Chapter V Part 5 Section (i) found that the lack of the court's consent defines the type of intervention prohibited by Article 62 of the Statute of the ICJ, and in Part 4 Section (iii) and Part 6 Section (i)(b) found that other examples of prohibited inter(ference/vention) are better understood in terms of consent than coercion. Chapter VI found that the principle was variously defined in terms of force, consent, and coercion, but that confusion was caused by the presumption that interference and intervention were different in international law, and the inter-related nature of the principle prohibiting inter(ference/vention) and the principle prohibiting the threat or use of force.

5. Finding: The Status Of The Principle Of Non-Inter(ference/vention)

(i) Non-intervention is binding generally and specifically, notwithstanding some exceptions (e.g. Art 2(7) and the statute).

Chapter II Part 7 Section (ii) found that the principle as articulated in the Friendly Relations Declaration is binding on all Member States as an authoritative interpretation of the Charter of the United Nations, and therefore has supremacy (via Article 103 of the Charter) over any conflicting treaty obligations. However, no conflicting treaty obligations were found: although there are instances where permission is given for what would otherwise be a prohibited inter(ference/vention), by definition (viz., "the presence of consent") such instances are excluded from that which is prohibited by the principle. Chapter III Part 4 found not only that the text is *prima facie* binding but that the conduct of State representatives in the Sixth Committee satisfies the conditions for being

considered as evidence in itself of customary international law. Chapter IV found that the principle is a "general principle of law recognized by civilized nations" and that as such it is not only binding on all States (according to the Friendly Relations Declaration), but is an autonomous source of law (according to the Preamble of the Charter of the United Nations). Separately, the Chapter also found that the principle is binding in general international law as a principle of the Charter of the UN, binding in the European Union not only through treaty law but also as a judicially-discoverable Article 6(3) TEU general principle of law, and binding in the English common law as an essential part of "the rule that you are to love your neighbour" (the golden rule). Chapter V found that the principle is binding in international law and in Part 6 it was observed that the ICJ has held that the principle has autonomous binding status in customary international law. Chapter VI found general agreement that the principle was binding in law, notwithstanding confusion about the meaning of interference which it has generally been presumed is not always prohibited, but is in fact to be encouraged.

(ii) Non-intervention binds not only all legal peers.

Chapter II Part 5 Section (i) found that the principle not only applies between States, but that it also protects groups of people, specific categories of individuals, chartered vessels, and transmissions. Chapter III found not only that the principle protects States, but that it was used expressly to protect the rights of "peoples". Chapter IV found the principle protects not only States, but also peoples, court proceedings, individual humans, and neighbours. Chapter V Part 5 found that court proceedings are protected by the principle. Chapter VI found that it has generally been considered only in relations between States and nations; however, the nineteenth century publicists identified the same principle as applying to all moral persons (including humans, not just States) and Vaughan Lowe made an analogy to inter-human relations when describing the principle.

6. Finding: The Importance Of The Principle Of Non-Inter(ference/vention)

(i) The importance of the principle

Chapter II Part 7 Section (ii) found that as a foundational principle of the Charter of the UN the principle is important for international peace, cooperation, and promoting and

encouraging respect for human rights (the Article 1 purposes of the Charter). In Part 6 this Chapter found that in almost all other treaty instances the principle was seen as a basis, rule, or guide for co-operation, friendly relations, peace, and/or matters of a technical nature. Chapter III Part 6 found that the principle is essential for attaining the aims of the United Nations and for ensuring the international rule of law. Chapter IV found that "strict observance" of the principle was an essential pre-condition for the aims and purposes of the United Nations, including the maintenance of peace and security, friendly relations among nations, and international cooperation in solving economic, social, cultural, and humanitarian problems and "promoting and encouraging respect for human rights and fundamental freedoms for all". Chapter V noted that the ICJ held it was "the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law." Chapter VI noted that the outcomes of adhering to the principle appear to have fallen somewhat in the teachings of publicists. Initially it was clearly associated with good-neighbourliness and the realisation, to paraphrase, of God's kingdom on earth (the golden rule as the direction of society and human law); the alternative was the policy of the sword and 'might is right', ie a complete anathema to the rule of law. Recently, however, the principle is presented as a "tool" that can be useful for "regulating" state relations.

(ii) The principle's associated principles

Chapter II found that the principle is associated with cooperation, friendship, and peace. Chapter III noted the principle is expressely inter-related with the other principles of the Charter of the UN[563] and the principle of good-neighbourliness, and that according to the Friendly Relations Declaration (paragraph 2) "the above principles are interrelated and each principle should be construed in the context of the other principles." Chapter IV found the principle's associated principles were the other principles enshrined in the Charter of the United Nations, including the principle of good-neighbourliness. Chapter V noted that the principle is inter-related with other principles in international law, such as "the principle of equal rights and self-determination of peoples" (Friendly Relations Declaration). Chapter VI found that the publicists reviewed over two hundred years

563 viz (paraphrased): the prohibition of the threat or use of force, the duty to settle disputes peacefully, the duty to cooperate, the principle of equal rights and self-determination of peoples, the principle of sovereign equality of States, and the principle of fulfilling obligations in good-faith.

typically consistently noted that the principle was a corollary of, variously, the sovereign equality and independence of States as independent individuals.

7. Finding: The UKGBNI And The Law

> *"I have acute **shame** about my role in all of this. I did not become a **lawyer** in order to justify the **moral depravity** that is the export of arms to Saudi Arabia.*
> *"We are five years into this conflict [in and against Yemen]. Seventeen thousand civilians are dead and 10 million people are facing famine. The people of Yemen, the devastated and the starving, are **our fellow** human beings. Their lives are not worth less than ours, nor are they worth less than our economic growth or employment prospects. **They are our equals**, and they are **victims** not just of **our egregious immorality**, the British preference for **our money above their lives**, but of **our illegality**.*
> *"**This is not a one-off**. With the approval of the prime minister, the secretary of state for Northern Ireland told parliament of the government's intention to break international law in a bill to amend the Brexit deal with the EU. **The attorney general did not object**, but many other lawyers did – including the president of the Law Society. Lawyers know that these are not small print technicalities, but **a dangerous cultural shift** towards a government which considers itself **above the law**. And when governments consider themselves above the law, the consequences can be horrifying: government critics are poisoned, journalists are detained and murdered, doctors are imprisoned for treating pro-democracy protestors, and particular ethnic groups are incarcerated and forcibly sterilised.*
> *"[The Prime Minister] cannot be allowed to drag Britain any **further** in that direction – and every government minister who has fallen meekly into line behind him must consider their **conscience**, and their country, and **do what's right**. If they fail, we may soon be reminded that the very worst terrors human beings inflict on others happen when **those in power do not respect the law**."*
>
> — Molly Mulready, 'Former Foreign Office Lawyer Admits 'Acute Shame' at Saudi Arms Exports' (Stop The War Coalition, 21 October 2020)

In Chapter II it was found that the UKGBNI is party to treaties which treat interference and intervention as synonymous, and that the UKGBNI is twice-bound to follow the principle as elaborated by the Friendly Relations Declaration (as an authoritative interpretation of the Charter of the UN) as a Member of the UN and as a Member of the UN Security Council. In Chapter III it was found that declassified legal opinion of HMG believed that the principle as elaborated in the Friendly Relations Declaration was binding on the UKGBNI, and that the source of that obligation pre-dated the Charter of the UN in which it was enshrined. In Chapter IV it was found that the UKGBNI has long professed adherence to the principle and to international law despite violations of it, but that it increasingly advocates (on bases found to be untenable) the right to violate the principle at its discretion. It was also noted that highly regarded authorities of the

English common law felt that were the UKGBNI to step outside of international law, it would be stepping outside of civilisation itself. In Chapter V it was found that the UKGBNI's advancement of a novel interpretation of the principle was rejected by the ICJ in its first contentious case, that its ongoing violation of international law regarding the unlawful separation of the Chagos Archipelago from Mauritius also engages the principle of non-inter(ference/vention), and that HMG has covertly acted to violate the principle when it has not succeeded in defending its perceived interests before the court. In Chapter VI it was found that the legal advisers of the UKGBNI have, in their public writings, shown a propensity to rely on the definition of the principle in *Oppenheim's International Law* even though that definition contradicts the Friendly Relations' Declarations interpretation of the principle, the statements made by the UKGBNI regarding that interpretation, and more recently HMG's National Security Bill 2022.

8. Evaluation

The strengths of this thesis are that the questions I had were legitimately derived from an identified literature, and the approach developed for answering those questions was in accordance with orthodoxy and more rigorous in its ways than hitherto found in the literature. The answers appear reasonably clear, and directly relevant to the questions and my hypothesis.

The main and general limitations of this thesis are that I only considered English language materials in much detail, and did not compare my findings with the literature much beyond the very narrow UKGBNI literature selected for engagement. Furthermore, each chapter study was limited on its own terms: for example, the study of treaties missed those which were not OCR searchable, the study of customary international law only considered one (albeit seemingly the most significant) instance, the study of *foro domestico* for the two-way identification of GPOLRBCN was limited to the UKGBNI and to an extent those of the European Union member states, the study of decisions of courts was limited to the International Court of Justice and even then did not include an exhaustive review of all decisions pertaining to inter(ference/vention), and my literature selection was limited to the teachings of some of the most qualified publicists of the UKGBNI. With regards to the meaning of the principle, I only considered interference and intervention: I did not, for example, consider 'meddling' (sometimes noticed as 'intermeddling'), and did not consider the meaning of the term 'principle' per se. With

regards to the binding status of the principle, I did not here consider whether the principle is *erga omnes*, *jus cogens*, or its violation a crime. Comprehensive treatment of such questions would have required a much broader consideration of materials than was possible in this study.

The most useful way to test the answers provided in this thesis would, I suggest, be to conduct a similar review of legal materials in different languages and literatures and to then compare and contrast the findings.

9. Conclusion

This thesis had two main conclusions. First, that the principle of non-inter(ference/vention) is binding in international law (and this comes from several formal sources of law), seems better understood in terms of consent than coercion, and is regarded by States and peoples as fundamental for achieving the purposes of the United Nations. Second, that conduct of States (or rather, their claimed representatives) contrary to the principle is better understood as being a violation of the law, rather than as being evidence of a change in the law.[564]

In terms of exploring the implications of the findings of this thesis, I suggest that one pressing avenue for consideration is the question of what should happen when those with most power violate the law. For example, what should happen to a P5 member of the UNSC such as the UKGBNI that does not follow the principles of the Charter of the UN: principles, including the principle of non-inter(ference/vention), which are known to be essential for peace, justice, and the attainment of a social and international order in which the dignity and human rights of all can flourish?

564 Grotius (2019, 15): "For, as Porphyry well observes, some nations are so strange that no fair judgment of human nature can be formed from them, for it would be erroneous. Andronicus, the Rhodian says, that with men of a right and sound understanding, natural justice is unchangeable. Nor does it alter the case, though men of disordered and perverted minds think otherwise. For he who should deny that honey is sweet, because it appears not so to men of a distempered taste, would be wrong. Plutarch too agrees entirely with what has been said, as appears from a passage in his life of Pompey, affirming that man neither was, nor is, by nature, a wild unsociable creature. But it is the corruption of his nature which makes him so: yet by acquiring new habits, by changing his place, and way of living, he may be reclaimed to his original gentleness."

ANNEX: 'FOREIGN INTERFERENCE' ACCORDING TO THE UKGBNI'S NATIONAL SECURITY BILL (2022)

13 **Foreign interference**: general

(1) A person commits **an offence** if—

(a) the person engages in conduct intending that the **conduct**, or a course of conduct of which it forms **part**, will have **an effect** within subsection (2),

(b) the foreign power condition is met in relation to the person's conduct (see section 24), **and**

(c) the person's conduct meets any of conditions A, B or C.

(2) The effects mentioned in subsection (1)(a) are—

(a) interfering with the **exercise** by a particular person of **a Convention right**, as it has effect under the law of the United Kingdom;

(b) **affecting** the **exercise** by any person of their **public functions**;

(c) **manipulating** whether, or how, any person makes use of **services** provided in the exercise of **public functions**;

(d) **manipulating** whether, or how, any person participates in **political processes** under the law of the United Kingdom;

(e) **manipulating** whether, or how, any person participates in **legal processes** under the law of the United Kingdom;

(f) **prejudicing** the **safety** or **interests** of the United Kingdom.

(3) For the purposes of subsection (2)(b) it does not matter if the effect is on a person's exercise of a specific public function, or a person's exercise of their public functions in general.

(4) **Condition A** is that the person's conduct **constitutes an offence** or, if it takes place in a country or territory outside the United Kingdom, would constitute an offence if it took place in England and Wales.

(5) **Condition B** is that the person's conduct involves **coercion** of any kind, including **in particular**—

(a) using or **threatening** to use **violence** against a person;

(b) damaging or destroying, or **threatening** to damage or destroy, a person's **property**;

(c) damaging or **threatening** to damage a person's **reputation**;

(d) causing or **threatening** to cause **financial loss** to a person;

(e) **causing spiritual injury** to, or placing **undue spiritual pressure** on, a person; (whether or not that person is the person in relation to whom the effect within subsection (2) is intended).

(6) **Condition C** is that the person's conduct involves making a **misrepresentation**.

(7) A "misrepresentation" is a representation that a reasonable person would consider to be **false or misleading** in a way material to the intended effect within subsection (2).

(8) A misrepresentation may be made by making a statement or by **any other kind** of conduct, and may be **express or implied**.

(9) A misrepresentation may in particular include—

(a) a misrepresentation as to the person's **identity** or **purpose**;

(b) **presenting information** in a way which amounts to a misrepresentation, even if some or **all** of the information is **true**.

(10) Subsection (1) applies whether the person's conduct takes place in the United Kingdom or elsewhere.

(11) A person's conduct may form **part of a course of conduct** engaged in by the person alone, or by the person and one or more **other persons**.

(12) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine (or both).

24 The **foreign power condition**

(1) For the purposes of this Part the foreign power condition is met in relation to a person's conduct if—

(a) the conduct in question, **or a course of conduct of which it forms part**, is carried out for or **on behalf of** a foreign power, and

(b) the person knows, or **ought** reasonably to know, that to be the case.

(2) The conduct in question, or a course of conduct of which it forms part, is in particular to be treated as carried out for or on behalf of a foreign power if—

(a) it is **instigated** by a foreign power,

(b) it is under the **direction or control** of a foreign power,

(c) it is carried out with the **financial or other assistance** of a foreign power, or

(d) it is carried out in collaboration with, or **with the agreement of**, a foreign power.

(3) Subsections (1)(a) and (2) may be satisfied by a direct or **indirect relationship** between the conduct, or the course of conduct, and the foreign power (for

example, there may be an indirect relationship through one or more companies).

(4) A person's conduct may form **part** of a course of conduct engaged in by the person alone, or by the person and one or more **other persons**.

(5) The foreign power condition is also met in relation to a person's conduct if the person **intends** the conduct in question to **benefit** a foreign power.

(6) For the purposes of subsection (5) it is **not necessary** to identify a particular foreign power.

(7) The foreign power condition may be met in relation to the conduct of a person who holds office in or under, or is an employee or other member of staff of, a foreign power, as it may be met in relation to the conduct of any other person.

[emphasis added]

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