

ARTICLE

The New Chinese Doctrine of Non-Intervention

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Abstract

China frequently accuses Western governments of interfering in its domestic affairs. International lawyers might be inclined to dismiss these accusations as cynical misrepresentations of the doctrine of non-intervention. This article questions that view, drawing on Chinese State practice and recent Chinese literature. It argues that China propagates a new and distinctive approach to the doctrine of non-intervention, by which the doctrine changes depending on who is interfering with whom, in what context and for what purpose. This approach could also be increasingly useful to Western governments who seek to challenge pernicious forms of foreign influence over liberal democratic processes. Hence, Chinese and non-Chinese approaches to non-intervention might converge. This approach arguably reflects the concerns that originally animated the doctrine and is in line with ideas that have been advocated for by non-aligned States for at least 70 years. Whether this is a desirable development is another question. The article concludes with a critique of the new doctrine of non-intervention.

Keywords: Public international law; China; non-intervention; international relations; sovereignty

1. Introduction

This article examines a new approach to the doctrine of non-intervention framed by the People's Republic of China (PRC, China). It begins with a general overview of the doctrine and explains why it is vulnerable to manipulation. It exposes a new account of the doctrine and places that account in historical context, exploring Chinese State practice and debates on the doctrine of non-intervention in Chinese legal scholarship. It concludes that this new doctrine is ambiguous because it is relative: it changes depending on who is interfering with whom, in what context and for what purpose. This approach may appear attractive to many States, but it is hard to reconcile with existing rules of international law.

The doctrine of non-intervention is a rule of international law. A State may not induce or compel another State to act in circumstances where that State ought to be able to act freely. Intervention can include the use of force but it also embraces

a wide variety of other forms of coercion, including interference in elections. 40 years ago, Tom Farer observed that '[i]f read literally [prohibitions of intervention in international declarations] would outlaw diplomacy'.¹ But the doctrine is qualified by two critical component parts. First, intervention is only wrongful when it is coercive. Second, intervention is only wrongful when it concerns the domestic jurisdiction of the State—the sphere in which the State ought to be able to act without interference.²

China frequently describes foreign criticism of its policies as a gross interference in its internal affairs, a serious contravention of international law and a violation of its sovereignty. For example, in February 2022, the United Kingdom (UK) Home Office announced that it would expand a visa scheme making it easier for one category of Hong Kong residents to live and work in the UK.³ The spokesperson for the Chinese Embassy in the UK said that the policy 'grossly interferes in Hong Kong affairs, which are China's internal affairs, and seriously contravenes international law'.⁴ In March 2022, the then UK Foreign Secretary, Liz Truss, said that action taken against a UK-based non-governmental organisation under Hong Kong's National Security Law was 'clearly an attempt to silence those who stand up for human rights in Hong Kong'.⁵ The spokesperson for the Chinese Embassy described this as an 'interference in China's internal affairs' and 'strongly urge[d] the UK side to respect China's sovereignty'.⁶

The Chinese Government has made similar remarks to other States in various other contexts.⁷ In his first press conference as China's Foreign Minister, (subsequently disappeared) Qin Gang urged the United States (US) and other countries to 'stop interfering in China's internal affairs'.⁸ In a recent international address, President Xi Jinping marked the seventieth anniversary of the Five Principles of Peaceful Coexistence (Five Principles), which include a commitment to mutual non-interference in internal affairs. President Xi said that the Five Principles:

have been a powerful rallying force behind the efforts of developing countries to pursue cooperation and self-strength through unity ... Inspired and encouraged by the Five

¹ TJ Farer, 'Political and Economic Coercion in Contemporary International Law' (1985) 79 AJIL 406.

² A detailed account of the doctrine is set out in [Section 3](#).

³ UK Government, 'Media Factsheet: Hong Kong BN(O) Visa Route' (24 February 2022) <<https://homeofficemedial.blog.gov.uk/2022/02/24/media-factsheet-hong-kong-bnos/>>.

⁴ Chinese Embassy in the UK, 'Embassy Spokesperson's Remarks on the UK Side's Decision to Expand the BNO Visa Scheme' (25 February 2022) <http://gb.china-embassy.gov.cn/eng/PressandMedia/Spokepersons/202202/t20220226_10645791.htm>.

⁵ UK Government, 'Hong Kong Watch: Foreign Secretary's Statement, March 2022' (14 March 2022) <<https://www.gov.uk/government/news/foreign-secretary-statement-on-hong-kong-watch-march-2022>>.

⁶ 'Embassy Criticizes UK after Judges Resign' *China Daily* (31 March 2022) <<https://www.chinadaily.com.cn/a/202203/31/WS6245c9d5a310fd2b29e54831.html>>.

⁷ See, e.g. China's list of accusations against United States (US) interference in Hong Kong in Peoples' Republic of China (PRC) Ministry of Foreign Affairs (MFA), 'Fact Sheet: US Interference in Hong Kong Affairs and Support for Anti-China, Destabilizing Forces' (24 September 2021) <https://www.mfa.gov.cn/eng/zy/gb/202405/t20240531_11367443.html>.

⁸ PRC MFA, 'Foreign Minister Qin Gang Meets the Press' (7 March 2023) <https://www.fmprc.gov.cn/eng/xw/zyjh/202405/t20240530_11341719.html>.

Principles, more and more countries in Asia, Africa and Latin America have ... stood up against foreign interference, and embarked on an independent path of development.⁹

An orthodox reading of the doctrine of non-intervention does not prohibit commentary on human rights conditions in foreign States. Moreover, governments in liberal democracies seldom feel the need to refer to the doctrine of non-intervention when they are accused of violating international human rights law.¹⁰ As [Section 3](#) explains, liberal democracies assert that the threshold for an intervention to be considered unlawful is higher than that used by the Chinese Government. Relying on International Court of Justice (ICJ) jurisprudence and other sources, liberal democracies define the two prongs of the doctrine of intervention—‘coerciveness’ and ‘domestic jurisdiction’—more narrowly than the Chinese Government.

With this in mind, one might be inclined to dismiss Chinese uses of the non-intervention doctrine as political positioning, not intended to shape international law. This would be a mistake. For better or for worse, the principle of non-intervention lends itself to exactly the kinds of uses that Chinese Government officials employ. These uses arguably reflect the original concerns that animated the doctrine in the Global South, and are in line with ideas which have been advocated by the Non-Aligned Movement (NAM) for at least 70 years.

The rest of this article is organised as follows. [Section 2](#) discusses problems caused by the non-technical use of words such as ‘intervention’ and ‘interference’ in English and Chinese, and their broader usages in international law and international relations. [Section 3](#) sets out what the authors believe to be an orthodox understanding of the doctrine of non-intervention. [Section 4](#) describes how that doctrine has developed in China and has changed globally in response to the Chinese position. [Section 5](#) discusses the consequences of that change for international law.

2. Legal and political references to intervention and interference

This section addresses two related sources of confusion. The first is a linguistic problem, which has to do with the words for ‘interference’ and ‘intervention’ in different languages and their connections to legal rules. The second is a methodological problem, which has to do with the ways in which these words are employed in different fields, such as law, diplomacy and international relations scholarship. For reasons of consistency and clarity, and in line with Chinese practice, this article

⁹ Xi Jinping, ‘Carrying Forward the Five Principles of Peaceful Coexistence and Jointly Building a Community with a Shared Future for Mankind’ (Speech at Conference Marking the 70th Anniversary of the Five Principles of Peaceful Coexistence, 28 June 2024) <https://www.fmprc.gov.cn/eng/xw/zyjh/202406/t20240628_11443852.html>.

¹⁰ SJ Barela, ‘Cross-Border Cyber Ops to Erode Legitimacy: An Act of Coercion’ (*Just Security*, 12 January 2017) <<https://www.justsecurity.org/36212/cross-border-cyber-ops-erode-legitimacy-act-coercion>>; JD Ohlin, ‘Did Russian Cyber Interference in the 2016 Election Violate International Law?’ (2017) 95 *TexLR* 1579, 1592–93.

generally translates the Chinese term '*bu ganshe yuanze*, 不干涉原则' as 'the principle of non-intervention', but this poses challenges.¹¹

The words 'interference' and 'intervention' are sometimes used synonymously in English, both in general and technical literature.¹² However, generally speaking, technical English sources refer to the rule, principle or doctrine of 'non-intervention'. In anglophone international legal discourse, the word 'interference' generally bears a less technical meaning and may refer to unwelcome, but not necessarily wrongful, behaviour.

The English terms 'interference' and 'intervention' can be translated into Chinese as either '*ganshe*, 干涉' or as '*ganyu*, 干预'. These terms are ambiguous¹³ and have sometimes been used synonymously in official documents, such as United Nations (UN) resolutions. For instance, the Chinese language version of the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the UN (Friendly Relations Declaration)—an important source of legal doctrine drafted when the Republic of China held China's UN seat—refers to the English language term 'intervention' consistently as '*ganshe*, 干涉', whereas it uses both '*ganshe*, 干涉' and '*ganyu*, 干预' to refer to the English language term 'interference'.¹⁴

Scholars have argued that '*ganshe*, 干涉' connotes a more forcible form of intervention than '*ganyu*, 干预'.¹⁵ Yet the practice is inconsistent. UN documents have translated 'unwelcome intervention', 'interference in internal affairs' and the 'principle of non-intervention' using the word '*ganshe*, 干涉', and the English language term 'humanitarian intervention' through military means using the term '*ganyu*, 干预'.¹⁶ Both terms appear in the Declaration of the People's Republic of China and the Russian Federation on the Promotion of International Law (Declaration on the Promotion of International Law):

¹¹ United Nations (UN) resolutions have used the terms 'interference' and 'intervention' synonymously, although some commentators have observed a difference between these terms: see MN Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP 2017) 313.

¹² The 1970 Friendly Relations Declaration classifies military and non-military forms of 'interference' as prohibited 'interventions', while it uses the word 'interference' as a general term for all 'interventions': see Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (15 December 1970) UN Doc A/RES/2625(XXV) (Friendly Relations Declaration) annex, art 1. Reflecting such uses, the *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*—a collaborative academic study—holds that '[t]he term intervention, the subject of this Rule, is limited to acts of interference with a sovereign prerogative of another State that have coercive effect': Schmitt (n 11) 313.

¹³ M Duchâtel, O Bräuner and H Zhou, 'Protecting China's Overseas Interests: The Slow Shift Away from Non-Interference' (Stockholm International Peace Research Institute, Policy Paper No 41, 2014) 1 <<https://core.ac.uk/download/pdf/210589473.pdf>>.

¹⁴ Friendly Relations Declaration (n 12) art 1, 372–73.

¹⁵ X Cheng (程晓霞), 'What Has Changed and What Has Not: Interference and Intervention in International Law (干涉与“国际干预”国际法的变与不变)' (2002) 5 *The Jurist* (法学家) 60; Duchâtel, Bräuner and Zhou (n 13) 1.

¹⁶ UNGA, 'Report of the Secretary-General: Implementing the Responsibility to Protect' (2009) UN Doc A/63/677, paras 7–9. The Chinese language translation of the UNGA report on interventions also includes one instance of 'interference' being translated as '*ganrao*, 干扰': see *ibid* para 10(d).

The People's Republic of China and the Russian Federation fully support the principle of non-intervention (*bu ganshe*, 不干涉) in the internal or external affairs of States, and condemn as a violation of this principle any interference (*ganyu*, 干预) by States in the internal affairs of other States with the aim of forging change of legitimate governments.¹⁷

The Chinese language text of this declaration refers to 'military interventions' through the term '*ganyu*, 干预'.¹⁸

The English texts of the PRC Ministry of Foreign Affairs (MFA) statements in Section 1, including Chinese embassy spokespersons' remarks, use the word 'interference' where anglophone international lawyers might say 'intervention'. Yet the point of the MFA statements is not to distinguish unwelcome from unlawful behaviour. The MFA statements explicitly state that the interference in question breaches international law.¹⁹ Instead of distinguishing unwelcome from unlawful behaviour, as the Friendly Relations Declaration does, the statements collapse this distinction. The consequences will be examined in Section 5.

A second source of confusion reflects the indiscriminate—and yet highly prominent—use of these two words both in diplomatic contexts and in international relations literature. Referring to a principle of non-intervention may be a convenient way to communicate one's general preference for a passive foreign policy stance. The 'principle of non-intervention' (*bu ganyu yuanze*, 不干预原则) is sometimes used by China's MFA to refer to a rule of international law; sometimes, it is used to describe its diplomatic stance. Such uses belong to a genre of Chinese political speech, which seeks to influence audiences through political language rather than through legal argument.²⁰ In the 1980s, China largely conducted its foreign policy according to Deng Xiaoping's maxim that it should 'hide its light and bide its time (*taoguang yanghui*, 韬光养晦)'.²¹ Since then, as the Chinese Government's interests abroad have grown, that position has become less expedient.²²

A large literature considers the relative passivity of China's foreign policy in terms of 'interference' and 'intervention'. For example, ten years ago, the Stockholm International Peace Research Institute (SIPRI) published an influential report on intervention and its impact on China's international relations.²³ About five years ago,

¹⁷ PRC and Russian Federation, 'Declaration of the People's Republic of China and the Russian Federation on the Promotion of International Law' (26 June 2016) para 4 <https://www.mfa.gov.cn/eng/zy/gb/202405/t20240531_11367332.html> (Declaration on the Promotion of International Law). For the Chinese language version, see PRC and Russian Federation, '中华人民共和国和俄罗斯联邦关于促进国际法的声明' (26 June 2016) para 4 <https://www.mfa.gov.cn/nanhai/chn/zcfg/201606/t20160626_8523564.htm>.

¹⁸ *ibid* para 3.

¹⁹ UK Government (n 5); *China Daily* (n 6).

²⁰ S Seppänen, 'Chinese Legal Thought on the Global and the Domestic Stage: A Rhetorical Study' (2023) 18 ASJCL 158.

²¹ Duchâtel, Bräuner and Zhou (n 13) 5.

²² PRC MFA, 'The Central Conference on Work Relating to Foreign Affairs was Held in Beijing' (Press Release, 29 November 2014) <https://www.mfa.gov.cn/eng/wjb/zzjg_663340/xws_665282/xgxw_665284/202406/t20240606_11405668.htm>. See also Duchâtel, Bräuner and Zhou (n 13) 17; CTN Sørensen, 'That Is Not Intervention; That Is Interference with Chinese Characteristics: New Concepts, Distinctions and Approaches Developing in the Chinese Debate and Foreign and Security Policy Practice' (2019) 239 *The China Quarterly* 595.

²³ Duchâtel, Bräuner and Zhou (n 13).

The China Quarterly carried a special edition on the same question, with a focus on foreign policy in the Middle East, East Asia and Africa.²⁴

In international relations literature discussing Chinese diplomacy, ‘non-intervention’ refers to a range of foreign policy behaviour, some of which is considered lawful and some unlawful.²⁵ For example, Camilla Sørensen relates the ‘rather strict’ principle of non-intervention to *taoguang yanghui* and then to ‘passivity’ and ‘softness’.²⁶ This strand of the political science literature uses ‘intervention’ to describe actions which are neither wrongful nor even particularly unwelcome. Sørensen gives the example of ‘diplomatic outreach’.²⁷ SIPRI discusses ‘consular protection’.²⁸ In contrast, some strands of the literature address intervention as if it referred to the use of force. In a book-length treatment, Mamoudou Gazibo and Abdou Rahim Lena refer to ‘intervention’ as the ‘use of force to defend the national interest’.²⁹ Obert Hodzi uses ‘intervention’ and ‘interference’ interchangeably to refer to any action (military, economic or diplomatic) taken ‘to affect the direction, duration or outcome of an intrastate armed conflict’.³⁰

The generality with which this literature addresses intervention makes it harder to work out whether States are seeking to influence *legal* discourse. In particular, it makes it harder to identify State practice or *opinio juris* on the legal doctrine of non-intervention. For example, while force can be a form of intervention, the doctrine of non-intervention is useful precisely because it provides a vocabulary to describe wrongful actions that fall short of the use of force.³¹ Zheng Chen from Shanghai’s Jiao Tong University argues that this imprecision creates a constructive ambiguity. In Chen’s view, the boundary between interference and legitimate diplomatic engagement ‘creates space for diplomatic flexibility’ because the concepts fail to specify ‘exactly which of a government’s actions might constitute interference in a State’s domestic affairs’.³² The second type of ambiguity—disciplinary rather than linguistic—makes it harder to distinguish between force, other unlawful actions and permitted actions. Both international relations literature and Chinese translations of these

²⁴ See M Hirono, J Yang and M Lanteigne, ‘China’s New Roles and Behaviour in Conflict-Affected Regions: Reconsidering Non-Interference and Non-Intervention’ (2019) 239 *The China Quarterly* 573; M Hirono, ‘China’s Conflict Mediation and the Durability of the Principle of Non-Interference: The Case of Post-2014 Afghanistan’ (2019) 239 *The China Quarterly* 614; Sørensen (n 22) 594; M Lanteigne, ‘China’s UN Peacekeeping in Mali and Comprehensive Diplomacy’ (2019) 239 *The China Quarterly* 635; I Mansour, ‘Treading with Caution: China’s Multidimensional Interventions in the Gulf Region’ (2019) 239 *The China Quarterly* 656.

²⁵ See, e.g. Sørensen’s discussion of ‘legitimate’ or ‘rightful’ intervention: see Sørensen (n 22) 602. The underlying word ‘*hefa*, 合法’ does mean legitimate, but its central meaning is ‘lawful’.

²⁶ *ibid* 597–98.

²⁷ *ibid* 607, 611.

²⁸ Duchâtel, Bräuner and Zhou (n 13) ch 4. This statement is subject to the enigmatic concession that ‘consular protection does not represent a challenge to the non-interference principle’: *ibid* 44.

²⁹ M Gazibo and AR Lema, ‘From Non-Interference to Adaptive Pragmatism: China’s Security Policy in Africa’ (2022) 21(3) *African Studies Quarterly* 2.

³⁰ O Hodzi, *The End of China’s Non-Intervention Policy in Africa* (Palgrave Macmillan 2019).

³¹ Schmitt (n 11) 313.

³² Z Chen, ‘China Debates the Non-Interference Principle’ (2016) 9 *Chinese Journal of International Politics* 350.

key terms—including those in the most important sources (such as the statements made by the PRC leadership in [Section 1](#))—oftentimes collapse the distinction between unlawful and merely unwelcome behaviour.³³ This “promiscuity” has made legal complaints about intervention ambiguous (and perhaps even constructively ambiguous).

3. The doctrine of non-intervention

This section discusses the key terms associated with the doctrine of non-intervention and highlights features of the doctrine which help to understand the new Chinese position.³⁴ In brief, it argues that the two central concepts which make up the doctrine—coercion and domestic jurisdiction—are underdeveloped in general international law. Moreover, they arguably reflect the same underlying idea. This ambiguity (or, perhaps, vacuity) leaves the doctrine open to reinterpretation and facilitates the sort of Chinese diplomatic framing of the doctrine explained in [Section 1](#).

3.1. The general prohibition and its framing

The earliest codification of the doctrine of non-intervention, which is found in the 1933 Montevideo Convention on the Rights and Duties of States (Montevideo Convention), provides that ‘[n]o State has the right to intervene in the internal or external affairs of another.’³⁵ As Arnulf Becker Lorca has argued, in its time, the Montevideo Convention ‘marked a definite departure from classical international law.’³⁶ The codification of the prohibition of intervention ‘did not lay down existing law, but created new law.’³⁷ It rendered wrongful behaviour that had previously been lawful.

The doctrine of non-intervention emerged to protect the Global South’s choice of political, economic, social and cultural systems from the predation of the Global

³³ See, e.g. PRC MFA (n 8).

³⁴ For a general, doctrinal introduction to non-intervention, see M Jamnejad and M Wood, ‘The Principle of Non-Intervention’ (2009) 22 LJIL 345. For an overview of some current issues in non-intervention, see H Moynihan, ‘The Application of International Law to Cyber Attacks: Sovereignty and Non-Intervention’ (Chatham House, 2 December 2019). For a historical introduction, see A Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (CUP 2015). For an excellent, recent account of the constituent parts, see P Urs, ‘Cross Border Cyber Operations Targeting Healthcare’ (2024) 57 VanderbiltJTransIL 1179.

³⁵ Convention on Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19 (Montevideo Convention) art 8. See also Charter of the Organization of American States (adopted 30 April 1948, entered into force 13 December 1951) 119 UNTS 3, arts 19, 20; Pact of the League of Arab States (adopted 22 March 1945, entered into force 10 May 1945) 70 UNTS 237, art 8; Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001) (as amended by Protocol on Amendments to the Constitutive Act of the African Union, adopted on 3 February on 11 July 2003) 2158 UNTS 3, art 4(g)–(h), (j); Charter of the Association of Southeast Asian Nations (adopted 20 November 2007, entered into force 15 December 2008) 2624 UNTS 223, art 2(e)–(f).

³⁶ Becker Lorca (n 34) 305.

³⁷ *ibid* 309. It should, however, be noted that Treaty of Versailles (adopted 28 June 1919, entered into force 10 January 1920) art 15(8) provided that the League shall make no recommendation as to the settlement of disputes ‘which by international law’ are ‘solely within the domestic jurisdiction’ of States.

North.³⁸ Before signing the Montevideo Convention, the US had invoked a right to intervene in Latin American States to 'protect its nationals or national interest, to recover public debt and other pecuniary claims based on injuries suffered by its nationals'.³⁹ By ratifying the Montevideo Convention, it endorsed a more restrictive definition of diplomatic protection.

The prohibition of intervention is now codified in the 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (Declaration on the Inadmissibility of Intervention) and the 1970 Friendly Relations Declaration.⁴⁰ The Declaration on the Inadmissibility of Intervention condemns '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'.⁴¹ It prohibits 'the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind'.⁴² The Friendly Relations Declaration similarly provides that '[n]o 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'.⁴³

ICJ jurisprudence on the nature of the prohibition is limited. In *Nicaragua*, the ICJ held that:

[T]he 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.⁴⁴

Despite the scarcity of legal opinions on the doctrine, distinguished publicists place the doctrine high in the hierarchy of international legal norms. In *Nicaragua*, the Separate Opinion of Judge Sette Camara provided that:

I firmly believe that the non-use of force as well as non-intervention—the latter as a corollary of equality of States and self-determination—are not only cardinal principles

³⁸ Becker Lorca (n 34); PL Hsieh, 'The Discipline of International Law in Republican China and Contemporary Taiwan.' (2015) 14 WashUGlobalStudLRev 87.

³⁹ Becker Lorca (n 34) 309. For instance, in 1854 a US navy vessel bombarded and 'completely destroyed' a town in Nicaragua to 'avenge [an] insult to the American minister [based in the town] and flag and to collect claims' of an American company operating in Nicaragua: RO Hudson, 'The Filibuster Minister: The Career of John Hill Wheeler as United States Minister to Nicaragua, 1854–1856' (1972) 49 North Carolina Historical Review 284.

⁴⁰ UNGA Res 2131 (XX) (21 December 1965) UN Doc A/RES/2131(XX); Friendly Relations Declaration (n 12).

⁴¹ UNGA Res 2131 (XX) (n 40) art 1.

⁴² *ibid* art 2.

⁴³ *ibid* art 1.

⁴⁴ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)* (Merits) [1986] ICJ Rep 14, para 205.

of customary international law but could in addition be recognized as peremptory rules of customary international law which impose obligations on all States.⁴⁵

As noted in Section 1, the doctrine of non-intervention is qualified in two ways. It is only wrongful to intervene in respect of ‘matters in which each State is permitted ... to decide freely’ and only then if the intervention constitutes ‘coercion’.⁴⁶

At first glance, domestic jurisdiction and coercion appear to reflect different ways of thinking about non-intervention. When considering domestic jurisdiction, focus falls on the internal affairs of the State that is subject to intervention—the matters on which it is permitted to decide freely. In other words, this facet of the doctrine reflects sovereign autonomy, the *internal* aspect of sovereignty. In contrast, when considering coercion, the focus falls on the actions of the State that is accused of unlawful intervention. It asks whether the manner in which that State conducted its international relations was lawful. In other words, this facet of the doctrine reflects the *external* aspect of sovereignty. While domestic jurisdiction and coercion might thus be considered as contrasting ways to conceive of intervention, these two prongs of intervention are better seen as manifestations of a single idea: that is, that there exists a baseline in international law for matters on which a State is permitted to decide freely.

3.2. Coercion

Coercion did not appear in the original definition of unlawful intervention in the Montevideo Convention.⁴⁷ Its status in the modern doctrine of non-intervention is a result of the efforts of Western States to limit the extent of the doctrine of non-intervention advocated by the Global South.⁴⁸ These efforts, and the subsequent attempts by Global South States to lower the bar as to what constitutes coercion, have made it an elusive component of the doctrine of non-intervention.

According to Oppenheim, wrongful intervention is ‘forcible or dictatorial or otherwise coercive, in effect depriving the state intervened against of control over the matter in question’.⁴⁹ Yet Oppenheim’s first adjective—‘forcible’—is unhelpful. *Nicaragua* and *Armed Activities* considered intervention to be of a scale and duration sufficient to breach the prohibition on the use of force, directed at the overthrow of a government. In *Armed Activities*, the ICJ made it clear that the doctrine of non-intervention is not limited to violent acts.⁵⁰ If the definition of intervention is centred on force, then it is redundant. Wrongful force will constitute wrongful intervention, but it will be wrongful anyway. Following Oppenheim, the purpose of

⁴⁵ *ibid* 199 (Separate Opinion of Judge Sette Camara).

⁴⁶ *Nicaragua* (n 44) para 205.

⁴⁷ Montevideo Convention (n 35) art 8. The concept of ‘coercion’ comes up in art 11 of the Montevideo Convention, which prohibits the recognition of ‘special advantages ... obtained by force whether this consists in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure’.

⁴⁸ Jamnejad and Wood (n 34) 353.

⁴⁹ L Oppenheim, *International Law* (9th edn, Longman 1992) vol 1, 432.

⁵⁰ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Merits) [2005] ICJ Rep 168.

the doctrine of non-intervention is to capture wrongs that are ‘dictatorial’ or ‘otherwise’ coercive.

Yet it is hard to supply (or even obtain) a clear definition of what ‘coercion’ might mean in the scope of the doctrine.⁵¹ The Tallinn Manual 2.0 on the International Law Applicable to Cyber Warfare (Tallinn Manual) acknowledges that the ‘term “coercion” is not defined in international law.’⁵² (Neither is dictatorial conduct.) The Tallinn Manual suggests its own exploratory definition of coercion: ‘an affirmative act designed to deprive another State of its freedom of choice.’⁵³ It states the ‘key is that the coercive act must have the potential for compelling the target State to engage in an action that it would otherwise not take (or refrain from taking an action it would otherwise take).’⁵⁴ Such acts are distinguished from ‘persuasion, criticism, public diplomacy, propaganda ... and the like.’⁵⁵

Perhaps, then, compulsion—that is, depriving another State of its freedom of choice—is what distinguishes lawful persuasion and unlawful intervention. But this definition of coercion is also unsatisfactory. It is hard to think of examples in which States are completely deprived of freedom of choice, including cases such as *Nicaragua* and *Armed Activities*, where the interventions were forcible. There are few offers that States cannot refuse. Indeed, when a polity is completely deprived of freedom of choice, this suggests that it *lacks* statehood. For example, the fact that Manchukuo could be compelled to act by Japan demonstrated that it was not a sovereign State.⁵⁶

In contrast, the Friendly Relations Declaration and the Charter of the Organization of American States set the bar for what constitutes ‘coercion’ far lower than the Tallinn Manual. They refer to activity designed to obtain ‘advantages of any kind’ from another State.⁵⁷ But, again, coercion cannot mean this because the doctrine of intervention is not supposed to ‘outlaw diplomacy.’⁵⁸ It is supposed to distinguish intervention from persuasion, criticism and public diplomacy. All of these are actions designed to obtain an advantage of some kind. If these options are rejected, it becomes clear that what counts as ‘coercion’ can only be defined with reference to context.

Indeed, the dominant philosophical theory of coercion is a contextual theory. It defines all coercion as threats to change the position of the victim relative to some

⁵¹ Schmitt (n 11) 317.

⁵² *ibid.*

⁵³ *ibid.*

⁵⁴ The reference to compulsion appears to reflect the language in the Separate Opinion of Judge Alvarez in *Corfu Channel (United Kingdom v Albania)* (Merits) [1949] ICJ Rep 244, para 47, who defines wrongful intervention as ‘action taken by a State with a view to compelling another State to do, or to refrain from doing, certain things’.

⁵⁵ Moynihan (n 34) para 86.

⁵⁶ TD Dubois, ‘Inauthentic Sovereignty: Law and Legal Institutions in Manchukuo’ (2010) 69 *The Journal of Asian Studies* 749, 766.

⁵⁷ W Ossoff, ‘Hacking the Domaine Réservé: The Rule of Non-Intervention and Political Interference in Cyberspace’ (2021) 62 *HarvILJ* 295, 309.

⁵⁸ Farer (n 1) 406.

baseline.⁵⁹ As Anna Stelle notes, ‘most post-1970’s writing on this topic assumes the fundamental premise that proposing to make another party worse off with regard to some baseline simply is what it is, or at least part of what it is, to commit the wrong of coercion.’⁶⁰ By this argument, what counts as coercion can only be identified if the relevant baseline for what counts as a threat is identified first.

The baseline theory means that what counts as coercion depends on context: on what the complainant expected, or what they were entitled to expect. For example, in his formative article, Robert Nozick raised the example of the slave who is told that they will not receive their regular beating if they comply.⁶¹ The baseline here is “being beaten”. In turn, some people might think that they are being coerced into coming into work every morning. The baseline here is “staying in bed”.

On the same basis, international lawyers might think that an invitation to accept a loan, or to join a free trade zone or non-aggression pact is coercive, provided that the offer is good enough to bend the State’s will.⁶² Yet unless the type of freedom a person, or a State, deserves in a given situation is specified, it is not possible to say whether they are being coerced. This ‘normal and expected course of events’ functions as a ‘baseline in assessing whether something is a threat’.⁶³

Some writers think that the very idea of coercion is circular: wrongful forms of intervention are by definition ‘coercive’, whereas the ‘coerciveness’ of an act is determined by its wrongfulness.⁶⁴ This is half-right—coercion is a placeholder for another idea. But that idea is not ‘wrongfulness’. It is the sort of freedom which a State ought to expect. What counts as coercion cannot be defined without first defining the freedom that such coercion is supposed to constrain. That is a contextual question and, as will be seen, the concept of ‘domestic jurisdiction’ is supposed to answer that question.

The definition of intervention set out in [Section 3.1](#) supposedly combines a broad prohibition with two limiting devices—coercion and domestic jurisdiction. There is now reason to suspect that these two devices might, in fact, be one single idea. The reason is, when deciding whether State action is coercive, a baseline that defines the freedom that the State ought to possess must first be established—the matters on which it is permitted to decide freely. The thing that enables the description of electoral interference, or public diplomacy, as unlawful intervention in a State’s internal affairs, is a satisfactory account of what constitutes ‘internal affairs’.

⁵⁹ The central text is R Nozick, ‘Coercion’ in S Morgenbesser, P Suppes and M White (eds), *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel* (St Martin’s Press 1969) 440, 441. For alternatives to this position, see J McGregor, ‘Bargaining Advantages and Market Coercion’ (1988) 14 *Philosophy Research Archives* 23; M Garnett, ‘Coercion: The Wrong and the Bad’ (2018) 128 *Ethics* 545 cited in A Stelle, ‘The Problem of Coercion’ (UCL Laws Research Paper No 1/2024, 2024).

⁶⁰ Stelle (n 59).

⁶¹ Nozick (n 59).

⁶² Note the fact pattern of *LDT v Ukraine* [2023] UKSC 11, in which Ukraine pleaded duress at common law and which engages all three examples.

⁶³ Nozick (n 59) 448 quoted by Stelle (n 59). The definition leaves open the possibility that States can wrongfully intervene by offers as well as threats, if the offer ‘compels’ the State to act in a particular way.

⁶⁴ Ohlin (n 10) 1590.

3.3. Domestic jurisdiction

As discussed in [Section 1](#), intervention is coercion in respect of matters ‘in which each State is permitted, by the principle of State sovereignty, to decide freely’.⁶⁵ What counts as intervention may itself depend on what those matters are.

There is a strand of scholarship and practice in non-intervention which seeks to define what counts as the ‘internal affairs of the State’—the area that is ‘not in principle, regulated by international law’.⁶⁶ This idea makes the Chinese statements in [Section 1](#) look less eccentric than they might at first appear. The argument is that if intervention protects the choice of a political system, and if criticism of the State’s human rights record is a challenge to the political system, then the criticism might be an unlawful intervention. This argument requires an unworkably broad definition of domestic jurisdiction. It would ‘outlaw diplomacy’, as Tom Farer observed.⁶⁷ The trouble, however, is that international law has not developed a workable legal account of domestic jurisdiction.

In certain subfields of international law, the law outlines the respective jurisdiction of the State and of the international community. For example, in international criminal law the principle of conferral expressed in Articles 13–16 of the Rome Statute of the International Criminal Court does this work, as does the Margin of Appreciation doctrine in international human rights law.⁶⁸ But there is no general account of the area regulated by international law. In this respect, international law differs from other legal orders, including transnational legal orders, which have developed an account of the space occupied by their system. For example, in European Union (EU) law, the principle of conferral and the principle of subsidiarity explain (imperfectly) the scope of the legal power of the EU. The domestic constitutional laws of federal or confederal legal orders employ similar ideas for a similar purpose.⁶⁹ However, international law has no general principle of conferral. Scholars including Rosalyn Higgins⁷⁰ and Eirik Bjorge,⁷¹ have suggested that this is a direction that public international law might have taken at one point in its development but, ultimately, did not.

Paolo Carozza goes further, arguing that it might not be possible for international law, in its current state, to develop such a principle. He argues that the principle of subsidiarity demands a degree of coherence in the structure of both the State and the international community.⁷² The legal order of the EU, for example, possesses such a structure, by which it is possible to determine which issues are supposed to fall within

⁶⁵ *Nicaragua* (n 44).

⁶⁶ *Nationality Decrees Issued in Tunis and Morocco (French Zone) on November 8th, 1921 (United Kingdom v France)* (Advisory Opinion) PCIJ Rep Series B No 4 quoted in Moynihan (n 34) para 105.

⁶⁷ Farer (n 1) 406.

⁶⁸ Yuval Shany suggests that such a doctrine could be developed in general public international law: Y Shany, ‘Toward a General Margin of Appreciation Doctrine in International Law?’ (2006) 16 EJIL 907, 939.

⁶⁹ A Follesdal, ‘The Principle of Subsidiarity as a Constitutional Principle in International Law’ (2013) 2 Global Constitutionalism 61.

⁷⁰ R Higgins, ‘Derogations under Human Rights Treaties’ (1976–77) 48 BYIL 281, 296–97.

⁷¹ E Bjorge, ‘Been There, Done That: The Margin of Appreciation and International Law’ (2015) 4 CIJCL 181.

⁷² It is noted that there is a difference between subsidiarity and conferral as a technical matter of European Union law. The framing is not important for this purpose.

the competence of the EU and which issues are supposed to fall within the competence of the Member States. However, for Carozza, the international legal system ‘simply does not correspond to the underlying vision of embedded relationships among norms and authorities that has provided the default framework for the historical development of the idea of subsidiarity’.⁷³ Perhaps a future configuration of international law can supply a doctrine of subsidiarity and/or conferral. Nonetheless, while some doctrines tilt in this direction, international law does not presently include such doctrines.

The obvious candidate for a doctrine that might fulfil this function is sovereignty. As was explained in [Section 1](#), the non-intervention principle relates to matters that are of an inherently sovereign nature. It is possible to imagine sovereignty as defining a sphere of State action that sits independently of the laws and the actions of other States. In the *Island of Palmas Case*, Arbitrator Max Huber said that sovereignty ‘in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State’.⁷⁴ This conception of sovereignty will prove to be important when addressing Chinese State practice but, crucially, it did not survive contact with the *Lotus* principle in mainstream international law. There are areas that international law does not yet regulate, but there are no areas that are, in general, insulated from the competing sovereignty of other States. A contemporary approach advocates ‘the gradual substitution of an international law of cooperation for the traditional international law of co-existence’.⁷⁵ Perhaps, with this in mind, in *Armed Activities* the ICJ approached non-intervention as an international wrong that is separate to the breach of ‘sovereignty’ and ‘territorial integrity’.⁷⁶ Domestic jurisdiction may therefore refer to ‘areas not [yet] regulated by international norms’.⁷⁷

There is an ongoing debate as to whether sovereignty is a ‘primary rule’ of international law, which is to say, a legal rule that can be breached and whose breach justifies countermeasures. The prohibition of the use of force and the prohibition of intervention are unambiguously primary rules. Some scholars and States believe that activity that does not meet the threshold for intervention may be a separate breach of a primary rule of sovereignty. As scholars such as William Ossoff and Mike Schmitt note, American and British officials in particular hold a sceptical view about the status of sovereignty as a primary rule.⁷⁸ In contrast, in 2017, Chinese practice

⁷³ PG Carozza, ‘The Problematic Applicability of Subsidiarity to International Law and Institutions’ (2016) 61 *AMJ* Juris 57.

⁷⁴ *Island of Palmas Case (the Netherlands v United States)* (1928) 2 *RIAA* 829.

⁷⁵ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 2, para 13 (Declaration of President Bedjaoui).

⁷⁶ *Armed Activities* (n 50) 165. In both *Nicaragua* (n 44) and *Armed Activities* (n 50), the Court declined to pronounce on whether conduct falling short of the use of force was in breach of the prohibition.

⁷⁷ See K Ziolkowski, ‘Peacetime Cyber Espionage: New Tendencies in Public International Law’ in K Ziolkowski (ed), *Peacetime Regime for State Activities in Cyberspace: International Law, International Relations and Diplomacy* (North Atlantic Treaty Organization (NATO) Cooperative Cyber Defence Centre of Excellence (CCDCE), 2019) 425, 434; TD Gill, ‘Non-Intervention in the Cyber Context’ in Ziolkowski *ibid* 217.

⁷⁸ See GP Corn and R Taylor, ‘Sovereignty in the Age of Cyber’ (2017) 111 *AJIL*: Unbound 210; Ossoff (n 57) 298; J Wright, UK Attorney-General, ‘Cyber and International Law in the 21st Century’ (Speech delivered

provided that the principle of sovereignty enshrined in the UN Charter was ‘a basic norm in contemporary international relations’.⁷⁹ Because of this norm, ‘no country should pursue cyber hegemony, interfere in other countries’ internal affairs, or engage in, condone or support cyber activities that undermine other countries’ national security’.⁸⁰

On one account, sovereignty is an organising principle which shapes and justifies primary rules such as non-intervention; on another account, it is a catch-all which applies when those rules run out.⁸¹ A full account of this debate is beyond the scope of this article, but regardless of which position is taken, as a vague, multifaceted and contested concept, sovereignty is unlikely to establish the sort of baseline which can divide coercive from non-coercive behaviour, and which ultimately can distinguish lawful State action from unlawful intervention.⁸² Moynihan concludes that the idea of a *domaine réservé* ‘is not particularly helpful’, in part, on account of the imperfect overlap of ideas, including domestic jurisdiction, inherently sovereign functions and internal affairs. She says that ‘a better understanding’ of sovereign function in this context begins with State functions, including ‘a state’s choice of political, economic, social and cultural system, as well as the formulation of foreign policy’.⁸³

There is another candidate principle which might define the sort of freedom that a State ought to expect. The final communiqué of the 1955 Bandung Conference called for ‘the abstention from intervention or interference in the internal affairs of another country’. The principle of self-determination protected the right of all nations ‘freely to choose their own political and economic systems and their own way of life’.⁸⁴ Louise Doswald-Beck has argued that ‘the principle of non-intervention in internal affairs is, in effect, an attempt to limit outside neo-colonial attempts to influence events in other countries for the interests of the intervening country’.⁸⁵ Pursuant to Common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, States are entitled to ‘freely determine their political status’, ‘freely pursue their economic, social and cultural development’ and ‘freely dispose of their natural wealth and resources’. The quotation from *Nicaragua* in Section 3.1 echoes this approach.

Self-determination can be frustrated when States interfere with the processes of self-governance.⁸⁶ The doctrine of self-determination places ‘the People’ (rather than

at Chatham House, 23 May 2018) <<https://www.gov.uk/government/speeches/cyber-and-international-law-in-the-21st-century>>.

⁷⁹ PRC MFA, ‘International Strategy for Co-operation in Cyberspace’ (1 March 2017) <http://www.xinhuanet.com/english/china/2017-03/01/c_136094371.htm>.

⁸⁰ *ibid.*

⁸¹ Corn and Taylor (n 78) 210; Ossoff (n 57) 298.

⁸² For a careful and persuasive position in that debate, see Schmitt (n 11).

⁸³ Moynihan (n 34) para 107.

⁸⁴ Final Communiqué of the Asian-African Conference of Bandung (24 April 1955).

⁸⁵ L Doswald-Beck, ‘The Legal Validity of Military Intervention by Invitation of the Government’ (1985) 56 BYIL 189.

⁸⁶ Ohlin (n 10) 1594–99.

the State) in the foreground and cherishes processes of political decision-making and the disposal of natural resources.⁸⁷ If the baseline of freedom and national choice is framed in terms of a national or political system,⁸⁸ then it is easier to defend the sorts of Chinese statements set out in Section 1, which oppose diplomatic criticism of China's human rights record. Such criticism may be seen as targeting the political system, which a People has (supposedly) chosen for itself but, again, this leads back towards a concept of intervention that forbids diplomacy. This objection will be revisited in Section 5.

The doctrine of non-intervention comprises a broad, vague prohibition, notionally restricted by two qualifications: coercion and domestic jurisdiction. The law in this area—whether couched in terms of domestic jurisdiction, self-determination or sovereignty—is highly contextual. In municipal law, boundary problems about the scope of domestic jurisdiction can be resolved through doctrines such as federalism, conferral and subsidiarity. In international law, such problems are fundamental, substantially unresolved and continuously contested. Moreover, even the use of force leaves a State with a 'choice of means'.⁸⁹

The real question is not 'whether' but 'to what extent' the State was compelled. This question can only be answered with reference to the appropriate level of freedom of the State in the given situation and this leads back to domestic jurisdiction. This makes the principle of non-intervention highly malleable and hence amenable to various uses.

Chinese critiques of foreign interference are premised on a broad understanding of what sort of affairs are considered 'internal'. In the 1990s, China referred to the genocide in Rwanda and ethnic cleansing in Srebrenica as 'domestic affairs'.⁹⁰ The Chinese statements set out in Section 1 fail to explain what makes alleged foreign intervention coercive.⁹¹ Statements such as these might still be seen as expressions of a passive foreign policy stance without substantial legal relevance. The next section argues that these statements should not be seen in this way.

4. Chinese uses of the principle of non-intervention

This section explains how China's historical experience has shaped its approach to both coercion and domestic jurisdiction. It then maps recent Chinese State practice on non-intervention, and describes how it connects to both Chinese foreign policy and to debates about that policy. Finally, this section considers how the Chinese Government's approach has been received recently by Chinese legal scholars.

⁸⁷ See *East Timor (Portugal v Australia)* (Jurisdiction) [1995] ICJ Rep 90.

⁸⁸ The importance of these ideas—*guoti* 国体和 *zhengti* 政体—in the Chinese literature on sovereignty is noted. See the references in RM Mitchell, *Recentring the World: China and the Transformation of International Law* (CUP 2022).

⁸⁹ *The Caroline Case* (1837) 29 Brit and For St Papers.

⁹⁰ CJ Fung, 'Separating Intervention from Regime Change: China's Diplomatic Innovations at the UN Security Council Regarding the Syria Crisis' (2018) 235 *The China Quarterly* 700.

⁹¹ Friendly Relations Declaration (n 12) art 1.

4.1. Context

Chinese uses of non-intervention reflect the PRC's long-standing opposition to colonial interference, which predates the establishment of the PRC, as well as the more recent position of the NAM.

China's history, and current domestic and international circumstances, give it a distinctive view of sovereignty and self-determination. Its classically Westphalian approach to sovereignty, the first element of the doctrine of non-intervention, focuses on the prescriptive jurisdiction of the State,⁹² that is, its power 'to make its law applicable to the activities, relations, or status of persons, or the interests of persons in things, whether by legislation, by executive act or order, by administrative rule or regulation, or by determination of a court.'⁹³

One reason why China favours a classical approach to sovereignty is because its prescriptive jurisdiction was usurped by Western colonial powers starting in the middle of the nineteenth century, a period framed by the Chinese Government as the 'hundred years of humiliation'.⁹⁴ Chinese ports were forcibly opened to foreign trade by the 1842 Treaty of Nanjing, and the country ultimately lost sovereignty over parts of its territory under the 1860 Convention of Peking. Its jurisdiction was penetrated by foreign extraterritorial 'consular' jurisdiction, and foreign States and their corporations dictated a wide variety of policy choices, from railway and telegraph systems to the trade in opium. International law was one key mechanism for this foreign domination. As Ryan Mitchell argues, the 'newly imposed structures of international law ... came to China in 1860 as a package and in the form of a collective Western project'.⁹⁵ China continues to describe the conventions that led to foreign penetration of its territory and usurpation of its sovereignty as 'unequal treaties': treaties which are unlawful because they are unequal. If China's approach to international law continues to pay careful attention to the balance of power between the parties, then that is the product of experience.

In response to the hollowing out of its domestic jurisdiction, China articulated an original conception of sovereignty, a sovereignty which could be segmented into its component parts. In its attempt to challenge extraterritorial control of the various concessions, the Government of the Republic of China coined a new vocabulary of sovereignty, including 'road sovereignty' (*luquan*, 路权) and 'police sovereignty' (*jingquan*, 警权).⁹⁶ A Chinese nationalist writer in 1930 protested against the involvement of the foreign-controlled Shanghai Municipal Council in the Shanghai school curriculum as a violation of 'China's sovereign educational rights'.⁹⁷ The Chinese

⁹² S Krasner, *Sovereignty: Organized Hypocrisy* (Princeton University Press 1999) 11.

⁹³ *Restatement of the Law (Fourth): Foreign Relations Law of the United States* (2018) section 401.

⁹⁴ C Cai, *The Rise of China and International law: Taking Chinese Exceptionalism Seriously* (OUP 2019) 41.

⁹⁵ Mitchell, (n 88) 33.

⁹⁶ FE Wakeman, *Policing Shanghai, 1927–1937* (University of California Press 1995). The authors are grateful to Pär Cassel for this reference.

⁹⁷ 'Chinese Writer Sees Danger in Simple Request' *The Shanghai Times* (6 November 1930). Again, the authors are grateful to Pär Cassel for this reference.

Communist Party (CCP, Party), in turn, came to power with an agenda to abolish concessions to Western powers and to eliminate foreign influence in China.⁹⁸

In the Chinese literature, domestic jurisdiction appears to follow logically from a conception of sovereignty. Since all States are 'sovereign', 'sovereignty' is an inalienable attribute of Statehood.⁹⁹ 'Sovereignty', in turn, means independence from external influence within a certain sphere.¹⁰⁰ For example, defining the doctrine of non-intervention, the Friendly Relations Declaration refers to the 'subordination of the exercise of ... sovereign rights'.¹⁰¹ As a consequence, intervention (and any interference) into the domestic affairs of all States must be categorically prohibited and international law must specify the content of those affairs.¹⁰²

This is a self-consciously antiquated conception of sovereignty, both in China and in general international law. It is argued in Section 3.3 that it does not survive contact with the *Lotus* principle. In turn, Mitchell traces the pre-twentieth century development of the concept of *guoti* (国体)—'State form' or 'Stateliness'—as a key dimension of China's pre-twentieth century theory of sovereignty.¹⁰³ An alternative, and more contemporary translation of *guoti* is 'national system'. A conception of sovereignty built on the distinctive features of a national political system¹⁰⁴ underpins an approach to intervention based on the national choice of political, economic or cultural system.

While China no longer needs to assert 'road sovereignty', the same approach to domestic jurisdiction still shapes its approach to both sovereignty and intervention. In 1994, Wang Huning, the chief ideologist of the CCP, declared the importance of 'cultural sovereignty' as a bulwark against Western interference.¹⁰⁵ In turn, China's first internet white paper proclaimed China's 'internet sovereignty' (*wangluo zhuquan*, 网络主权).¹⁰⁶ That same year, when the Norwegian Nobel Committee awarded the Nobel Peace Prize to Liu Xiaobo, the Chinese Government protested against this as

⁹⁸ Z He (何志鹏), 'The Contribution of the Chinese Communist Party to International Law and Governance (中国共产党的国际法治贡献)' (2021) 3 *Studies in Law and Business* (法商研究) 12.

⁹⁹ This argument has a strong influence on the Chinese literature. See, e.g. X Cheng (程晓霞), 'Interference and "International Intervention": Evolution and Standstill of International Law (干涉与"国际干预"国际法的变与不变)' (2002) 5 *The Jurist* (法学家) 61; B Li (李斌), 'The Impact of "the Responsibility to Protect" on "the Principle of Non-interference" in Domestic Affairs ("保护的责任"对"不干涉内政原则"的影响)' (2007) 3 *Science of Law: Journal of Northwest University of Political Science and Law* (法律科学(西北政法大学学报)) 133.

¹⁰⁰ See, e.g. Cheng (n 99) 60–61.

¹⁰¹ Friendly Relations Declaration (n 12) art 1.

¹⁰² See, e.g. Cheng (n 99) 60–61.

¹⁰³ Mitchell (n 88).

¹⁰⁴ In the modern Chinese political discourse, '*guoti* (国体)' is often used in conjunction with '*zhengti* (政体)' or 'political system': see Mitchell (n 88).

¹⁰⁵ H Wang (王沪宁), 'Cultural Expansion and Cultural Sovereignty: A Challenge to the Concept of Sovereignty (文化扩张与文化主权: 对主权观念的挑战)' (1994) 3 *Fudan Journal of Humanities and Social Sciences* (复旦学报(社会科学版)) 10.

¹⁰⁶ PRC State Council Information Office (SCIO), 'The Internet in China' (White Paper, June 2010) <http://us.china-embassy.gov.cn/eng/zt/bps/201206/t20120621_4911374.htm>.

an act of interference in China's 'judicial sovereignty' (*sifa zhuquan*, 司法主权).¹⁰⁷ As Judge Xue Hanqin has written, 'China invokes sovereignty often as a defence against external interference in its domestic affairs'.¹⁰⁸

The second element of the doctrine of non-intervention relates to unwarranted influence over other States and, in particular, to the persistence of unlawful colonial patterns of control. As noted in Section 3.3, coercion can be described as a form of interference which is incompatible with the self-determination of peoples to determine their political status and freely pursue their economic, social and cultural development.

Chinese jurists had a distinctive voice in this debate from the very beginning. As Ryan Mitchell notes, China's representatives at the Versailles Peace Conference sought to limit the scope of 'regional understandings' in the Covenant of the League of Nations, such as the American Monroe Doctrine (the American foreign policy stance declaring the Americas off-limits for European powers), which could have justified Japan's interventions into China.¹⁰⁹ Arnulf Becker Lorca similarly highlights the role played by Wu Chaoshu, China's delegate to the 1930 Hague Conference, in shaping the nascent doctrine of non-intervention in light of the extraterritorial reach of colonial powers in contemporary China.¹¹⁰

The newly established PRC enshrined its conception of sovereignty through the so-called Five Principles in 1953. The Five Principles described the ideals of Chinese foreign policy as 'mutual respect for sovereignty and territorial integrity', 'mutual non-aggression', 'non-interference in each other's internal affairs', 'equality and mutual benefit' and 'peaceful coexistence'.¹¹¹ The Panchsheel Treaty, signed in 1954, reaffirmed the Five Principles between the PRC and India.¹¹² Premier Zhou Enlai took the Five Principles to the international stage at the Bandung Conference in 1955.

The principle of non-intervention served various purposes for countries in the NAM. As Antony Anghie has pointed out, some participants in the Bandung Conference endorsed the principle of non-intervention not only to oppose the colonialism and imperialism of Western States, but also to resist 'communist colonialism' and Chinese overseas influence.¹¹³ In any event, the Five Principles have shaped the modern doctrine of self-determination and, indirectly (through its Chinese uses), the doctrine of non-intervention. They continue to inform the language of

¹⁰⁷ 'Awarding the Nobel Peace Prize to Liu Xiaobo Interferes with China's Judicial Sovereignty and Violates International Law' *Xinhua News Agency* (7 December 2010) <<http://web.archive.org/web/20220615050137/https://www.fmprc.gov.cn/ce/cemy/chn/zgxw/t778703.htm>>. See generally J Hellström, 'Sovereignty' in *Chinese Media Project Dictionary* (24 May 2021) <https://chinamediaproject.org/the_ccp_dictionary/sovereignty/>.

¹⁰⁸ H Xue, *Chinese Contemporary Perspectives on International Law* (Brill 2012) 104.

¹⁰⁹ Mitchell (n 88) 130–31.

¹¹⁰ Becker Lorca (n 34) 321ff; Hsieh (n 38).

¹¹¹ He (n 98) 12–13.

¹¹² China Society of Private International Law (中国国际私法学会), 'Concept of International Rule of Law in Xi Jinping Thought on the Rule of Law (习近平法治思想中的国际法治观)' (2021) 1 *Wuhan University International Law Review* (武大国际法评论) 4.

¹¹³ A Anghie, 'Bandung and the Origins of Third World Sovereignty' in L Eslava, M Fakhri and V Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (CUP 2017) 535, 542–43, 549.

Chinese foreign policy. According to President Xi, the Five Principles should be the basic principles for building a community with a shared future for mankind.¹¹⁴

4.2. State practice and *opinio juris*¹¹⁵

Chinese statements about the content of the doctrine of non-intervention can be found in the highest constitutive documents of the PRC. The Preamble to the 1982 PRC Constitution (which, with amendments, is still in force) declares that China:

consistently opposes imperialism, hegemonism and colonialism, works to strengthen unity with the people of other countries, supports the oppressed nations and the developing countries in their just struggle to win and preserve national independence and develop their national economies, and strives to safeguard world peace and promote the cause of human progress.¹¹⁶

As mentioned in Section 4.1, China's foreign policy doctrine adheres to the Five Principles, which assert a policy of non-intervention.¹¹⁷ Recent Chinese Government white papers on foreign policy also reference the concept of non-intervention, and the Chinese leadership continues to stress China's commitment to refraining from intervening in the domestic affairs of foreign countries.¹¹⁸

Examples of anti-interventionist speech can be found in specific areas of Chinese foreign policy. For instance, the English language text of the Declaration on the Promotion of International Law 'fully support[s] the principle of non-intervention in the internal or external affairs of States, and condemn[s] as a violation of this principle any intervention by States in the internal affairs of other States with the aim of forging change of legitimate governments'.¹¹⁹ In case this is read as delimiting the principle of non-intervention to attempts to overthrow governments, the same paragraph condemns 'extraterritorial application of national law by States not in conformity with international law as another example of violation of the principle of non-intervention in the internal affairs of States'.¹²⁰ The Joint Statement between the Russian Federation and the People's Republic of China of 8 February 2022 restates Russia and China's common commitment to 'counter interference by outside forces

¹¹⁴ China Society of Private International Law (n 112) 6.

¹¹⁵ The nature of State practice is contestible; State practice in the form of restraint is difficult to demonstrate and the line between practice and *opinio iuris* can be soft. The formation of customary law is debated here. Accordingly, it is recognised that some readers will approach these statements as practice and some as *opinio iuris*.

¹¹⁶ Constitution of the People's Republic of China (1982) preamble.

¹¹⁷ See PRC MFA, *China's Initiation of the Five Principles of Peaceful Coexistence* <https://www.mfa.gov.cn/eng/zy/wjls/3604_665547/202405/t20240531_11367542.html>.

¹¹⁸ See, e.g. PRC SCIO, *China's Peaceful Development* <http://english.www.gov.cn/archive/white_paper/2014/09/09/content_281474986284646.htm>; PRC SCIO, *China and the World in the New Era* <http://english.scio.gov.cn/node_8014488.html>; PRC SCIO, *China's International Development Cooperation in the New Era 2021* <https://english.www.gov.cn/archive/whitepaper/202101/10/content_WS5ffa6bbbc6d0f72576943922.html>.

¹¹⁹ Declaration on the Promotion of International Law (n 17) para 4.

¹²⁰ *ibid.*

in the internal affairs of sovereign countries under any pretext.¹²¹ Such speech can be seen as carefully measured attempts to conform Chinese State practice to the principle of non-intervention.

Similarly, China's submission to the UN's Open-Ended Working Group on Developments in the Field of Information and Telecommunications in the Context of International Security in 2019 is based on the principle of non-intervention, which China described as the 'cornerstone of a just and equitable international order in cyberspace'.¹²² This statement defines intervention broadly as actions which 'undermine [the] political, economic and social stability' of other States.¹²³ As William Ossoff observes in a comparative survey of State practice in this field, China 'views internet governance as an exclusively sovereign matter in which other States cannot intervene'.¹²⁴

The Chinese Government purports to adhere to 'The Five Nos' (*wu bu*, 五不) in its engagement with African States.¹²⁵ The Five Nos stand for self-imposed restrictions on Chinese conduct in Africa: 'no interference with African countries' exploration of development paths ... ; no interference in Africa's internal affairs; no impositions of one's will on others; no attachment of political conditions to aid to Africa; and no political self-interest in investments and financing in Africa'.¹²⁶ The Chinese Government and international lawyers have generally refrained from criticising likeminded governments for human rights violations. Instead, China has accused Western governments of using human rights as a pretext to intervene in foreign States for selfish motives.¹²⁷ The Chinese Government has also objected to economic sanctions and military interventions, especially outside the Chapter VII mechanism of the UN Charter.¹²⁸

It is striking that China does not typically use the doctrine of non-intervention—or call upon other States to use it—when complaining about certain types of interference in its internal affairs. In August 2019, the US Department of the Treasury designated China's sovereign monetary policy as currency manipulation. The People's Bank of China called this 'a capricious act of unilateralism and protectionism' and claimed that it would 'severely undermine international rules and have material impacts on the

¹²¹ Russian Federation and PRC, 'Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development' (4 February 2022) <<http://en.kremlin.ru/supplement/5770>>.

¹²² PRC, 'China's Submissions to the Open-ended Working Group on Developments in the Field of Information and Telecommunications in the Context of International Security' (2021) 6 <<http://hdl.handle.net/1885/282371>>.

¹²³ *ibid* 3.

¹²⁴ See Ossoff (n 57) 316.

¹²⁵ China Society of Private International Law (n 112) 17–18. See also PRC SCIO, *China and Africa in the New Era: A Partnership of Equals* (SCIO, 2021) (referring to 'five lines that China will not cross').

¹²⁶ China Society of Private International Law (n 112) 18.

¹²⁷ Q Zhu (朱奇武), 'International Protection of Human Rights and Principle of Non-intervention in Domestic Matters (人权的国际保护与不干涉内政原则)' (1992) 1 *Law Review* (法学评论) 1, 4–5.

¹²⁸ Li (n 99) 137; S Shao (邵沙平) and J Zhao (赵劲松), 'The Influence of Iraq War on the International Rule of Law (伊拉克战争对国际法治的冲击和影响)' (2003) 3 *Legal Forum* (法学论坛) 5, 8.

global economy and finance.¹²⁹ Nevertheless, China did not describe the designation as an interference in China's domestic affairs or as a serious breach of international law. In October 2022, the US Department of Commerce announced regulations which restricted the export to China of chips made using American tools. China brought a dispute before the World Trade Organisation (WTO), accompanied by statements by the Ministry of Commerce and the Chinese Semiconductor Association.¹³⁰ China made no reference to intervention in this context.

The Chinese Government does not frame foreign influence that occurs through the WTO regime as unlawful intervention, whereas it does object to essentially similar interventions through human rights treaty bodies.¹³¹ For instance, China has accepted decisions regarding its censorship regime under the WTO Dispute Settlement Understanding (DSU), while rejecting recommendations regarding censorship reached through the Universal Periodic Review (UPR) of China's human rights treaty obligations.¹³² The legal effects of decisions reached through the DSU and the UPR are different: the former are binding, the latter are not.¹³³ It also matters that these WTO disputes and UPR recommendations relate to different aspects of the Chinese censorship regime.¹³⁴ The point remains that the Chinese Government accepts some types of interference by some actors, but not by others.

More recent legal developments extend the language of intervention to a broader range of essentially foreign interests. For example, in 2023 the Standing Committee of the National People's Congress adopted the PRC Foreign Relations Law, which sets up a basic legal framework for enacting extraterritorial sanctions. Article 37 of the PRC Foreign Relations Law authorises the Chinese State to take necessary measures in order to protect the security and legitimate rights and interests of Chinese citizens and organisations overseas.¹³⁵

Chinese protests against interference typically relate to one aspect of China's domestic jurisdiction in particular, which the Chinese Government calls its 'core interests'. When the concept of Chinese 'core interests' was first adopted in the early

¹²⁹ Peoples' Bank of China, 'Statement of the People's Bank of China on US Treasury Department Designating China as a Currency Manipulator' (6 August 2019) <<http://www.pbc.gov.cn/en/3688110/3688172/4048311/3870480/index.html>>.

¹³⁰ Delegation of China to the World Trade Organization (WTO), 'United States—Measures on Certain Semiconductor and Other Products, and Related Services and Technologies: Request for Consultations by China' (15 December 2022) Communication No WT/DS615/1, G/L/1471, S/L/438, G/TRIMS/D/46, IP/D/44.

¹³¹ G Chen, 'Piercing the Veil of State Sovereignty: How China's Censorship Regime into Fragmented International Law Can Lead to a Butterfly Effect' (2014) 3 *GlobCon* 31, 45–46.

¹³² *ibid* 50–51. For China's compliance with the WTO decisions regarding its censorship regime, see JY Qin, 'Pushing the Limits of Global Governance: Trading Rights, Censorship and WTO Jurisprudence: A Commentary on the China-Publications Case' (2011) 10 *ChineseJIL* 272.

¹³³ For the legal effect of WTO Dispute Settlement Understanding decisions, see WTO, 'Understanding on Rules and Procedures Governing the Settlement of Disputes' (adopted 1994) art 3; for the legal effect of the Universal Periodic Review process, see UNGA Res 60/251 (3 April 2006) UN Doc A/RES/60/251, para 5(e).

¹³⁴ Qin (n 132) 279.

¹³⁵ PRC, 'Foreign Relations Law of the People's Republic of China (中华人民共和国对外关系法)' (28 June 2023) <https://www.gov.cn/yaowen/liebiao/202306/content_6888929.htm>.

2000s, it referred exclusively to Taiwan.¹³⁶ Subsequently, the scope of the Chinese 'core interests' has been broadened to include other territorial issues, such as China's sovereignty over Tibet, Xinjiang and the Diaoyu/Senkaku Islands.¹³⁷ The Chinese Government opposes involvement in these matters as interference in China's domestic affairs.¹³⁸

Nevertheless, unless China's view on its territory, including its maritime territory, is widely shared, it should be clear that not all core interests are domestic affairs. It also seems that Chinese uses of intervention and interference are not always consistent. When the Arbitral Tribunal convened under Annex VII of the UN Convention on the Law of the Sea (UNCLOS) ruled against China in July 2016, Foreign Minister Wang Yi called the ruling a number of things, including a 'bad-faith dramatization'.¹³⁹ He did not describe it as an interference in China's domestic affairs.

China has been accused of interfering in the domestic affairs of other States. Its State practice includes examples of the behaviour which it identifies as interference. For example, 12 years ago, after the Chinese author Liu Xiaobo was awarded the Nobel Peace Prize, China imposed various requirements on Norwegian exports, including new sanitation and veterinary controls for Norwegian salmon.¹⁴⁰ The share of Norwegian salmon imports in the Chinese market fell from over 80 per cent to 25 per cent.¹⁴¹ As noted in Section 4.1, the Chinese Government objected to the award as unlawful foreign intervention. (Perhaps these actions might therefore be seen as legal countermeasures.) At the same time, China's reaction could be seen as interference in the domestic affairs of Norway. More recently, China excised Lithuania from the General Administration of Customs list of States, a move which prevented goods shipped or transhipped from Lithuania from being landed at Chinese ports, designed to influence Lithuanian policy.

China's diplomacy has also been described as 'coercive' in Southeast Asia where, according to Bonnie Glazer, 'China has directly used economic relations to compel target countries to alter their policies'.¹⁴² In 2015, the Chinese Government deployed warships to evacuate hundreds of Chinese and foreign nationals from the Yemen

¹³⁶ MD Swaine, 'China's Assertive Behavior—Part One: On "Core Interests"' (*Carnegie Endowment*, 15 November 2010) 3 <<https://carnegieendowment.org/posts/2010/11/chinas-assertive-behaviorpart-one-on-core-interests>>?

¹³⁷ *ibid* 7; J Zeng, Y Xiao and S Breslin, 'Securing China's Core Interests: The State of the Debate in China' (2015) 91 *International Affairs* 245, 264.

¹³⁸ Zeng, Xiao and Breslin (n 137) 262.

¹³⁹ PRC MFA, 'Remarks by Chinese Foreign Minister Wang Yi on the Award of the So-Called Arbitral Tribunal in the South China Sea Arbitration' (12 July 2016) <https://www.mfa.gov.cn/eng/wjb/wjbz/jh/202405/t20240527_11312137.html>.

¹⁴⁰ XW Chen and RJ Garcia, 'Economic Sanctions and Trade Diplomacy: Sanction-Busting Strategies, Market Distortion and Efficacy of China's Restrictions on Norwegian Salmon Imports' (2016) 30 *China Information* 29.

¹⁴¹ *ibid* 31.

¹⁴² BS Glazer, 'China's Coercive Economic Diplomacy: A New and Worrying Trend' (*Center for Strategic and International Studies*, 6 August 2012) <<https://www.csis.org/analysis/chinas-coercive-economic-diplomacy-new-and-worrying-trend>>.

civil war.¹⁴³ The Chinese Government described this action as a humanitarian relief mission, while noting that the intervention had taken place with the consent of the Yemeni Government.¹⁴⁴ The Chinese Government also objected to the formation of the Yemeni Government of the Houthi rebels, which some Chinese legal scholars regarded as a departure from its traditional anti-interventionist posture.¹⁴⁵ Furthermore, the Chinese Government has not always opposed humanitarian intervention through the UN Security Council (UNSC). Its support has, however, been conditional on the consent of the parties to the conflict, as was the case in Darfur.¹⁴⁶ China notably abstained from a UNSC vote authorising the use of military measures against the Libyan Government in 2011.¹⁴⁷

The Chinese Government's positions on the Ukrainian conflict present another qualification to its policy on non-intervention. The Chinese Ministry of Foreign Affairs has asserted that, in the application of the principles of State sovereignty and non-intervention, '[t]he legitimate security concerns of any country should be respected'.¹⁴⁸ According to Wang Yi, the Chinese Foreign Minister, China both endorses 'the sovereignty and territorial integrity of all countries' and holds that 'the security of one country should not come at the expense of the security of other countries'.¹⁴⁹ Ukraine, according to the Foreign Minister, 'should function as a bridge between the East and the West, not a frontier in big power confrontation'.¹⁵⁰ To the extent that these statements are coherent, China appears to suggest that Russia's legitimate security concerns require Ukraine to remain non-allied, and justifies Russia's armed intervention in Ukraine.¹⁵¹ Such statements may suggest that China endorses Russia's radically interventionist agenda, which stands at odds with its previous anti-interventionist position and has virtually no support in contemporary public

¹⁴³ Z Yang (杨泽伟), 'On Legal Issues in Infrastructure Hubs for the 21st Century Maritime Silk Road (21世纪海上丝绸之路建设重要节点地区的法律问题研究)' (2019) 8 *Law Science Magazine* (法学杂志) 72.

¹⁴⁴ Chinese Consulate in Vancouver, 'Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference' (3 April 2015) <https://vancouver.china-consulate.gov.cn/eng/fyrth/201504/t20150403_4904582.htm>; PRC SCIO, 'China Withdrawing Citizens from Yemen' (30 March 2015) <http://english.www.gov.cn/news/international_exchanges/2015/03/30/content_281475080319006.htm>. Elsewhere China has described its evacuation operations in Yemen as the protection of 'the security and legitimate rights and interests of overseas Chinese people, organizations and institutions': see PRC SCIO, 'China's National Defence in the New Era' (Whitepaper, 24 July 2019) <https://english.www.gov.cn/archive/whitepaper/201907/24/content_WS5d3941ddc6d08408f502283d.html>.

¹⁴⁵ 'China Expresses Concern as Yemen's Houthis Form Government' *Reuters* (3 December 2016) <<https://www.reuters.com/article/world/china-expresses-concern-as-yemen-s-houthis-form-government-idUSKBN13S01T/>>.

¹⁴⁶ M Barelli, 'China and Peacekeeping: Unfolding the Political and Legal Complexities of an Ambivalent Relations' (2022) 12 *AsianJIL* 157, 160–61 (discussing the Darfur conflict).

¹⁴⁷ See UNSC, 'The Situation in Libya' (17 March 2011) UN Doc S/PRV.6498.

¹⁴⁸ PRC MFA, 'Foreign Ministry Spokesperson Wang Wenbin's Regular Press Conference' (22 February 2022) <https://www.mfa.gov.cn/eng/xw/fyrbt/lxjzh/202405/t20240530_11347229.html>; PRC MFA, 'Wang Yi Expounds China's Five-Point Position on the Current Ukraine Issue' (26 February 2022) <https://www.mfa.gov.cn/eng/wjbzhd/202202/t20220226_10645855.html>.

¹⁴⁹ PRC MFA, 'Wang Yi Expounds China's Five-Point Position on the Current Ukraine Issue' (n 148).

¹⁵⁰ *ibid.*

¹⁵¹ *ibid.*

international law. For the most part, however, it appears that the Chinese Government seeks to justify its silence and inaction in respect of the Russian invasion of Ukraine through the doctrine of non-intervention.¹⁵²

As discussed, China does not frequently criticise the human rights records of likeminded States. Yet, in 2017, it joined a statement which expressed ‘grave concern’ about human rights violations in Rakhine State, calling on Myanmar to cease using ‘excessive military force’ and halt communal violence.¹⁵³ Among other demands, the statement called for the implementation of the recommendations of Kofi Annan’s Advisory Commission on Rakhine State, and for investigations into human rights abuses. The State Council Information Office also publishes an annual review of human rights violations in the US.¹⁵⁴

State practice on non-intervention is rarely scrupulously consistent and China is no exception. A similar list of American statements and policies could be made. Here, again, the argument is laid open to the realist objection that the only explanation for the Chinese uses of the doctrine of non-intervention lies in the immediate priorities of China’s foreign policy. But, again, it is stressed that interference is not merely an impediment to Chinese foreign policy. It is a way to describe and justify Chinese foreign policy, and to influence the foreign policy of other States. Section 5 will return to this point. The following section examines the ways in which Chinese Government-aligned scholars have explored this concept.

4.3. Chinese publicists

This section surveys Chinese publications on intervention and considers what this scholarship might mean for the future direction of Chinese State practice.

Most Chinese scholars adhere to non-interventionism, seeking to expand its scope to new fields, such as to ‘internet sovereignty’.¹⁵⁵ Nevertheless, some Chinese scholars have sought to reform the Chinese approach to non-intervention by, among other things, urging the Chinese Government to acknowledge that it no longer opposes intervention in the internal affairs of foreign States when important humanitarian and national interests require it.¹⁵⁶

¹⁵² PRC MFA (n 8).

¹⁵³ UN, ‘Security Council Presidential Statement Calls on Myanmar to End Excessive Military Force, Intercommunal Violence in Rakhine State’ (Press Release SC/13055, 6 November 2017) <<https://press.un.org/en/2017/sc13055.doc.htm>>.

¹⁵⁴ PRC SCIO, ‘Report on Human Rights Violations in the United States in 2021’ (28 February 2022) <http://english.scio.gov.cn/scionews/2022-02/28/content_78076572.htm>.

¹⁵⁵ See RJEH Creemers, ‘China’s Conception of Cyber Sovereignty: Rhetoric and Realization’ in D Broeders and B van den Berg (eds), *Governing Cyberspace: Behavior, Power and Diplomacy* (Rowman and Littlefield 2020) 107, 129.

¹⁵⁶ Y Wang (王逸舟), *Creative Intervention: New Directions in Chinese Diplomacy* (创造性介入: 中国外交新取向) (Peking University Press 2011) 5; Z Yang (杨泽伟), ‘The Value of Democracy and the Rule of Law in the International Community and Protective Intervention: Challenges and Responses Facing the Principle of Non-Interference in Internal Affairs (国际社会的民主和法治价值与保护性干预——不干涉内政原则面临的挑战与应对)’ (2012) 5 Science of Law (法律科学) 41, 46.

Professor Yang Zewei of Wuhan University has urged China to ‘rethink and modify’ its approach to the principle of non-intervention in line with China’s international standing and the enlargement of its national interests.¹⁵⁷ Yang argues that China’s anti-interventionist posture has prevented it from assuming a leadership role in global governance and pursuing its own economic and security interests abroad.¹⁵⁸ He believes that China should recognise the erosion of the principle of non-intervention, and replace its policy of non-intervention with a new doctrine of ‘protective intervention’ (*baohuxing ganyu*, 保护性干预).¹⁵⁹ Yang advocates for the doctrine of ‘protective intervention’, which would see China intervene in the domestic affairs of foreign States in the event of humanitarian disasters and ‘serious threats’ to China’s national interests.¹⁶⁰ In contrast to the advocates of the Responsibility to Protect doctrine, who justify intervention solely on the basis of humanitarian needs in the absence of UNSC action, Yang regards foreign States and regions in terms of their ‘strategic value’ in the furtherance of China’s economic influence abroad.¹⁶¹ In sufficiently important geographical locations, preparations should be made for using military force to ensure the safety of Chinese personnel and investments.¹⁶²

A number of Chinese legal scholars have urged the Chinese Government to take advantage of the same interventionist legal tools that Western countries have used for decades. For instance, Professor Li Ming of Peking University observes that Western countries, and the US in particular, use the recognition and non-recognition of foreign governments as a tool to pursue their interests abroad. Li Ming believes that China, too, should maintain sufficient flexibility in the application of principles such as non-interference, when it recognises foreign governments.¹⁶³ Li Ming also raises the issue of using economic sanctions as a policy option for China to protect its investments abroad (without, however, taking a clear view on this matter).¹⁶⁴

Professor Xiao Yongping of Wuhan University has also urged China to change its understanding of non-intervention. Xiao argues that China should examine the use of American-style long-arm jurisdiction in the pursuit of its overseas interests.¹⁶⁵ Xiao contends that long-arm jurisdiction does not necessarily violate the sovereignty of foreign States, since international law allows domestic law to have moderate extraterritorial effects.¹⁶⁶ He proposes law reform to establish Chinese long-arm jurisdiction. For example, Chinese securities legislation could be applied to foreign

¹⁵⁷ Yang (n 156) 41.

¹⁵⁸ *ibid* 45.

¹⁵⁹ *ibid*.

¹⁶⁰ *ibid* 45–46.

¹⁶¹ *ibid* 68. For further information on the Responsibility to Protect, see UNGA, ‘Report of the Secretary-General on Implementing the Responsibility to Protect’ (12 January 2009) UN Doc A/63/677 <<http://undocs.org/A/63/677>>.

¹⁶² Yang (n 156) 72.

¹⁶³ M Li (李鸣), ‘International Law and Research on the “Belt and Road Initiative” (国际法与“一带一路”研究)’ (2016) 1 Law Science Magazine (法学杂志) 11, 13.

¹⁶⁴ *ibid*.

¹⁶⁵ Y Xiao (肖永平), ‘A Legal Analysis of “Long Arm Jurisdiction”, and Its Countermeasures (长臂管辖权的法理分析与对策研究)’ (2019) 6 China Legal Science (中国法学) 39, 39.

¹⁶⁶ *ibid* 60.

conduct which has effects in China,¹⁶⁷ while Chinese criminal law could be applied to foreign corporations, so that China could take retaliatory measures in criminal law, or deploy countermeasures against foreign multinational companies.¹⁶⁸ Xiao also argues that transposing international crimes, such as the crimes of genocide and torture, into domestic Chinese law would provide China with a weapon to retaliate against other States.¹⁶⁹

Some Chinese legal scholars have begun to disaggregate the doctrines of sovereignty and non-intervention. According to this argumentative strategy, sovereignty is not 'absolute,' nor can the doctrine of non-intervention be deduced from first principles of international law.¹⁷⁰ This reflects formative ideas about the nature of sovereignty in the Chinese experience.¹⁷¹

Finally, the most ambitious versions of Chinese interventionism call for the establishment of a new kind of international morality based on Chinese 'wisdom'.¹⁷² Some Chinese scholars have even called for the deconstruction of the monopoly of the traditional Western human rights discourse in order to give human rights more Chinese characteristics.¹⁷³ Chinese scholars cite the adoption of Chinese ideological concepts, such as 'harmonious world' and 'community with a shared future for mankind', in international declarations as evidence of the international community's acceptance of Chinese ideology.¹⁷⁴ Chinese ideological innovations—such as the ideal of 'building a moderately prosperous society in all respects'—provide 'a novel practical paradigm for the human rights dimension of the international rule of law'.¹⁷⁵ Such arguments are in line with Chinese political elites' growing global ambitions.

Readers outside China may wonder how such revisionist statements should be assessed in the context of the Chinese party-state. Is the relativisation of the doctrine of non-intervention in Chinese scholarship a matter of individual academic creativity or is it a semi-formal sign of changing government policy? The nature of the connection between Chinese universities and the CCP is unusual, and its unusual nature is not addressed directly in the literature which considers Chinese State practice. Some foreign commentators on Chinese international law, however, have been able to appreciate the general influence of the CCP on international lawyers, while still being mystified about the specific motives and agency of Chinese international lawyers.

¹⁶⁷ *ibid.*

¹⁶⁸ *ibid.* 61.

¹⁶⁹ *ibid.*

¹⁷⁰ G Luo (罗国强), 'The International Legal Theory of "Humanitarian Intervention" and Its New Developments ("人道主义干涉"的国际法理论及其新发展)' (2006) 1 *Legal Science (法学)* 86, 88; T Liu, 'China and Responsibility to Protect: Maintenance and Change of Its Policy for Intervention' (2012) 25 *Pacific Review* 153, 160.

¹⁷¹ Luo (n 170) 88.

¹⁷² He (n 98) 19; Y Wang (王阳), 'Global Governance of the Ocean: Historical Evolution, Theoretical Foundations and China's Response (全球海洋治理: 历史演进、理论基础与中国的应对)' (2019) 7 *Hebei Law Science (河北法学)* 164, 174.

¹⁷³ C Qiu (邱昌情), 'China's Freedom of Speech in the Field of International Human Rights: Realist Dilemmas and Management Strategies (中国在国际人权领域话语权: 现实困境与应对策略)' (2018) 3 *Human Rights (人权)* 74.

¹⁷⁴ Wang (n 172) 164, 174.

¹⁷⁵ China Society of Private International Law (n 112) 20.

In *Is International Law International?* Anthea Roberts acknowledges that the professional community of international lawyers in China is fundamentally unlike the community of international lawyers in other jurisdictions. For example, she notes the ‘startling unanimity’ of Chinese scholars’ opinions on the UNCLOS *South China Sea* arbitration.¹⁷⁶ She explains this unanimity in three ways. First, it may result from ‘the genuine belief of most Chinese legal academics that the arbitral tribunal erred in asserting jurisdiction.’¹⁷⁷ Second, it may result from ‘a complex socialization process based on the way these scholars were educated, the reference materials that they commonly use, the media on which they rely, and the assumptions and boundaries that delimit mainstream academic debate within China.’¹⁷⁸ Finally, Chinese academics may also ‘be unwilling to dissent on an issue of importance to the government out of fear of censorship or soft retribution in the competitive domestic academic job market.’¹⁷⁹ These reasons are not unique to China. To a greater or lesser extent, they apply to lawyers in almost any jurisdiction. They do not explain the ‘startling unanimity’ of Chinese views on the UNCLOS *South China Sea* arbitration.

All arguments about international law reflect local patterns of dominance and control over media. However, in China, singular institutions shape that environment. As David Shambaugh notes, ‘virtually every conceivable medium which transmits and conveys information to the people of China falls under the bureaucratic purview of the CCP Propaganda Department.’¹⁸⁰ Every Chinese law school has a Party Secretary and a Party Committee, whose responsibility it is to monitor the implementation of Party policy and to implement material strategic decisions made by the Central Committee. This role extends to the dismissal,¹⁸¹ rustification¹⁸² and criminal conviction¹⁸³ of academics who fail to repeat the Party line when called upon to do so.

Not all prominent Chinese international lawyers and professional organisations follow the direction of the Party on all occasions. Chinese legal scholars have some amount of freedom to form heterodox positions and they have been influential in changing the Chinese Government’s positions on some international legal questions, such as the legal effects of international treaties in Chinese domestic law.¹⁸⁴ Idiosyncratic proposals, such as the abovementioned doctrine of ‘protective

¹⁷⁶ The *South China Sea Arbitration* concerned disputes between the Philippines and the PRC ‘regarding the legal basis of maritime rights and entitlements in the South China Sea, the status of certain geographic features in the South China Sea, and the lawfulness of certain actions taken by China in the South China Sea’; *South China Sea Arbitration (Philippines v People’s Republic of China)* PCA Case No 2013-19, Award (12 July 2016) para 2.

¹⁷⁷ A Roberts, *Is International Law International?* (OUP 2017) 243.

¹⁷⁸ *ibid.*

¹⁷⁹ *ibid.*

¹⁸⁰ D Shambaugh, ‘China’s Propaganda System: Institutions, Processes and Efficacy’ (2007) 57 *China Journal* 25, 28.

¹⁸¹ See, e.g. Peter Hessler <<https://www.newyorker.com/contributors/peter-hessler>>.

¹⁸² See, e.g. Professor He Weifang <<https://en.law.pku.edu.cn/faculty/faculty1/11729.htm>>.

¹⁸³ See, e.g. Ilham Tohti <<https://pen.org/advocacy-case/ilham-tohti/>>.

¹⁸⁴ B Ahl, ‘Chinese Law and International Treaties’ (2009) 39 *HKLJ* 735, 741–42.

intervention' (*baohuxing ganyu*, 保护性干预), are most likely instances of individual academic creativity.¹⁸⁵

Yet it should be acknowledged that, on important and sensitive issues, including key aspects of non-intervention, Chinese legal scholars speak at the discretion of the Party.¹⁸⁶ For example, a statement on the UNCLOS *South China Sea* arbitration made by the Chinese Society for International Law and published in the *People's Daily*, will have been approved by managers in the Chinese Society for International Law and editors in the *People's Daily* who are appointed to and maintained in their positions at the discretion of the Party.¹⁸⁷ A field such as human rights is more tightly policed than trade.¹⁸⁸ Seen against this background, the unanimity of Chinese legal scholars' opinions on the UNCLOS *South China Sea* arbitration is not so 'startling'. Similarly, the authors believe that the relativisation of the Chinese non-interventionism is sanctioned by the Chinese party-state. At the very least, such relativisation reflects a willingness within the Chinese party-state to reassess the Chinese approach to non-intervention.

Finally, because of the close links between scholarship and the Chinese party-state, it is not far-fetched to regard some writings of distinguished Chinese publicists as a complex form of State practice.

5. A relative principle?

The analysis in this article highlights two features of the new doctrine of non-intervention: its ambiguity and its relativity. These features present problems, not only for Chinese uses of the doctrine, but also for uses by other States. The aim is to help others to navigate this interpretation of the doctrine of non-intervention.

There is a familiar realist objection to this reading: that there is less to see here than meets the eye. Realists believe that States invoke international law to suit themselves. From the realist perspective, there is a discrepancy between what States say about the doctrine of non-intervention and what they actually do.¹⁸⁹ By this account, Chinese uses of non-intervention fall somewhere between the ambivalent and the blatantly opportunistic. The realist perspective is attractive especially to those readers who are broadly sceptical about the role that China plays in the 'rules-based international system'.¹⁹⁰ It might be argued that there is no coherent Chinese doctrine of non-intervention, just foreign policy.

There is some force in this objection. The ambiguity of the doctrine of non-intervention makes it vulnerable to the sort of diplomacy described in [Section 1](#) and [Section 4](#). It is acknowledged that the evidence is also ambiguous. Moreover, certain Chinese arguments on non-intervention may appear to be insincere or

¹⁸⁵ *ibid.*

¹⁸⁶ E Perry, 'Studying Chinese Politics, Farewell to Revolution' (2007) 57 *China Journal* 1, 21.

¹⁸⁷ See, e.g. Chinese Society of International Law, 'The South China Sea Arbitration Awards: A Critical Study' (2018) 17 *ChineseJIL* 207.

¹⁸⁸ Chen (n 131) 59.

¹⁸⁹ See Jamnejad and Wood (n 34) 352.

¹⁹⁰ See, e.g. House of Commons Foreign Affairs Committee, *China and the Rules Based International System* (HC 612, 4 April 2019).

apologetic to some Western lawyers. Consequently, Western lawyers may discount or ignore Chinese views on non-intervention altogether.¹⁹¹

But there is a familiar institutionalist counterargument. States conduct their foreign policy by shaping the rules that regulate State behaviour. They describe their foreign interests in the language of legal doctrine, and their foreign policy behaviour responds to that legal doctrine, however imperfectly. From this perspective, the Chinese Government seeks to shape international law, in part, because it seeks to shape international relations. Specifically, it seeks to expand its ‘discourse power’ and to ‘lead the reform of the global governance system with the concepts of fairness and justice’.¹⁹² As a spokesperson of the Chinese Embassy in the UK observed in response to criticism of Chinese exceptionalism on Ukraine, ‘[g]one are the days when a handful of Western countries could manipulate international rules and monopolise world affairs!’¹⁹³

Realists ought to be consistent. It is not easy to distinguish the cynical, emotionally charged propaganda of the Chinese Government from the sincere, legally meaningful statements of other governments. Institutionalists ought accept that international law is likely to become more dissonant as it becomes more international. The new Chinese approach to intervention increasingly appeals to Western governments, who seek to challenge pernicious forms of foreign influence over liberal democratic processes. This creates dissonance for both the East and the West, who sometimes reject the principle of non-intervention, while sometimes embracing it.

As acknowledged in Section 4, Chinese practice is not uniform, and Chinese opinion is not univocal, but the evidence points clearly enough to a new way to think about the principle of non-intervention. First, the Chinese statements set out in Section 1 and Section 4 are statements about law. For example, the statements which began this article describe interference as something that ‘seriously contravenes international law’.¹⁹⁴

Second, these are statements intended to change international law. The 2018 Central Foreign Policy Work Conference noted the CCP’s resolution to reform the international order (*guoji zhixu*, 国际秩序), the international system (*guoji xitong*, 国际系统) and global governance (*quanqiu zhili*, 全球治理). That Conference stressed that China must take its ‘core national interests as the bottom line to safeguard China’s sovereignty, security and development interests’.¹⁹⁵ This is one aspect of the international order that China has sought to reform. Chinese approaches to non-intervention are becoming more prominent in the international arena. Several States have adopted the Chinese language on intervention in domestic affairs. Indeed,

¹⁹¹ See, e.g. T Ginsburg, ‘Authoritarian International Law?’ (2020) 114 AJIL 228.

¹⁹² EJ Gregory, ‘Control Issues are Feeding China’s “Discourse Power” Project’ *National Interest* (15 August 2018) <<https://nationalinterest.org/feature/control-issues-are-feeding-chinas-discourse-power-project-28862>>; S Seppänen, ‘Production and Global Dissemination of Chinese Legal Ideology: Implications for the Study of Illiberalism’ (2023) 6 Cardozo Intl & Comp L 448.

¹⁹³ Chinese Embassy in the UK, ‘Chinese Embassy Spokesperson’s Comments on the Wrong Remarks Concerning China by UK Foreign Secretary Truss’ (28 April 2022) <http://gb.china-embassy.gov.cn/eng/PressandMedia/Spokepersons/202204/t20220429_10675366.htm>.

¹⁹⁴ Chinese Embassy in the UK (n 4).

¹⁹⁵ ‘Xi Urges Breaking New Ground in Major Country Diplomacy with Chinese Characteristics’ *Xinhua* (24 June 2018) <http://www.xinhuanet.com/english/2018-06/24/c_137276269.htm>.

on the opening day of the 50th Session of the UN Human Rights Council (HRC), the Cuban representative issued a joint statement on behalf of 69 States, opposing ‘interference in China’s internal affairs under the pretext of human rights’, and maintaining that ‘Xinjiang, Hong Kong and Tibet related issues [were] China’s internal affairs’.¹⁹⁶

Third, the key Chinese aim is to make the lawfulness of intervention turn on the positions of the States concerned—be they economic, military or political. Whether conduct constitutes unlawful intervention depends on whether one State sought to influence another’s policy in respect of trade or human rights. It also depends on whether the action was intended to protect ‘legitimate interests’ among other factors.

China argues that ‘respect for each country’s sovereignty and non-interference in internal affairs are universally recognized principles of international law, which are applicable to all fields of international relations, and of course applicable to the field of human rights as well’.¹⁹⁷ These statements serve China’s goal of rejecting ‘attempts to use human rights as an excuse to interfere in China’s internal affairs or undermine its sovereignty and territorial integrity’, such as the recommendations from the UPR.¹⁹⁸ Scholars such as Gráinne de Búrca show how States, such as China, conduct their foreign policy not by ignoring human rights, but by reframing them, and by reshaping the institutions that police them.¹⁹⁹ Ted Piccone notes that ‘China has shifted from its traditionally more defensive posture to a more activist role’, while retaining ‘orthodox interpretations of national sovereignty and non-interference in internal affairs that weaken international norms of human rights, transparency, and accountability’.²⁰⁰ China’s central objection is that criticism of its human rights record ‘seriously contravenes international law’.²⁰¹ It is aware of the contours of the law, and it proposes to change them.²⁰²

The new doctrine polices the actions of some States and organisations more closely than others. It is a doctrine flexible enough to condemn intervention by the HRC, while accommodating interference by the WTO. It is a doctrine that validates widespread economic intervention in foreign States to compel policy change, while regulating

¹⁹⁶ PRC Mission to the UN, ‘Joint Statement Delivered by Cuba on Behalf of 69 Countries at the 50th Session of the Human Rights Council’ (14 June 2022) <http://geneva.china-mission.gov.cn/eng/dbdt/202206/t20220616_10703983.htm>.

¹⁹⁷ PRC SCIO, ‘Human Rights in China’ (1991) <http://za.china-embassy.gov.cn/eng/zt/zgrq/200604/t20060425_7639022.htm>.

¹⁹⁸ A Worden, ‘China Deals Another Blow to the International Human Rights Framework’ *ChinaChange* (25 November 2018) <<https://chinachange.org/2018/11/25/china-deals-another-blow-to-the-international-human-rights-framework-at-its-un-universal-periodic-review>>; Y Chen, ‘China’s Challenge to the International Human Rights Regime’ (2019) 51 *NYUJIL&Pol* 1179, 1211.

¹⁹⁹ See generally G de Burca, *Reframing Human Rights in a Turbulent Era* (OUP 2021); C Yujie, ‘Authoritarian International Law in Action? Tribal Politics in the Human Rights Council’ (2023) 54 *VanderbiltJTransnatlL* 1203; T Larkin, ‘China’s Normfare and the Threat to Human Rights’ (2022) 122 *ColumLRev* 2285.

²⁰⁰ E Piccone, ‘China’s Long Game on Human Rights at the United Nations’ (Brookings Institution, September 2018) <<https://www.brookings.edu/research/chinas-long-game-on-human-rights-at-the-united-nations>>.

²⁰¹ UK Government (n 5).

²⁰² See Cai (n 94) 267.

diplomatic criticism of a State's human rights conditions. In other words, it is an agent-relative doctrine, whose application depends on who is interfering with whom, in what context and for what purpose.

Intervention takes on different meanings in different periods of time and in different contexts under this new doctrine.²⁰³ Western uses may well follow the same pattern. For instance, Western States may find it useful to seek to regulate fields such as long-arm jurisdiction, clandestine political influence and cyber warfare through the doctrine of non-intervention. At the same time, and in contrast to China, they might be reluctant to apply that doctrine to regulate trade, diplomacy and human rights. International law already does this to a limited extent. The external affairs of the State are unambiguously subject to international law, even though it is possible for intervention to disrupt those same external affairs.²⁰⁴

Chinese uses of the doctrine of non-intervention may appear particularly tempting to international lawyers in liberal democracies who are concerned about interference in liberal democratic processes—which lack an evident coercive element—while seeking to preserve their ability to intervene in foreign States for humanitarian reasons.²⁰⁵ Ironically, mimicking the Chinese uses of this doctrine may be prompted by an increasingly interventionist China.

It is not suggested that this is a coherent position. Nor is it suggested that it is compatible with existing canons of international law. Any satisfying account of the prohibition of intervention cannot be so vapid that it shelters States who label ethnic cleansing a 'domestic affair'. Moreover, an agent-relative doctrine of non-intervention would be a departure from the modern approach to international wrongs, which holds that wrongful acts are wrongful regardless of who commits them, where and when.²⁰⁶ This would also mark a departure from the way in which international law conceives of custom, according to which States can be held accountable for their actions even if they have not refrained, with complete consistency, from intervention in each other's internal affairs.²⁰⁷ Finally, as explained in [Section 3](#), many international lawyers conceive of the prohibition of intervention as a rule against which States cannot persistently object.

Nevertheless, faced with an ever more interventionist China, Western governments may soon find themselves repeating Chinese arguments about intervention. It is hard to think of, for example, political warfare, clandestine influence, electoral interference and bribery of government officials as 'coercive' in the narrow sense employed by mainstream international legal doctrine. The same arguments apply to domestic jurisdiction. Playing down the coerciveness of these threats, and playing up the domestic nature of their objects, in line with China, might therefore appear to be in the interests of Western governments. But sooner or later, those who wish to use the

²⁰³ Y Chen (陈一峰), 'Reflections on the Method to the Customary Law Nature of the Principle of Non-intervention (不干涉原则作为习惯国际法之证明方法)' (2012) 5 *The Jurist* (法学家) 153, 163.

²⁰⁴ Moynihan (n 34).

²⁰⁵ Jamnejad and Wood (n 34); UNGA (n 161).

²⁰⁶ International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries', UNYBILC, vol II, part II (2001) UN Doc A/CN.4/SER.A/2001/Add.1, 31.

²⁰⁷ *ibid* 56.

principle in this way will still need to distinguish diplomacy from political warfare. The double-edged sword (双刃剑) is an idiom both in English and in Chinese.

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