

THE SILENT TREATMENT: COERCION BY CABLE CUT

PROHIBITED INTERVENTION

- 1933 *Montevideo Convention on the Rights and Duties of States* and its 1936 Protocol relative to non-intervention
 - Article 5 of the Montevideo Convention provides that, ‘the fundamental rights of States are not susceptible of being affected in any manner whatsoever’ while Article 8 provides that ‘no State has the right to intervene in the internal or external affairs of another’.
 - Although a regional treaty, the Montevideo Convention also sets out the criteria for statehood which is widely regarded as constituting customary international law.

PROHIBITED INTERVENTION

- *The Charter of the Organisation of the American States, the Charter of the Organisation of African Unity*
- *The Charter of the Organisation of Islamic Cooperation and the Charter of the Association of Southeast Asian Nations. Charter of the Organisation of the American States*, signed 30 April 1948, 1952 UNTS 48 arts 2(b), 3(e), and 19;
- *Charter of the Organisation of African Unity*, opened for signature 25 May 1963 UNTS (entered into force 13 September 1963) arts III(2) replaced by the *Constitutive Act of the African Union*, opened for signature 1 July 2001 (entered into force May 2001) art 4(g);
- *Charter of the Organisation of Islamic Cooperation*, opened for signature 25 August 1969 (entered into force 4 March 1972), art 2(4)-(5);
- *Charter of the Association of Southeast Asian Nations*, opened for signature 20 November 2007 (entered into force 15 December 2008) art 2(e).

PROHIBITED INTERVENTION

- *Charter of the United Nations* (UN Charter) Article 2(7) of the
 - ‘nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state’.
- Article 2(7), which largely replaced Article 15(8) of the 1919 *Covenant of the League of Nations*, is sometimes cited (including by Australia) as authority for the prohibition on intervention
 - see Australian Government, Australia’s submission on international law annexed to the report of the 2021 Group of Governmental Experts on Cyber (2021) 3.

YET ...

- Article 2(7) differs in two material ways.
 - First, it is drafted not as a prohibition but rather as a without-prejudice clause to clarify the effect and limit of UN enforcement powers under Chapter VII of the Charter.
 - Second, the subject of the obligation in Article 2(7) is not States (as is the case with other obligations set out in Article 2 of the Charter) but rather the UN itself.

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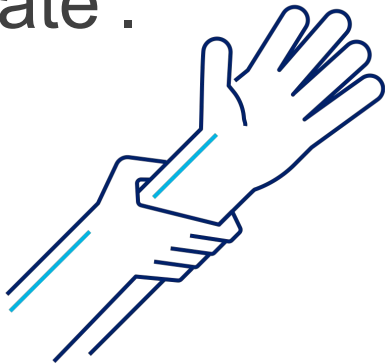


[T]he principle forbids all States or groups of States to intervene directly or indirectly in **internal or external affairs of other States**. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. 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. **The element of coercion...defines, and indeed forms the very essence of, prohibited intervention** is particularly obvious in the case of an intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State.

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COERCION?

‘Coercion must be distinguished from persuasion, criticism, public diplomacy, propaganda, retribution, mere maliciousness and the like in the sense that, unlike coercion, such activities merely involve ... influencing the voluntary actions of the target State’.



Tallinn Manual 2.0, pp. 318 [21]

Coercion-as-extorsion

First the State makes a demand – i.e. do this thing (demand)

Second, it threatens the victim state with consequences if the demand is not meant (threat)

Third, it might implement the threat and consequences if the demand is unheeded (harm) this third step is optional, demand + threat will still constitute coercion as extortion

- E.g. Saudi Arabia and its partners demand Qatar to break off relations with Turkey and Iran, and shut down Al Jazeera TV station etc. If you don't, there will be consequences. Qatar say no and Saudi Arabia expel Qatari nationals, suspend flights to/from Qatar, and threaten to physically sever the Qatar from the Arabian Peninsula.

Coercion-as-control

Coercion as control does not involve demand, threat, harm. It involves an action by the intervening state that in and of itself deprives the victim of its ability to control its internal or external affairs.

Best example – is a cyber operation

- Today, States are all the time coming out with formal positions (expressions of their opinio juris) on how international law applies to cyber space, stating that coercion has to apply in cyberspace. The one example all states seem to agree on as **coercive is cyber election interference operations**
- Consider an online election in a State – but imagine if another state hacks into the electoral system and changes the outcome electronically without the State knowing. This operation only works without us knowing about it. Most States and academics agree that this is coercion.

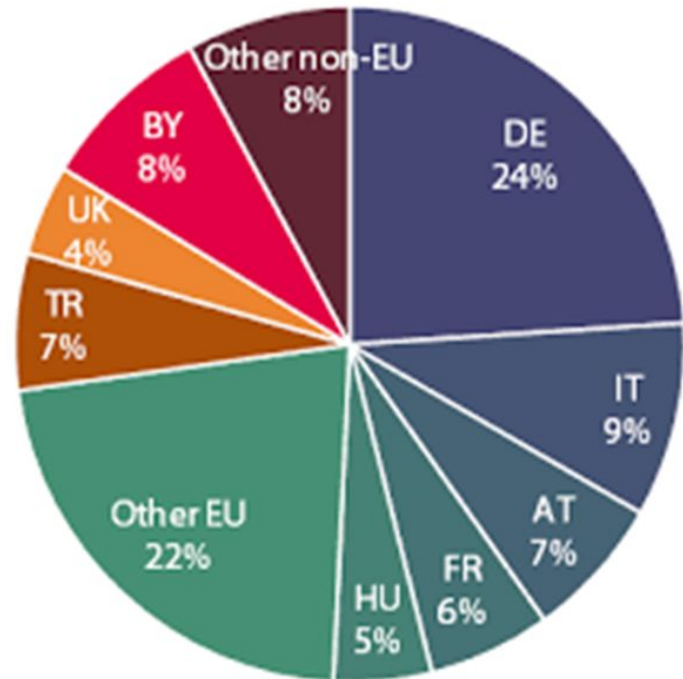
External Affairs:

- Diplomatic recognition and relations
- Treaty-making and withdrawal
- Alliance and security commitments
- International trade and sanctions
- Decisions on war and peace

Internal Affairs:

- Choice of political system and constitution
- Conduct of elections and political representation
- Control of natural resources and economic policy
- Education and cultural policies
- Domestic law enforcement and administration of justice

WHO IS BEING COERCED?



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SO WHAT?

