Chapter 4

Non-Intervention in the Internal Affairs of States

4.1 Introduction: Conceptual Problems

When Talleyrand served as Ambassador in London, he replied to a lady who asked him about the meaning of the word ‘non-intervention’: ‘Madame, non-intervention est un mot diplomatique et énigmatique qui signifie à peu près la même chose qu’intervention.’ The prohibition of intervention in the internal affairs of a state remains one of the most complex and controversial principles of international law to this day.

The problems begin with the manifold and contradictory meanings of the term ‘intervention’ which refer to both lawful and illegal action. They range from an oral statement at a conference to the illegal use of armed force. A discussant is called ‘intervenant’ in French. Even in diplomatic and legal parlance no generally accepted definition exists. ‘It is not too much to say that there are as many textbook definitions of intervention as there are of war.’

The basic legal issue is caused by the difficulty of drawing a line between unlawful coercion and interference, on the one hand, and the exercise of permissible, even desirable, influence, for which the word ‘Interzession’ is used in German legal terminology, on the other hand. What is at stake once more is the conflict between two key rules on which the international legal order is based, both of which therefore deserve special protection. On the one
hand, the sovereignty especially of small and weak states ought to be preserved; on the other, the collective promotion and enforcement of a growing number of values and interests of the international community, such as the respect for human rights or the protection of the environment, are more important than ever in an increasingly interdependent and globalized world.

The difficulties of distinguishing illegal from lawful attempts to influence the behaviour of other international actors are reflected in the writings of legal scholars. They propose different criteria which in their opinion characterize prohibited interference: the means used by, the intention of and the objective pursued by the intervening state; the targets against which the measures taken are directed; or the ‘adequate’ relation, i.e., the proportionality between the objective and the means used. Yet, the illegality of certain means and forms of pressure may be contested; the intention of a state trying to influence another state is often difficult to establish; the internal affairs of states in which others must not interfere are in flux; the proportionality between means and ends is problematic because of the lack of precise criteria. As in the case of other complex issues of international law, no simple and perfect solution can therefore be offered.

What is feasible once more is the identification of areas of clear legality and illegality, with a rather large ‘grey area’ between them. Thus, on the one hand, coercion by military means, which is usually included in definitions of intervention, is clearly unlawful and already prohibited under Article 2(4) of the UN Charter. Moreover, as early as 1936 the parties to the International Convention

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627 Neuhold, supra (fn. 7), 290.
628 This is the criterion (‘Sozialadäquanz’ – ‘social adequacy’) emphasized by Gerlach. As an example, he mentions the refusal of the United States to grant Argentina economic assistance during World War II in order to force the latter state to break off diplomatic relations with Nazi Germany and close its territory to German nationals. In order to achieve goals of minor importance, the United States threatened the existence of the target state. Gerlach, supra (fn. 624) 203. A similar view is held by Fisher, ‘Intervention: Three Problems of Policy and Law’, in: Stanger (ed.), supra (fn. 624) 3.
629 See supra 127.
630 In addition to the treaties and ‘soft law’ quoted below, the ICJ formulated the principle of non-intervention in its judgment in the Nicaragua case as follows: ‘...the principle forbids all States of groups of States to intervene directly or indirectly in the 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.... The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of intervention which uses force, either in the direct form of military action, or in the indirect