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Challenging Paternalistic Interference: The Case for Non-Intervention in a Globalized World

Cecilia Yue Wu*

The principle of non-intervention, which prohibits states from coercively interfering in the domestic affairs of other states, is well-established in customary international law. Yet underneath the general support for the principle is substantial disagreement over its proper scope and application. The principle is subject to even greater challenge in a globalized world where the penetration of sovereignty is often taken as the goal of progressive development in areas of international human rights law, environmental law, trade and investment law, and beyond. This Note challenges the conventional doctrine of non-intervention that allows significant latitude for intervention in political and economic spheres. It examines a category of "paternalistic interference"—acts of intervention that purport to have beneficent purposes and do not involve the threat or use of force—and illustrates how this least controversial form of intervention shall nevertheless be subject to stronger scrutiny under international law.

This Note begins by tracing the development of the principle of non-intervention and examining the contours of its two elements: domaine réservé and coercion. Then, it presents a normative account of why paternalistic interference can be harmful to the targeted state and ought to sometimes be prohibited by international law. Specifically, paternalistic interference often uses lofty pretexts to cover up self-interested motives, reflects arrogance of Western actors with neo-imperialist assumptions, and deprives the targeted states of autonomy as political communities. This Note ends by exploring doctrinal avenues to strengthen the principle of non-intervention, including interpreting domaine réservé as a set of states' fundamental rights and developing a broad construction of coercion that accounts for power imbalance in international relations.

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Introduction

Consider the following scenario. After *New York State Rifle & Pistol Association, Inc. v. Bruen*[1] and *Dobbs v. Jackson Women's Health Organization*[2] were decided, China criticized the United States for its human rights abuse. The spokeswoman for China's Ministry of Foreign Affairs tweeted, "[t]his is how the US 'protects' #humanrights, women's rights in particular."[3] "Can't understand US way of protecting human rights—think it necessary to protect the rights of an unborn child, but quite OK to tolerate the shooting of children in schools."[4] This much was what actually happened. Imagine, then, China demands that the United States change its laws to legalize abortion and ban gun possession nationwide—just as Chinese law does.[5] If the United States does not properly protect the "inherent right to life"[6] for pregnant women and shooting victims, China suggests, it would sanction all individuals propelling the relevant abortion and gun policies.

Contrast that with the next scenario. Due to climate change, Pakistan suffered from the most devastating floods in its history in the summer of 2022, killing over 1,700 people, displacing 8 million, and resulting in $15.2 billion economic loss.[7] With reconstruction needs estimated at $16.3 billion,[8] Pakistan was in desperate need of financial assistance. Having sought a bailout from the International Monetary Fund ("IMF") twenty-three times in the nation's history, Pakistan was already under

1. 142 S. Ct. 2111 (2022) (striking down New York's gun control law that required proper cause for concealed carry).

2. 142 S. Ct. 2228 (2021) (overturning *Roe v. Wade* and holding that there is no constitutional right to abortion).

3. @SpokespersonCHN, Twitter (June 25, 2022, 10:57 AM), https://twitter.com/SpokespersonCHN/status/1540710754688839680 [https://perma.cc/KWK5-KX5P].

4. *Id.*

5. *See generally* Muying Baojian Fa (母婴保健法) [Law on Maternal and Infant Health Care] (promulgated by Standing Comm. Nat'l People's Cong., Oct. 27, 1994, effective June 1, 1995, amended Nov. 4, 2017) (China); Qiangzhi Guanli Fa (枪支管理法) [Law on Control of Guns] (promulgated by Standing Comm. Nat'l People's Cong., July 5, 1996, effective Oct. 1, 1996) (China).

6. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art. 6, § 1 [hereinafter ICCPR].

7. *Pakistan: Flood Damages and Economic Losses over USD 30 Billion and Reconstruction Needs Over USD 16 Billion - New Assessmen*t, The World Bank (Oct. 28, 2022), https://www.worldbank.org/en/news/press-release/2022/10/28/pakistan-flood-damages-and-economic-losses-over-usd-30-billion-and-reconstruction-needs-over-usd-16-billion-new-assessme [https://perma.cc/Z22Y-9AAW].

8. *Id.*

stringent fiscal targets and expenditure constraints imposed by the IMF.[9] The latest $6 billion IMF bailout, offered in February 2023, was conditioned on the Pakistani government raising taxes on natural gas from 16% to 112% and slashing subsidies on electricity.[10] Coming out of the negotiation, the Pakistani Prime Minister commented, "the conditions we will have to agree to with the IMF are beyond imagination. But we will have to agree with the conditions."[11] More broadly, the World Bank has committed around $2.3 billion lending to Pakistan for fiscal year 2023,[12] coupled with a Country Partnership Strategy that seeks to transform Pakistan's energy sector through policy reforms, increase privatization and adapt legal frameworks to promote private sector development, and improve the Pakistani government's delivery of public services.[13] In trade relations, Pakistan benefits from favorable tariffs under the European Union's Generalised Scheme of Preference ("GSP"), but that status was up for renewal in 2023, conditioned on Pakistan's "ratification and effective[] implement[ation] [of] 27 core international conventions on human and labour rights, environment protection, and good governance."[14]

What do the two scenarios have in common? Essentially, they both involve international actors pressuring a state to undertake certain domestic policies, ostensibly for the benefit of that state or its own people. Such "paternalistic interference" shall be understood in a context where powerful states or international organizations ("IOs") have a variety of means to exert influence on other states. The most dictatorial form of influence is the threat or use of force. Below that threshold exist many other means to intervene in the policies and behaviors of a state, including both "sticks," such as economic sanctions and cyber interference, and "carrots," such as foreign aid and development assistance.

While intervention is an inevitable feature of international politics, the principle of non-intervention prescribes the "outer limits of permissible influence" that states may exert on each other.[15] This principle, proclaimed in the unanimously passed Friendly Relations Declaration,[16] affirms "the right of every

9. Kunwar Khuldune Shahid, *Pakistan's Vicious IMF Cycle*, THE DIPLOMAT (Sep. 28, 2022), https://thediplomat.com/2022/09/pakistans-vicious-imf-cycle [https://perma.cc/926X-2FFS].

10. *IMF Bailout Bid: Pakistan Raises Tax on Natural Gas from 16% to 112%*, BUS. STANDARD (Feb. 14, 2023), https://www.business-standard.com/article/international/imf-bailout-bid-pakistan-raises-tax-on-natural-gas-from-16-to-112-123021402263_1.html [https://perma.cc/GRR3-ZHHQ].

11. Agence France-Presse, *Pakistan "Will Have to Agree" to IMF Conditions for Bailout, PM Says*, VOA (Feb. 3, 2023, 4:44 AM), https://www.voanews.com/a/pakistan-will-have-to-agree-to-imf-conditions-for-bailout-pm-says-/6946228.html [https://perma.cc/XHT5-Y4R8].

12. *The World Bank in Pakistan*, THE WORLD BANK, https://www.worldbank.org/en/country/pakistan/overview#2 [https://perma.cc/4HMZ-SLAM] (last updated Oct. 4, 2023).

13. *See generally* The World Bank, *Country Partnership Strategy for the Islamic Republic of Pakistan*, World Bank Report No. 84645-PK (2014).

14. *Pakistan: EU Trade Relations with Pakistan,* EUROPEAN COMMISSION, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/pakistan_en [https://perma.cc/DGV5-8VCZ].

15. Richard Falk, *United States Practice and the Doctrine of Non-Intervention in the Internal Affairs of Sovereign States, in* LEGAL ORDER IN A VIOLENT WORLD 159 (2019).

16. G.A. Res. 2625 (XXV) (Oct. 24, 1970) [hereinafter Friendly Relations Declaration].

sovereign State to conduct its affairs without outside interference" as a matter of customary international law.[17] Despite general support for the principle, states disagree about its proper scope and application.[18] The principle of nonintervention speaks the clearest in the prohibition of the threat or use of force, as embodied by the UN Charter and the Friendly Relations Declaration.[19] In non-forcible contexts, some states and scholars argue that the principle also prohibits unilateral economic sanctions, yet that claim remains debated.[20]

This Note contests the legality of an even less challenged category of intervention, which I call "paternalistic interference." As illustrated in Figure 1, acts of intervention can span a spectrum from more forcible and antagonistic ("sticks") to more benevolent and collaborative ("carrots"). Paternalistic interference is clustered towards the end of "carrots." This category of intervention often purports to have a beneficent purpose, such as helping a state improve its conditions or securing the human rights of its people, rather than focusing on extracting geopolitical advantage or punishing a hostile state.

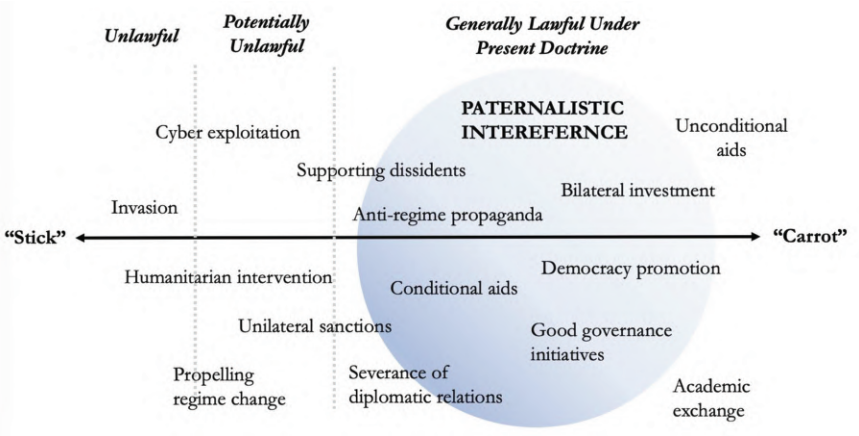

Figure 1: Spectrum of Intervention[21]

17. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶ 202 (June 27) [hereinafter Nicaragua].

18. *See, e.g.*, R. J. Vincent, Nonintervention and International Order 281–326 (2015).

19. U.N. Charter art. 2(4); Friendly Relations Declaration, *supra* note 16.

20. *Compare* Nigel D. White, *Autonomous and Collective Sanctions in the International Legal Order*, 27 It. Y.B. Int'l L. 3, 24 (2017) (arguing that only collective, not unilateral, sanctions can be lawful under international law) *with* Dapo Akande, Payam Akhavan & Eirik Bjorge, *Economic Sanctions, International Law, and Crime Against Humanity: Venezuela's ICC Referral*, 115 Am. J. Int'l L. 493, 497–500 (2021) (rebutting Venezuela's claim that unilateral economic sanctions are unlawful).

21. I do not intend to put forth "paternalistic interference" as a rigid doctrinal concept, but only to sketch a working definition to shed light on a class of intervention that is under-studied in international law. My primary focus is on intervention by other states, although some examples of intervention by IOs will be used to illuminate specific arguments.

The following examples illustrate some typical forms of paternalistic interference of interest to this Note:

- *Conditional Aid*: Since 1992, the European Union has included a human rights conditionality in all of its development and trade agreements, making the recipient country's "respect for human rights, democratic principles and the rule of law" an essential element of the agreement.[22] The European Court of Justice held such provisions to be "an important factor for the exercise of the right to have a development cooperation agreement suspended or terminated where the non-member country has violated human rights."[23]
- *Democracy Promotion*: The United States has a budget estimated at $2.8 billion a year for democracy promotion worldwide.[24] The initiatives are scattered across over a dozen federal agencies, most prominently the Department of State's Bureau of Democracy, Human Rights, and Labor, as well as the U.S. Agency for International Development ("USAID").[25] They engage in a wide range of activities in different countries, including providing election support, implementing civic education, launching judicial reform, assisting municipal government, and creating public awareness campaigns.[26]
- *International Investment Law*: Foreign direct investment ("FDI") creates major benefits to the global economy, but such treaties often contain investment protection standards that prevent the host state from adopting economic, social, or environmental regulations that may undermine business profits.[27] For example, FDI in African agricultural land is key to revitalizing the sector, but African states are often unable to negotiate treaties that preserve their autonomy to protect local farmers, labor, and indigenous populations.[28]
- *Support for Dissident Movements*: In support of the 2019 pro-democracy protests in Hong Kong, the United States passed the Hong Kong Human Rights and Democracy Act to impose various consequences

22. *See* Der-Chin Horng, *The Human Rights Clause in the European Union's External Trade and Development Agreements*, 9 EUR. L.J. 677, 678–79 (2003).

23. Case C-268/94, Portugal v. Council, 1996 E.C.R. I-06177, ¶ 27.

24. Elliott Abrams, *Reorganizing U.S. Promotion of Democracy and Human Rights*, COUNCIL ON FOREIGN RELS. (Oct. 29, 2021, 9:57 AM), https://www.cfr.org/article/reorganizing-us-promotion-democracy-and-human-rights [https://perma.cc/84V8-TUND].

25. *Id.*

26. *See* MARIAN LAWSON & SUSAN B. EPSTEIN, CONG. RSCH. SERV., DEMOCRACY PROMOTION: AN OBJECTIVE OF U.S. FOREIGN ASSISTANCE 2–3 (2019).

27. *See* Lorenzo Cotula, *Do Investment Treaties Unduly Constrain Regulatory Space?*, 9 QUESTIONS INT'L L. 19, 20 (2014).

28. *See* Uche Ewelukwa Ofodile, *Managing Foreign Investment in Agricultural Land in Africa: The Role of Bilateral Investment Treaties and International Investment Contracts*, 7 LAW & DEV. REV. 329, 330, 345 (2014).

on China's oppressive actions,[29] and the U.S. Agency for Global Media prepared $2 million in funding to help Hong Kong protestors evade Chinese surveillance techniques.[30] Unsurprisingly, China called such conduct a "serious intervention" in China's domestic affairs and "a grave violation of international law."[31]

For many of these measures, the possibility that a mechanism of influence so seemingly non-coercive and ostensibly altruistic could be unlawful is often rejected off-hand.[32] This Note argues against such conventional wisdom by identifying the harms of paternalistic interference and exploring doctrinal avenues to place stronger constraints.

In Part I, I present the conventional public international law story about the principle of non-intervention and examine its two requisite elements: domaine réservé and methods of coercion. In Part II, I identify and discuss three problems of paternalistic interference: the pretext problem, the arrogance problem, and the autonomy problem. In Part III, I sketch the possibilities for a revitalized principle of non-intervention. I argue that paternalistic interference can intrude on domaine réservé, when interpreted as a set of states' fundamental rights, and it can involve coercion, when interpreted with sensitivity to the realistic picture of power dynamics in international relations.

I. The Conventional Story of Non-Intervention

The principle of non-intervention is widely recognized as "a corollary of every state's right to sovereignty, territorial integrity and political independence."[33] The principle of non-intervention primarily finds its source in customary international law, although treaties, judicial decisions, and scholarly commentaries also play a role in prescribing its demands.

29. *See* Hong Kong Human Rights and Democracy Act, 22 U.S.C. §§ 5721–26 (mandating sanctions against Chinese individuals, reassessment of Hong Kong's status of special treatment under U.S. law, and strategy to protect Hong Kong residents from abduction to China).

30. *See* Alex Lo, *US Has Been Exposed for Funding Last Year's Hong Kong Protests*, S. China Morning Post (July 2, 2020, 1:14 AM), https://www.scmp.com/comment/opinion/article/3091438/us-has-been-exposed-funding-last-years-hong-kong-protests [https://perma.cc/CU9C-LDLX].

31. Anne Gearan & David Lynch, *Trump Signs Legislation Designed to Support Pro-Democracy Protesters in Hong Kong*, Wash. Post (Nov. 27, 2019, 10:44 PM), https://www.washingtonpost.com/politics/trump-signs-legislation-designed-to-support-pro-democracy-protesters-in-hong-kong/2019/11/27/f7090e02-1070-11ea-9cd7-a1becbc82f5e_story.html [https://perma.cc/5JUE-DE5Q].

32. *See, e.g.*, Sabine Schlemmer-Schulte, *International Monetary Fund, Structural Adjustment Programme (SAP), in* Max Planck Encyclopedia of International Law, ¶ 37 (Rüdiger Wolfrum ed., 2014) ("While the accusation [that the IMF and the World Bank are illegally interfering in their members' internal affairs] may be justified from a policy perspective . . . the accusation is unfounded from a legal perspective.").

33. Robert Jennings & Arthur Watts, Oppenheim's International Law 428, § 128 (1996).

A. Historical Development

The U.N. Charter only explicitly mentions non-intervention as a limit to the organization's own authority, not an obligation upon its member states: "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 . . . ."[34] Yet scholars argue that the principle of non-intervention *between states* is implicit in the Charter's demand of sovereign equality,[35] peaceful settlement of international disputes,[36] and restraint from the threat or use of force.[37] The focus on forcible intervention is an outgrowth of the principle's early origins that tied the question of non-intervention to the permissibility of military interference.[38]

The aftermath of the two World Wars saw growing awareness that intervention takes many forms beyond military force. The doctrine of non-intervention began to expand, often with broad language but contested substance. The Charter of the Organization of American States ("OAS") in 1948 was one of the earliest instruments that spelled out the prohibition on non-forcible intervention, proclaiming that "[t]he foregoing principle prohibits not only armed force but also *any other form* of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements"[39] and "[n]o State may use or encourage the use of coercive measures of an *economic or political* character in order to force the sovereign will of another State and obtain from it advantages of any kind."[40] The Final Communiqué of the 1955 Asian-African Conference of Bandung declared the principle of "[a]bstention from intervention or interference in the internal affairs of another country" and emphasized that "all nations should have the right freely to choose their own *political and economic systems* and their *own way of life*."[41]

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34. U.N. Charter art. 2(7).

35. *See* Philip Kunig, *Prohibition of Intervention, in* MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW, ¶¶ 9–10 (Rüdiger Wolfrum ed., 2008); VINCENT, *supra* note 18, at 236; U.N. Charter art. 2(1).

36. U.N. Charter art. 2(3).

37. U.N. Charter art. 2(4).

38. *See* Maziar Jamnejad & Michael Wood, *The Principle of Non-Intervention*, 22 LEIDEN J. INT'L L. 345, 348 (2009) ("Many writings on 'non-intervention', particularly in earlier times, dealt solely with the law on the use of force."); Immanuel Kant, *Toward Perpetual Peace: A Philosophical Sketch, in* TOWARD PERPETUAL PEACE AND OTHER WRITINGS ON POLITICS, PEACE, AND HISTORY 70 (Pauline Kleingeld ed., David Colclasure trans., 2006) (1795) ("No state shall forcibly interfere in the constitution and government of another state."). *But see* EMER DE VATTEL, THE LAW OF NATIONS OR PRINCIPLES OF THE LAW OF NATURE APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS 12, § 37 (Joseph Chitty ed. & trans., 1844) (1758) ("[A]ll these affairs being solely a national concern, no foreign power has the right to interfere in them otherwise than its good offices, unless requested to do it, or induced by particular reasons.").

39. Charter of the Organization of American States art. 19, Apr. 30, 1948, 119 U.N.T.S. 3 (emphasis added).

40. *Id.* art. 20 (emphasis added).

41. Final Communiqué of the Asian-African Conference of Bandung, § G (Apr. 24, 1955).

From the 1960s to the 1980s, a series of United Nations General Assembly ("UNGA") resolutions, all passed with resounding approval, solidified the principle of non-intervention as customary international law. The 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, sponsored primarily by Asian, African, and Latin American states and passed near-unanimously, borrowed significantly from the OAS Charter and contains broad language prohibiting "economic, political or any other type of measures [of] coerc[ion]."[42] Much of the language in this Declaration made its way into the prominent and unanimous 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, known as the Friendly Relations Declaration. Not only does it formally list "the duty not to intervene in matters within the domestic jurisdiction of any State" as one of the seven basic principles of international law, but it also gives potentially rich content to the principle.[43] For example, it broadly proclaims 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."[44] Specifically, "[n]o State may use or encourage the use of *economic, political or any other type* of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind,"[45] and "[e]very State has an *inalienable right to choose its political, economic, social and cultural systems*, without interference in any form by another State."[46]

The Friendly Relations Declaration represents the high-water mark of international support for the principle of non-intervention. While its content achieved the status of customary international law,[47] its aspirations lacked further substantiation. In fact, the vagueness of the Declaration's wording may be a reason behind its unanimity, as "each state [could] vote for its conception of their meaning without violating its principles or its interests."[48] While the Global South continuously advocated for an expanded definition of non-intervention,[49] Western states tried to limit the doctrine as closely as possible to the threat or use of force.[50]

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42. G.A. Res. 2131 (XX), ¶ 2 (Dec. 21, 1965); *see also* VINCENT, *supra* note 18, at 238 n.13 (characterizing the Friendly Relations Declaration as a "Third World draft").

43. Friendly Relations Declaration, *supra* note 16.

44. *Id.* (emphasis added).

45. *Id.* (emphasis added).

46. *Id.* (emphasis added).

47. *See* Nicaragua ¶ 202.

48. VINCENT, *supra* note 18, at 243.

49. *Id.* at 252 ("Among the states of the Third World, above all, support was to be found for an expansive definition of sovereignty, an elaborate recording of the acts constituting intervention, and at the same time a restriction of the claims to sovereignty of the states with the power to intervene.").

50. During deliberations on the Friendly Relations Declaration, a U.S. representative noted, "the basic provision of the [U.N.] Charter concerning the principle of non-intervention was contained in Article 2, paragraph 4. Since Western countries held the term 'force' in this provision of the Charter to mean only

By contrast, a more ambitious attempt at sharpening the rules of non-intervention failed to receive wide approval. A 1981 UNGA resolution, the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, suggests a long list of rights and duties prescribed for states by the principle of non-intervention. Such rights include "national identity and cultural heritage of their peoples,"[51] "permanent sovereignty over its natural resources,"[52] and the right to "develop fully, without interference, their system of information and mass media."[53] Such duties include refraining from many activities that are rarely contemplated as illegal under present-day international law—such as "any measure which would lead to the strengthening of existing military blocs,"[54] "any defamatory campaign, villification or hostile propaganda for the purpose of intervening or interfering in the internal affairs of other States,"[55] "external economic assistance programme or . . . any multilateral or unilateral economic reprisal or blockade . . . in violation of the Charter,"[56] and "the exploitation and the distortion of human rights issues as a means of interference in the internal affairs of States."[57] The resolution was adopted by 102 votes to 22 with 6 abstentions, with virtually no Western power in support.[58] It is widely dismissed by scholars as not reflecting customary international law.[59]

B. Doctrinal Elements

By the time the International Court of Justice ("ICJ") issued its first opinion directly addressing the principle of non-intervention in *Military and Paramilitary Activities in and Against Nicaragua* in 1984, it has become clear that the principle is "part and parcel of customary international law," supported by substantial state practice and strong opinio juris.[60] The ICJ defined, in a relatively short paragraph, "the exact content of the principle" regarding aspects relevant to the case:

'armed force,' intervention was taken to mean the use or threat of armed force." Tomislav Mitrovic, *Non-Intervention in the Internal Affairs of States, in* Principles of International Law Concerning Friendly Relations and Cooperation 219, 226 (Milan Sahovic ed., 1972).

51. G.A. Res. 36/103 art. 2(I)(a) (Dec. 9, 1981).
52. *Id.* art. 2(I)(b).
53. *Id.* art. 2(I)(c).
54. *Id.* art. 2(II)(i).
55. *Id.* art. 2(II)(j).
56. *Id.* art. 2(II)(k).
57. *Id.* art. 2(II)(l).
58. Jamnejad & Wood, *supra* note 38, at 355 n.32.
59. *See, e.g.*, Kunig, *supra* note 35 ("The broad definition of the non-intervention principle given by this resolution was passed against the will of many States and does not reflect general international opinion on the topic."); Ori Pomson, *The Prohibition on Intervention under International Law and Cyber Operations*, 99 Int'l L. Stud. 180 (2022) ("Resolution 36/103 . . . is of little value for discerning the scope of the customary prohibition on intervention.").
60. *See* Nicaragua ¶¶ 202, 206–07.

> [I]n view of the generally accepted formulations, the principle forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State.[61]

This description reflects, and scholarship broadly adopts, two requisite elements to an incident of unlawful intervention.[62] First, the *object* of intervention must bear on "matters in which each State is permitted, by the principle of State sovereignty, to decide freely."[63] I refer to this element as "domaine réservé," in line with many scholars.[64] Second, the *means* of intervention must involve "methods of coercion."[65] Both elements contain substantial ambiguity, particularly when it comes to non-forcible intervention. Below, I summarize the conventional international law view of what the two elements encompass, which this Note seeks to challenge in later sections.

Domaine réservé is commonly interpreted as a residual right.[66] It is defined as "all matters which are not regulated by an international treaty, customary international law, or other international rules."[67] In other words, domestic juris-

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61. Nicaragua ¶ 204.

62. *See, e.g.*, William Ossoff, Note, *Hacking the Domaine Réservé: The Rule of Non-Intervention and Political Interference in Cyberspace*, 62 HARV. INT'L L.J. 295, 304 (2021) ("[S]tates and scholars generally agree that the rule of non-intervention has two primary elements."); Mohamed Helal, *On Coercion in International Law*, 52 N.Y.U. J. INT'L L. & POL. 1, 4 (2019) (defining "unlawful ends" and "unlawful means" as the two elements of unlawful intervention).

63. Nicaragua ¶ 205.

64. Some other scholars refer to this element as "domestic jurisdiction," "domestic affairs," "internal affairs," or "exclusive jurisdiction," and there is disagreement on whether these terms connote the same, or different, meanings. *Compare* Niki Aloupi, *The Right to Non-Intervention and Non-Interference*, 4 CAMBRIDGE J. INT'L & COMPAR. L. 566, 573–74 (2015) (arguing the terms have different connotations) *with* Katharina Ziolkowski, *Peacetime Cyber Espionage—New Tendencies in Public International Law, in* PEACETIME REGIME FOR STATE ACTIVITIES IN CYBERSPACE: INTERNATIONAL LAW, INTERNATIONAL RELATIONS AND DIPLOMACY 425, 434 (Katharina Ziolkowski ed., 2013) (suggesting "internal affairs" and "domaine réservé" are synonymous) *and* Terry Gill, *Non-Intervention in the Cyber Context, in* PEACETIME REGIME FOR STATE ACTIVITIES IN CYBERSPACE: INTERNATIONAL LAW, INTERNATIONAL RELATIONS AND DIPLOMACY 217, 217 (Katharina Ziolkowski ed., 2013) (suggesting "domestic jurisdiction" and "domaine réservé" are synonymous). This Note uses the terms interchangeably to refer to what the ICJ described as "matters in which each State is permitted, by the principle of State sovereignty, to decide freely." Nicaragua ¶ 205.

65. Nicaragua ¶ 205.

66. Helal, *supra* note 62, at 66.

67. Kunig, *supra* note 35, ¶ 3.

diction is not an "irreducible sphere of state freedom" or "fundamental rights" of states with intrinsic content.[68] By "matters in which each State is permitted . . . to decide freely," it simply means whatever subject that has yet to be regulated by international law.[69] This forms a sharp contrast with the domestic context of many states, where individual rights constrict the permissible reach of state authority, instead of being defined by what the state has yet to intrude on. While the Friendly Relations Declaration and *Nicaragua* envisioned domaine réservé to include "the choice of a political, economic, social and cultural system,"[70] the contours of this autonomy have been increasingly blurred and encroached upon.[71] For example, while the regulation of nationality was held to lie within domaine réservé in 1923, that is no longer true today.[72] With the advancement of international human rights law, international criminal law, and many other progressive developments that elevate individuals to the international plane, "there are hardly any subject-matters or policy areas . . . that are inherently removed from the international sphere."[73] The scope of domaine réservé is severely restricted.

Coercion, the essential second element of unlawful intervention, is a concept that invokes intensive debate. According to Oppenheim, "the interference must be forcible or dictatorial, or otherwise coercive, in effect depriving the state intervened against of control over the matter in question."[74] On the one end, coercion is "particularly obvious" in the threat or use of force.[75] Thus, in *Nicaragua* as well as in *Armed Activities on the Territory of the Congo*, the ICJ held that military intervention and the funding of armed forces in another territory constituted coercion.[76] While international law generally recognizes that non-forcible measures can also constitute unlawful intervention,[77] there is

68. Helal, *supra* note 62, at 66.

69. *See* Nationality Decrees Issued in Tunis and Morocco, Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 4, at 23–24 (Feb. 7) ("The words 'solely within the domestic jurisdiction' seem rather to contemplate matters which . . . are not, in principle, regulated by international law . . . . The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends on the development of international relations.").

70. Friendly Relations Declaration, *supra* note 16; Nicaragua ¶ 205.

71. *See* Antonio Tzanakopoulos, *The Right to Be Free From Economic Coercion*, 4 CAMBRIDGE J. INTL. & COMPAR. L. 616, 631 (2015) ("[E]ven the matters of choice of a political or economic or social or cultural system . . . may be regulated by international law, and thus be put outside the sphere of freedom of the state . . . . Can a state adopt a political, social, and cultural system based on racial discrimination? Clearly not. There are even claims that new states can no longer emerge unless they are democratic, and that democratic governance is arising as an obligation under international law.").

72. *See* Katja Ziegler, *Domaine Réservé, in* MAX PLANCK ENCYCLOPEDIA OF INTERNATIONAL LAW, ¶ 3 (Rüdiger Wolfrum ed., 2013).

73. *Id.* ¶ 3.

74. JENNINGS & WATTS, *supra* note 33, § 129.

75. Nicaragua ¶ 205.

76. *See id.*; Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), 2005 I.C.J. Rep. 168, ¶ 345 (Dec. 19).

77. *See, e.g.*, Friendly Relations Declaration, *supra* note 16 ("No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from

little settled law on what conduct short of force rises to the level of coercion. In *Nicaragua*, with respect to the United States' ninety percent reduction in sugar import quota and trade embargo with Nicaragua, "the Court has merely to say that it is unable to regard such action on the economic plane as is here complained of as a breach of the customary-law principle of non-intervention," without providing further guidance.[78] The coerciveness of certain economic interventions such as sanctions, embargoes, and boycotts remains open questions.[79] Recently, various forms of cyber operations have attracted substantial attention and debate on the threshold of coercion.[80] On the other end, there is broad acceptance that some measures are clearly non-coercive and entirely lawful, such as the provision and termination of economic aid,[81] public criticism of state policies and human rights violations,[82] and expression of support for opposition movements.[83]

II. The Missing Stories: Problematizing Paternalistic Interference

The progressive development of international law vis-à-vis state sovereignty is often celebrated. As Martti Koskenniemi observes, "[f]unctional interventionism underlies all human rights law, trade law, and environmental law so that lawyers in all of these fields are in the business of lifting the veil of sovereignty so as to grasp international problems by the skin."[84] Many believe it is great that states and IOs have significant latitude to intervene—through peaceful means of persuasion, incentives, and pressure—in the domestic affairs of other states. It is only through interference that the international community can protect the basic human rights of individuals under oppressive regimes,[85] nudge governments to undertake collective action on climate change,[86] and promote the universal recognition of gender and racial equality.[87] For much of

it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind.").

78. Nicaragua ¶¶ 244–45.

79. Kunig, *supra* note 35, ¶ 26.

80. *See generally* Ossoff, *supra* note 62; Jack Goldsmith & Alexis Loomis, *"Defend Forward" and Sovereignty*, Aegis Series Paper No. 2102 (2021); Annachiara Rotondo & Pierluigi Salvati, *Fake News, (Dis) information, and the Principle of Nonintervention*, Cyber Def. Rev. 209 (2019).

81. Kunig, *supra* note 35, ¶ 26.

82. Helal, *supra* note 62, at 116–17.

83. *Id.* at 118.

84. Martti Koskenniemi, *What Use for Sovereignty Today?*, 1 Asia J. Int'l L. 61, 64–65 (2011).

85. *See generally* Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 Duke L.J. 621 (2004).

86. *See generally* Franz Perrez, Cooperative Sovereignty: From Independence to Interdependence in the Structure of International Environmental Law (2000).

87. *See generally Gender Equality*, United Nations, https://www.un.org/en/global-issues/gender-equality [https://perma.cc/CYV5-BDMS] (last visited Mar. 27, 2023); *75th Anniversary of the UDHR – An Impetus*

the international law scholarship, such lofty objectives could only turn problematic when pursued through forcible means: humanitarian intervention is controversial because it violates the prohibition on the threat or use of force and causes conspicuous harm of "break[ing] things and kill[ing] innocent people."[88] By contrast, when an act of interference is only, at its worst, "paternalistic," few arguments are made as to what harms it could cause, why the harms might outweigh the benefits, and why it sometimes ought to be prohibited by international law. This Part undertakes this normative task by identifying three problems of paternalistic interference: the pretext problem, the arrogance problem, and the autonomy problem. It lays the basis for *lex ferenda* arguments to be developed in Part III.

A. The Pretext Problem

The first problem of paternalistic intervention is that the intervening state may be disingenuous about its intentions. The moral high ground of altruistic purposes and humanitarian objectives creates normative appeal for otherwise unpalatable interventions.[89] Indeed, the goals of development, equality, and human rights appear to be such universal good that it is hard to conceive of why measures to advance them should be objectionable under international law. Such righteous claims often conceal the real incentives behind interference.

Recall the hypothetical at the beginning of this Note, where China demands the United States legalize abortion and prohibit guns with the threat of sanctions. Part of the objection may be that China does not care about human rights in the United States at all. It is only criticizing *Dobbs* as a pretext to tarnish the United States' global image and retaliate against U.S. criticism of China's human rights abuses. Similar problems can be observed in many other scenarios. Empirical analyses on unilateral humanitarian intervention have found that there are few interventions, among many purported ones, that "can be even plausibly described as motivated primarily by humanitarian concerns," as opposed to the intervening state's power pursuits or geopolitical interests.[90] Cases of paternalistic interference fare no better.

Consider development projects in formerly colonized states. During the Cold War, the United States offered large-scale aid and development programs to

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to Combat Racism, UNITED NATIONS, https://www.un.org/en/observances/end-racism-day [https://perma.cc/A76A-7Z2K] (last visited Mar. 27, 2023).

88. Roland Paris, *The 'Responsibility to Protect' and the Structural Problems of Preventive Humanitarian Intervention*, 21 INT'L PEACEKEEPING 569, 575 (2014); *see also* Kevin Heller, *The Illegality of 'Genuine' Unilateral Humanitarian Intervention*, 32 EUR. J. INT'L L. 613, 628 (2021).

89. *See, e.g.*, Robert Belloni, *The Trouble with Humanitarianism*, 33 REV. INT'L STUD. 415, 415 (2007) (defining humanitarianism as "the political, economic and military interference in the domestic affairs of a state justified by a nascent transnational morality").

90. Heller, *supra* note 88, at 643; *see also* ANDREAS KRIEG, MOTIVATIONS FOR HUMANITARIAN INTERVENTION: THEORETICAL AND EMPIRICAL CONSIDERATIONS 126 (2013).

Global South states through USAID, which President Kennedy described as fulfilling the United States' "moral obligations as a wise leader and good neighbor in the interdependent community of free nations."[91] Yet, USAID largely arose out of fear that extreme poverty would lead to communist insurrections,[92] and was primarily concerned with protecting U.S. national interests.[93] These programs aimed at promoting free market democracies in recipient countries, while references to human rights were largely an ideological weapon, as the United States "overlook[ed] grave violations by allies such as Guatemala and Zaire and claim[ed] violations by communist countries."[94]

Western states also contributed to international financial institutions ("IFIs") like the World Bank to provide highly subsidized loans to the Global South.[95] The Bank encouraged Global South states to borrow heavily in order to modernize their national economies and fund a whole host of social projects.[96] However, when African states struggled with their balances of payment after the 1973 oil crisis and had to borrow from Western financial institutions at much higher interest rates to repay existing debt, the World Bank blamed the debt crisis on the African states' "domestic policy inadequacies" and pressed the need for Western-prescribed policy reforms.[97] While Africa was "unable to point to any significant growth" from the 1960s to 1980s,[98] the profits that the United States derived from Africa almost tripled in the early 1970s.[99] By prescribing development agendas and influencing the economic policies of the Global South, Western actors set out to bring modernization and prosperity to those states, only to leave them in an economic quagmire while Western states themselves benefited both economically and geopolitically from the exchanges.

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91. *USAID History*, USAID, https://www.usaid.gov/about-us/usaid-history [https://perma.cc/WVC4-CDYE] (last visited Mar. 28, 2023).

92. Isaac Kamola, Making the World Global: U.S. Universities and the Production of the Global Imaginary 66 (2019).

93. *See* Godfrey Uzoigwe, *Neocolonialism Is Dead: Long Live Neocolonialism*, 36 J. Glob. S. Stud. 59, 77 (2019).

94. Cesare Pinelli, *Conditionality, in* Max Planck Encyclopedia of International Law ¶ 17 (Rüdiger Wolfrum ed., 2013).

95. Kamola, *supra* note 92.

96. *Id.*

97. *Id.* at 76, 78; *see also* The World Bank, *Accelerated Development in Sub-Saharan Africa: An Agenda for Action,* at 3, World Bank Report No. 14030 (Jan. 1, 1981). By contrast, the Organization of African Unity attributed the crisis to the fact that "Africa was directly exploited . . . for the past two decades . . . through neo-colonialist external forces which seek to influence the economic policies and directions of African States." Org. Afr. Unity [OAU], *Lagos Plan of Action for the Economic Development of Africa: 1980-2000*, ¶ 6 (1982).

98. *OAU, Lagos Plan of Action*, *supra* note 97, ¶ 1.

99. *See* Clarence Munford, *Imperialism and Third World Economics*, 6 The Black Scholar 15, 19 (1975). In 1971 alone, the United States obtained $8.8 billion in profits from direct investments in the Third World. *Id.* Theories of imperialism explains the discrepancy by the structure of "an integral economic system consisting of a center—the imperialist powers—and a periphery—a belt of super-exploited underdeveloped countries," where the center exports capital, sometimes through loans, only to reap the lion's share of surplus value. *Id.* at 18–19.

By the 1990s, it was observed that "the [IMF] and the [World] Bank have been hijacked by their major shareholders for overtly political ends. Whether in Mexico in 1994, Asia in 1997, or Russia throughout the 1990s, the institutions became a more explicit tool of Western, and more particularly American, foreign policy."[100]

The rule of law presents another curious example. In 1989, the Non-Aligned Movement introduced a UNGA resolution to declare 1990–1999 the "UN Decade of International Law,"[101] viewing the end of the Cold War as an occasion to renew faith in international law and finally achieve sovereign equality.[102] Western states, by contrast, viewed the end of the Cold War as "the triumph of the liberal democratic state," which should inform new rules around state legitimacy in international law.[103] Accordingly, they substituted the discourse on the international rule of law *between* states with the internationalization of rule of law *within* states, and established the latter as an important factor in states' economic development.[104] In effect, Western states hijacked an initiative to restore sovereign equality and constrain powerful states and turned it into further justification for liberal intervention. Thus, while promoting the rule of law around the globe sounds laudable and unproblematic, its motive no longer seems beneficent when understood in the context of its origination and how the focus on domestic legitimacy "effectively removes [its] teeth as [a] concept[] which could bite between nations."[105]

"Why are pretexts harmful?" one may ask. After all, it is unsurprising that states conduct their foreign affairs based on their national interests. For states that yield significant voting power in an IO, sometimes to the effect of a veto,[106] it is also unsurprising that the IO's course of action would reflect that state's concerns. Still, pretextual justifications for intervention are harmful for several reasons. In policy areas such as economic development or environmental protection that involve technical expertise, Western states can leverage their

100. *Sick Patients, Warring Doctors*, The Economist (Sept. 16, 1999), https://www.economist.com/finance-and-economics/1999/09/16/sick-patients-warring-doctors [https://perma.cc/67ZV-TZUU].

101. G.A. Res. 44/23 (Nov. 17, 1989).

102. Sundhya Pahuja, Decolonising International Law: Development, Economic Growth and the Politics of Universality 176–77 (2011).

103. *Id.* at 179.

104. *Id.* at 184.

105. *Id.* at 239.

106. For example, the United States possesses 16.5% voting power in the IMF, while many important IMF decisions require a special majority vote with 85% approval. *See IMF Members' Quotas and Voting Power, and IMF Board of Governors*, Int'l Monetary Fund (Nov. 4, 2023), https://www.imf.org/en/About/executive-board/members-quotas [https://perma.cc/E7XF-92X4] (last visited Jan. 7, 2024); Articles of Agreement of the IMF arts. 3 § 2(c), 4 § 2(c), 5 § 7(c), July 22, 1944 (as amended Dec. 15, 2010), 2 U.N.T.S. 39 (eighty-five percent majority required for changing quotas, making provisions for general exchange arrangements, or changing the periods for currency repurchase) [hereinafter IMF Articles of Agreement]. This is no coincidence. *See* Leo Van Houtven, *Governance of the IMF: Decision Making, Institutional Oversight, Transparency, and Accountability*, IMF Pamphlet Series 12 (2002) ("[T]he higher special majority was raised to 85 percent in order to maintain the veto power of the United States.").

privilege in knowledge production to conceal their ulterior motives and lure the recipient country into following their direction.[107] When the interfering state represents both "objective" knowledge and its own interests in promoting a preferred policy choice, it can lead to conflating the latter with the former. The insincerity coupled with epistemological power interferes with the recipient country's ability to make policy decisions in their best interests. For example, Western states exported their models for intellectual property protection through Trade Related Intellectual Property Rights agreements, only to make foreigners much more likely to benefit from these protections than locals in Global South states.[108]

In the human rights context, pretexts and hypocrisy are particularly troubling. The power of international human rights law lies, in large part, in its articulation of universal norms and its ability to persuade states to strive towards that ideal.[109] When a powerful state uses the language of human rights to support self-interested interventions or cites human rights violations to justify punitive measures against a rival state, the pretext undermines the normative power of the international human rights discourse. The reference to human rights for geopolitical and strategic purposes does injustice to the genuine human rights endeavor, creating the cynical impression that it is merely a foreign policy tool at the great powers' disposal.[110]

B. The Arrogance Problem

While there may be reasonable debate about the ulterior motives behind interventions, even if an act of interference genuinely seeks to benefit the target state, it may nevertheless be problematic by connoting arrogance on the part of the intervening state. The arrogance problem has two layers. First, although the intervening state may believe it knows the best solution to another state's problems, it often does not, and its interference only misleads the intervened state. Second, even when the intervening state indeed possesses the right answer, it

107. *See, e.g.*, KAMOLA, *supra* note 92, at 62 (characterizing the World Bank as "a primary site for knowledge production about the world economy"); Koskenniemi, *supra* note 84, at 63 ("Where national governments intervene, they do this on the basis of advice from essentially non-national networks of financial, military, or environmental expertise.").

108. *See* ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW 271 (2004).

109. *See, e.g.*, Veronika Fikfak & Lora Izvorova, *Language and Persuasion: Human Dignity at the European Court of Human Rights*, 22 HUM. RTS. L. REV. 1, 3 (2022) (arguing that compared to enforcement authority, "[i]t is the substance of the [human rights] judgments and the positions endorsed that will motivate and persuade states to implement changes"); *see also* Darren Hawkins, *Explaining Costly International Institutions: Persuasion and Enforceable Human Rights Norms*, 48 INT'L STUD. Q. 779, 783–87 (2004).

110. *Cf.* Richard Perkins & Eric Neumayer, *The Organized Hypocrisy of Ethical Foreign Policy: Human Rights, Democracy and Western Arms Sales*, 41 GEOFORUM 247, 254 (2010) ("While a more ethically-grounded foreign policy may script a geopolitics of hope . . . underpinned by a deterritorialised concern for the well-being of a more spatially inclusive, cosmopolitan humanity, our findings suggest that such socio-spatial narratives (potentially) conceal a geopolitics of territorial egoism.").

can be an affront to the intervened state's dignity to simply be demanded to follow external prescriptions. Consider the hypothetical of abortion and guns again. A U.S. audience may react, "who are you, China, to tell us what to do with our laws? What do you think you know?"

The history of paternalistic interference is filled with arrogant presumptions, where Western states believe their values and experiences are applicable to the entire world. Antony Anghie detailed how the West exercised a monopoly over the definition of "good governance."[111] A concept that emerged after the Cold War, good governance broadly requires "the creation of a government which is, among other things, democratic, open, accountable and transparent, and which respects and fosters human rights and the rule of law."[112] Political crises in the West were almost never deemed failures to meet good governance norms. Instead, the concept was specifically directed at the Global South, viewed as "countries that lack governance."[113] The message was clear: Global South states must leave their backward policies and follow the footsteps of Western political institutions to achieve stability and prosperity.[114] The Western structures, featuring competitive elections, free markets, and common law designs, are presented as the solutions to various ills and underdevelopment in the Global South. According to Anghie, the good governance initiatives are replicas of the "civilizing mission" in the colonial period.[115]

The promotion of good governance serves as the basis for extensive Western interference in the political systems and domestic policies of Global South countries. This is achieved through its close relationship with two other concepts: development and human rights. By alleging that democratic governance is indispensable for development,[116] Western states have expanded the reach of IFIs like the World Bank, which wields broad power in the economic sphere but is prohibited by its Articles of Agreement from "interfer[ing] in the political affairs of any member."[117] Now, the line between politics and economy is blurred. Under the name of development, the World Bank is now able to attach conditions of political accountability, competitive elections, civic participation, and constitutional reform onto its loans.[118] Meanwhile, Western governments sought to universalize their models of governance through

111. *See* ANGHIE, *supra* note 108, at 245–72.
112. *Id.* at 248.
113. *See id.* at 249.
114. *See id.*
115. *Id.*
116. *See* Balakrishnan Rajagopal, *From Modernization to Democratization: The Political Economy of the "New" International Law*, *in* REFRAMING THE INTERNATIONAL: LAW, CULTURE, POLITICS 136–162 (Richard Falk, Lester Edwin J. Ruiz & R. B. J. Walker eds., 2002).
117. Articles of Agreement of the International Bank for Reconstruction and Development art. 4, § 10, Dec. 27, 1945 (as amended June 27, 2012), 2 U.N.T.S. 134. Similarly, the IMF is required by its Articles of Agreement to "respect the domestic social and political policies of members" in its surveillance over exchange rates. IMF Articles of Agreement, *supra* note 106, art. 4 § 3.
118. PAHUJA, *supra* note 102, at 238.

international human rights law. Following the end of the Cold War, for example, U.S. interpretations of Article 25 of the ICCPR, which provides the right "[t]o take part in the conduct of public affairs" and the right "[t]o vote and to be elected at genuine periodic elections,"[119] shifted from a pragmatic right open to different forms of political organization to the right to a specific Western form of democratic governance.[120]

As mentioned above, the harm of such arrogance is two-fold. First, it leads states to adopt policies ill-suited for local conditions, causing negative impact. Consider structural adjustment programs ("SAPs") imposed by the World Bank and IMF on Global South countries as conditions to their loans.[121] These conditionalities include both macroeconomic policies, such as trade liberalization, financial market deregulation, privatization, and fiscal discipline,[122] and political reforms, such as democratic governance, anti-corruption, and the rule of law.[123] Many of the SAPs are ineffective at best and often harmful to local societies. Empirical studies show that they have little effect on long-run GDP, export, or investment growth,[124] economic complexity and export diversification,[125] or the transition towards energy sustainability.[126] Worse, SAPs are shown to exacerbate income inequality,[127] lower health system access,[128] undermine collective labor rights,[129] hollow out the bureaucratic quality of local institutions,[130] and

119. ICCPR Article 25 provides in full: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country." ICCPR, *supra* note 6, art. 25.

120. *See generally* Henry Steiner, *Political Participation as a Human Right*, 1 Harv. Hum. Rts. Y.B. 77 (1988); Gregory Fox, *The Right to Political Participation in International Law*, 17 Yale. J. Int'l L. 539 (1992); Thomas Franck, *The Emerging Right to Democratic Governance*, 86 Am. J. Int'l L. 46 (1992).

121. Western countries rarely borrow from IFIs. When Britain last did so in 1976, it was subject to the IMF's conditionality of cutting social spending. Deeply discontent with the coercive pressure and erosion on sovereignty, it never borrowed from IFIs again. *See generally* Richard Peet, Unholy Trinity: The IMF, World Bank and WTO (2003).

122. *See* Schlemmer-Schulte, *supra* note 32, ¶ 3.

123. *Id.* ¶ 20.

124. *See* Fiseha Gebregziabher, *Adjustment and Long-Run Economic Performance in 18 African Countries*, 27 J. Int'l Dev. 170, 179 (2015).

125. *See* Firat Demir, *IMF Conditionality, Export Structure and Economic Complexity: The Ineffectiveness of Structural Adjustment Programs*, 50 J. Compar. Econ. 750, 752 (2022).

126. *See generally* Fatih Karanfil & Luc Désiré Omgba, *Do the IMF's Structural Adjustment Programs Help Reduce Energy Consumption and Carbon Intensity? Evidence from Developing Countries*, 49 Structural Change & Econ. Dynamics 312 (2019).

127. *See* Timon Forster et al., *How Structural Adjustment Programs Affect Inequality: A Disaggregated Analysis of IMF Conditionality, 1980–2014*, 80 Soc. Sci. Rsch. 83, 90 (2019).

128. *See* Timon Forster et al., *Globalization and Health Equity: The Impact of Structural Adjustment Programs on Developing Countries*, 267 Soc. Sci. & Med. 1, 5 (2020).

129. *See* Robert Blanton, Shannon Blanton & Dursun Peksen, *The Impact of IMF and World Bank Programs on Labor Rights*, 68 Pol. Rsch. Q. 324, 330 (2015).

130. *See* Bernhard Reinsberg et al., *The World System and the Hollowing out of State Capacity: How Structural Adjustment Programs Affect Bureaucratic Quality in Developing Countries*, 124 Am. J. Socio. 1222, 1239 (2019).

lead to excessive deaths from infectious diseases.[131] These failures have been attributed to the SAPs' "cookie cutter" approach and their neglect towards local distributional consequences.[132]

Second, independent of the harmful effects, these interventions are also problematic because they reinforce the neo-imperialist assumption that the states possessing greater economic and military power—in part due to colonialism and exploitation—are also superior in their intellect, knowledge, and morality. They reflect a savior mentality, where hopeless victims of the underdeveloped world await help, and compassionate Western actors "observe[] this and design[] an exceptional intervention that alleviates suffering."[133] Underlying the domestic policy conditionalities is an assumption that Global South states are incapable of figuring out what is best for themselves, and must be educated and nudged by external forces. They also reveal a self-righteous mindset among many Western actors that the solution to the world's ills would always be *more* active intervention from the West, without appreciating the dignity effect upon its recipients.

C. The Autonomy Problem

The dignity effect of the arrogance problem is connected to the third problem of paternalistic intervention—its encroachment on national autonomy. Even if the intervening state is acting in good conscience, and even if it is providing the right solution with the right attitude, there may still be good reason to insist, from the intervened state's perspective, that it is important not just to reach the right outcome but to do so through the right process. And foreign intervention is not the right process to arrive at desirable domestic policies.

Western scholars are aware of this problem in their own contexts. John Yoo finds that "[g]lobalization poses real challenges to American constitutional law," because regulations imposed by the undemocratic operation of IOs and treaty regimes come into tension with what the framers of the U.S. Constitution designed to be "a distinctive structure for the exercise of governmental power at home: lawmaking through congressional bicameralism followed by presentment to the President."[134] Again, in the abortion and gun control hypothetical, a natural response would be that these issues have a special place in the U.S. Constitution and must be interpreted by the U.S. Supreme Court accordingly. Alternatively, these issues are so politically contested in the United States

131. *See* Elias Nosrati et al., *Structural Adjustment Programmes and Infectious Disease Mortality*, 17 PLOS ONE 1, 6 (2022).

132. ANGHIE, *supra* note 108, at 259.

133. Amy Finnegan, *Growing Up White Saviors*, 16 J. APPLIED SOC. SCI. 617, 618 (2022).

134. John Yoo, *Debating Sovereignty: Globalization, International Law, and the United States Constitution*, LAW & LIBERTY (May 7, 2012), https://lawliberty.org/forum/debating-sovereignty-globalization-international-law-and-the-united-states-constitution [https://perma.cc/7G45-X4GR].

that they must be resolved by the U.S. legislature and popular will. Either way, it would be unfathomable why China, coming from an entirely different political and legal system, could threaten sanctions to demand that American law simply be changed to follow how things are done in China. It is, after all, a decision to be made by the American people.

Koskenniemi's account of sovereignty articulates this concern. He argues that the value of sovereignty today lies in the autonomy of human groups to live and deliberate as political communities.[135] For all the problems that statehood may produce, it remains an important venue for "the expression of local values and preferences as well as traditions of self-rule, autonomy, and continuous political contestation."[136] Koskenniemi concludes with an optimistic note:

> [S]overeignty articulates the hope of experiencing the thrill of having one's life in one's own hands. . . . Today, it stands as an obscure representative of an ideal against disillusionment with global power and expert rule. In the context of war, economic collapse, and environmental destruction, in spite of all the managerial technologies, sovereignty points to the possibility, however limited or idealistic, that whatever comes to pass, one is not just a pawn in other people's games but, for better or for worse, the master of one's life.[137]

Autonomy in a state's policy-making process is important in itself because it serves the core purpose and hope in individuals' participation in political communities. On a practical level, autonomy is also important because positive changes achieved through an organic process are much more likely to be sustainable. Take constitution drafting as an example. Would constitutionalism and the rule of law have prospered in the United States as it did if the U.S. Constitution had not been written by the Founding Fathers, but handed down by the British as a condition of American independence? It would be hard to imagine an affirmative answer, yet Western powers sometimes played significant roles in drafting the constitutions of other countries, such as the Iraqi constitution of 2005. The Iraqi constitution-making process was criticized for being "insufficiently organic" and "too often dictated, or so it seemed, by U.S. interests, such as narrow partisan and electoral issues in Washington."[138] As part of its development programs, the World Bank has also promoted reforms in recipient countries such as Uganda, Ethiopia, Liberia, and Sierra Leone to "[a]mend[] the constitution to redefine the role of the state, introduce new

135. Koskenniemi, *supra* note 84, at 68.

136. *Id.*

137. *Id.* at 70.

138. Feisal Amin Rasoul al-Istrabadi, *A Constitution Without Constitutionalism: Reflections on Iraq's Failed Constitutional Process*, 87 TEX. L. REV. 1627, 1628 (2009).

governance arrangements, change the machinery of government or alter the balance of power among the executive and the parliament."[139] While the text of a constitution can be imported, constitutionalism and other underlying values cannot, and collective decision-making by the local political community is indispensable to their development.

Autonomy and independence in a state's policymaking process is also crucial for the efficacy of political movements and social advocacy on the ground. Even when a policy change is enacted, it requires popular acceptance to be translated into real impact, and a society is less likely to embrace progressive changes that are perceived as being imported from the outside, instead of generated organically from within the community.[140] Further complicating the picture is the rise of nationalism in global politics. The fact that a certain policy is an objective of foreign interference may raise antagonism from the local government and public. For example, LGBTQ movements in the developing world often face the accusation that "LGTBQ" identities are a Western invention or imperialist import at odds with the local culture.[141] Such prejudice can be reinforced when Western states and actors actively fund, oversee, or orchestrate local advocacy efforts. I worked at an LGBTQ education nonprofit in China from 2020 to 2021. We were alarmed when President Biden announced that the United States was putting global LGBTQ rights at the forefront of its foreign policy.[142] The more vocal the U.S. administration is about LGBTQ rights worldwide, the more trouble our organization has—we were likely to face stronger suspicion from the Chinese government, increased shutdown of our activities, greater safety concerns for ourselves, and more difficulty in changing the public's mind when LGBTQ rights become a "sensitive political issue" at odds with prevailing nationalistic sentiments. In this respect, foreign interference can easily be counterproductive. Indeed, Global South states may "adopt defensive strategies for countering what they perceive [as] Western attempts at enforcing [an] international hierarchy" where Euro-American constructs of identity and rights are

139. The World Bank, *Reforming Public Institutions and Strengthening Governance: A World Bank Strategy*, World Bank Strategy Paper, at 77 (November 2000).

140. *See, e.g.*, Geoffrey Swenson, *Why U.S. Efforts to Promote the Rule of Law in Afghanistan Failed*, 42 Int'l Sec. 114, 150 (2017) ("[T]he rule of law cannot be promoted successfully absent powerful domestic constituencies and at least some high-level state officials who take the idea seriously.").

141. *See, e.g.*, Ratna Kapur, *Postcolonial Erotic Disruptions: Legal Narratives of Culture, Sex, and Nation in India*, 10 Colum. J. Gender & L. 333, 370–71 (2001); Elizabeth Baisley, *Framing the Ghanaian LGBT Rights Debate: Competing Decolonisation and Human Rights Frames*, 49 Can. J. Afr. Stud. 383, 387 (2015); Eve Ng, *LGBT Advocacy and Transnational Funding in Singapore and Malaysia*, 49 Dev. & Change 1093, 1108–09 (2018). In fact, it is much more likely that not LGBTQ identities, but homophobia, is a Western import. *See id.* at 1109.

142. *See Memorandum on Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World*, The White House (Feb. 4, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/memorandum-advancing-the-human-rights-of-lesbian-gay-bisexual-transgender-queer-and-intersex-persons-around-the-world [https://perma.cc/39SY-AL2F].

promulgated across the globe.[143] This illustrates how paternalistic interference can undercut progress by depriving the local community of the autonomy to make their own decisions.

III. Towards a Revitalized Principle of Non-Intervention

The present doctrine of non-intervention lacks the language to talk about the problems of pretext, arrogance, and autonomy in paternalistic interference. By defining domaine réservé as a residual right, and by adopting a narrow view of coercion, it almost takes for granted that most interventions discussed in this Note are perfectly lawful. While interventions have many benefits and legitimate uses in international politics, a weak principle of non-intervention leaves states, particularly those in the Global South, with few doctrinal tools to draw boundaries and refute problematic instances of political and economic interference. This Part explores how the principle of non-intervention can be revitalized to provide greater clarity in the realm of paternalistic interference and afford stronger protection to the sovereignty of Global South states. I sketch possible doctrinal adaptations for both elements of intervention.

A. Domaine Réservé as Fundamental Rights

Defining domaine réservé as residual liberty—matters that have yet to be regulated by international law—is not the only way to understand what the ICJ described as "matters in which each State is permitted, by the principle of State sovereignty, to decide freely."[144] Instead, it is possible to conceive of domaine réservé as a state's fundamental rights that *impose limits* on how far international law can reach.

As a start, this approach would much more rigorously apply the Friendly Relations Declaration's assertion that "[e]very State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State."[145] Instead of being treated as part of an infirm and relative concept,[146] this language can establish an irreducible core of state control: there are decisions so fundamental to a state's character that a state cannot relinquish them under international law. They can include, for example,

143. Vikash Yadav & Jason A. Kirk, *State Homophobia? India's Shifting UN Positions on LGBTQ Issues*, 15 Globalizations 670, 674 (2018). For example, "[t]o the extent that raising [sexual orientation and gender identity] issues and advancing LGBTQ rights at the UN can be cast as a Western project, Indian diplomats could see incentives not to align India's stances with those of the US, EU, and Latin American states advancing an LGBTQ-rights-as-human-rights agenda." *Id.* at 671.

144. Nicaragua ¶ 202.

145. Friendly Relations Declaration, *supra* note 16. *Nicaragua* reiterates "the choice of a political, economic, social and cultural system" as an example of matters that a state is permitted to freely decide. Nicaragua ¶ 202.

146. *See* Tzanakopoulos, *supra* note 71, at 620.

a state's decisions over whether to become a Marxist or capitalist, religious or secular, democratic or authoritarian polity. Two possible theories support a strengthened application. First, under a natural law view, states possess "a set of fundamental rights protected against intervention because they are considered intrinsic characteristics of states, without which statehood would be eviscerated."[147] The formulation of a state's own political and economic identity is inseparable from the essential requirements of statehood. Second, states' fundamental rights are a corollary of sovereign equality as "rights unconditionally owned by States individually, on equal terms."[148] In other words, part of what it means to treat all states as equals on an international law level is the recognition that states possess certain equal rights regardless of their power or development status.

Another possibility is to draw on the right to self-determination, despite the concept's complex relationship with sovereignty,[149] to argue that the development of certain broad political and economic agendas must be reserved to the states themselves. Under the ICCPR, "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[150] To the extent that self-determination is a collective right, and association through nationhood is a venue for exercising that right, a nation's pursuit of "economic, social and cultural development" would not be a free one if unduly manipulated by foreign forces. Thus, although self-determination is commonly discussed as a right that "citizens hold and exercise . . . against their governments,"[151] it also presumptively can be held and exercised against *foreign* governments in the postcolonial age.[152]

Invoking self-determination can provide additional content to a state's fundamental rights. With respect to political status, scholars have argued that "[a] determination in which there can be only one legitimate outcome, democracy,

147. Helal, *supra* note 62, at 66.

148. Alexander Orakhelashvili, *Sanctions and Fundamental Rights of States: The Case of EU Sanctions Against Iran and Syria*, *in* Economic Sanctions and International Law 13, 20 (Paul Eden & Matthew Happold eds., 2016).

149. The peoples' right to self-determination can clash with a state's claim to sovereignty in multiple ways: external self-determination comes into direct conflict with territorial integrity, and internal self-determination imposes demands on states regarding how it shall govern. *See generally* Daniel Thürer & Thomas Burri, *Self-Determination*, *in* Max Planck Encyclopedia of International Law (Rüdiger Wolfrum ed., 2008).

150. ICCPR, *supra* note 6, art. 1.

151. Amy Eckert, *Free Determination or the Determination to Be Free: Self-Determination and the Democratic Entitlement*, 4 UCLA J. Int'l L. & Foreign Aff. 55, 68 (1999).

152. The Friendly Relations Declaration also suggests an expansion of self-determination beyond the colonial context when it declared that "subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle [of self-determination]." Friendly Relations Declaration, *supra* note 16.

cannot truly be considered a free act of self-determination."[153] Similarly, advocates for economic self-determination insist that it confers to a State's population the ability to determine its own economic agenda. [154] For example, while bilateral investment treaties are facially lawful under the present doctrine of non-intervention, some scholars have used arguments of economic self-determination to attack international investment law as undermining host state sovereignty.[155]

B. Coercion Under Broad Construction

Coercion as a concept is inherently hard to define. Many acts of coercion do not involve literal physical compulsion. Rather, they leave the victim with a choice, only imposing undesirable consequences on certain options.[156] Thus, determining what constitutes coercion necessarily involves value judgments of what conduct shall or shall not be acceptable.[157] This is particularly true in international politics, where property rights and market systems are less well-defined, such that "the distinction between voluntary economic exchange and highway robbery may be more difficult to make."[158] Thus, the normative concerns discussed in Part II can play an important role in formulating the standard for coercion in the context of non-intervention.

Effective constraint on harmful intervention requires adopting a broad understanding of coercion that accounts for the power dynamics in international politics and a realistic picture of available options the intervened state faces. This will differ markedly from other areas of international law, such as treaty formation and state responsibility, which follow narrow constructions of coercion.[159] An expansive interpretation of coercion in the context of non-intervention is supported by the Friendly Relations Declaration's language, recalling "the duty of States to refrain in their international relations from *military,*

153. Cécile Vandewoude, *The Rise of Self-Determination Versus the Rise of Democracy*, 2 GOETTINGEN J. INT'L L. 981, 984 (2010).

154. *See* Edward Guntrip, *Self-Determination and Foreign Direct Investment: Reimagining Sovereignty in International Investment Law*, 65 INT'L & COMP. L. Q. 829, 839 (2016).

155. *See id*.

156. A classic example is that even a person threatened at gunpoint with "your money or your life" still has a choice between, well, his money or life.

157. *See, e.g.*, Michael D. Bayles, *A Concept of Coercion*, *in* COERCION 18 (J. Roland Pennock & John W. Chapman eds., 1972) ("General judgments of what is or is not coercive, such as that duress is not a defense for murder, involve value choices.").

158. Donald McIntosh, *Coercion and International Politics: A Theoretical Analysis*, *in* COERCION, *supra* note 157, at 247.

159. *See* Vienna Convention on the Law of Treaties art. 52, May 23, 1969, 1115 U.N.T.S. 311 ("Coercion of a State by the threat or use of force: A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations."); Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries art. 18, ¶ 2 U.N. Doc. A/56/10, Y.B. INT'L L. COM. (2001) (limiting coercion to "conduct which forces the will of the coerced State . . . , giving it no effective choice but to comply with the wishes of the coercing State").

political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State."[160] In this light, coercion can take many forms beyond the threat or use of force. Economic coercion may include "trade embargoes and boycotts, import and export controls, asset freezes, and capital restraints, as well as the blocking of development aid or assistance;"[161] political coercion may include "the severing of diplomatic relations or official statements of denunciation, propaganda across national frontiers, political support of internal opposition groups in another State, and the recognition or withdrawal of recognition of foreign governments;"[162] and cyber coercion may include "[d]isruption of another State's data infrastructure or interference in its political system by the deliberate spreading of disinformation."[163]

Examples from common law jurisdictions illustrate how coercion can be interpreted in flexible ways. In U.S. contract law, a contract is voidable for duress when "a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative."[164] The emphasis on "improper threat" and "reasonable alternative" builds in room for normative judgment in the determination of coercion. Similarly, British law defines the wrong of duress as consisting of two elements: "(1) pressure amounting to compulsion of the will of the victim; and (2) the illegitimacy of the pressure exerted."[165] Again, the inherently normative judgment of legitimacy is involved.

Further, U.S. unconstitutional conditions doctrine provides a remarkable example of how the provision of conditional *benefits* can be treated as coercion. Under the doctrine, the government may not grant a benefit on the condition that its recipient surrenders a constitutional right, such as the freedom of speech, association, or religion.[166] This doctrine extends to the federal government vis-à-vis the states, such that "the federal government may not use its spending power to pressure state governments into yielding constitutionally protected autonomy."[167] In *United States v. Butler*, the U.S. federal government attempted to regulate states' agricultural production by offering benefits to their farmers.[168] Striking down the statute, the U.S. Supreme Court reasoned that, "[t]he power to confer or withhold unlimited benefits is the power to coerce or destroy. . . . This is coercion by economic pressure. The asserted power

160. Friendly Relations Declaration, *supra* note 16 (emphasis added).

161. Omri Sender, *Coercion*, *in* Max Planck Encyclopedia of International Law ¶ 9 (Anne Peters ed., 2021).

162. *Id.* ¶ 12.

163. *Id.* ¶ 13.

164. Restatement (Second) of Contracts § 175(1) (Am. L. Inst. 1981).

165. Universe Tankships Inc. of Monrovia v. International Transport Workers Federation, [1983] 1 AC (HL) 366, 400 (UK).

166. *See* Kathleen Sullivan, *Unconstitutional Conditions*, 102 Harv. L. Rev. 1413, 1415–16 (1989).

167. *Id.* at 1417.

168. *See* United States v. Butler, 297 U.S. 1, 54–56 (1936).

of choice is illusory."[169] The same logic can apply to Western conditional aid to Global South countries. Since a nation-state possesses more sovereignty than a U.S. state, the concern of coercion is even more salient in the international context.

The difficult question is how to draw the line between impermissible coercion and permissible influence. Scholars have suggested various approaches. Some define coercion based on its outcome of causing a change in behavior against one's will.[170] But this approach imposes the excessive burden of proving "that the coerced state would not (otherwise) have made the decision that it was allegedly coerced to make."[171] Others focus on the permissibility of the employed instrument.[172] But the focus on the instrument alone fails to account for the power differences between states: the less powerful a state and the more dependent it is—economically, politically or militarily—on the coercing state, the more coercion it will experience from a given act.

To safeguard a state's autonomy against harmful interference, a theory of coercion should be sensitive to both the intention of the intervening state and the impact on the intervened state, such that troubling findings on either front can cause an act to cross the threshold into impermissible coercion. The former consideration ties back to the pretext problem of paternalistic interference and is consistent with the Friendly Relations Declaration's language that "[n]o State may use or encourage the use of economic, political or any other type of measures to coerce another State *in order to obtain from it the subordination* of the exercise of its sovereign rights and *to secure from it advantages of any kind*."[173] The latter consideration ties into the autonomy problem and contemplates the totality of circumstances for the intervened state, inquiring into whether it has genuine, reasonable alternatives. Thus, although the Court in *Nicaragua* deemed the trade embargo imposed by the United States on Nicaragua non-coercive,[174] an analytical framework more sensitive to the Central American economy's reliance on its export to the United States may well find such measures to constitute coercion. In addition, an approach that focuses on the mentality of both the intervenor and the intervened states would recognize that, "[i]n reality, . . . coercion is often exercised through a strategy of carrots and sticks. Threats of harm and offers of benefit are intertwined in a single process of coercion."[175]

169. *Id.* at 71.

170. *See* Virginia Held, *Coercion and Coercive Offers*, *in* COERCION, *supra* note 157, at 50–51 ("Coercion is the activity of causing someone to do something against his will, or of bringing about his doing what he does against his will.").

171. Ossoff, *supra* note 62, at 309.

172. *See* Helal, *supra* note 62, at 80 ("[D]etermining the legality of the pressure tactics that states employ should focus on the behavior of the coercing state regardless of its impact on the coerced state. The test should consider whether the instruments employed by the coercing state are permissible.")

173. Friendly Relations Declaration, *supra* note 16 (emphasis added).

174. Nicaragua ¶¶ 244–45.

175. Helal, *supra* note 62, at 7.

Such contemplation of benefits as potentially part of coercion marks a significant departure from present doctrine. In doing so, it seeks to better account for the power imbalance in international exchanges—a core concern in paternalistic interference.

C. Applications

To understand how the principle of non-intervention would apply in its strengthened form, let us return to the example of Pakistan. In a dire position to rebuild its economy and recover from the devastation of unprecedented floods, Pakistan needs all the help it can get from the international community. This includes another IMF bailout, continued World Bank loans, as well as humanitarian assistance from and favorable trade relationships with other countries. When the European Union conditions a continuation of favorable tariffs on Pakistan's implementation of twenty-seven international conventions on labor rights, environment, and good governance, that places Pakistan under significant pressure to comply. Similarly, when the IMF and World Bank conditions their economic assistance on Pakistan's adoption of major changes to their economic policies, Pakistan has little choice other than accepting the imposition and securing the funds to address the emergency at hand. Pakistan's desperate conditions and lack of options make it likely that acts of intervention—even in benevolent forms of assistance—would cross the line of coercion.

In addition, some of the conditions imposed are rather intrusive in nature. For example, the twenty-seven international conventions for which the European Union monitors its GSP partners' implementation include the United Nations Convention against Corruption, Right to Organise and Collective Bargaining Convention, and the Kyoto Protocol to the United Nations Framework Convention on Climate Change[176]—some of which concern important political and economic policies and many of which even E.U. allies like the United States have not ratified.[177] Similarly, many of the IMF's and World Bank's conditions directly touch on how Pakistan should raise taxes, regulate its industries, deliver public services, and reform its legal framework.[178] Under a theory of domaine réservé grounded on self-determination, some of these interventions fall under areas where Pakistan as a sovereign state should be able to deliberate and pursue under its own political process. Accordingly, they could infringe

176. European Union, *Conventions*, GSP HUB, https://gsphub.eu/conventions [https://perma.cc/J2J8-UHY4] (last visited Nov. 4, 2023).

177. *See, e.g .*, *Signatories for Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*, DANISH INST. HUM. RTS., https://sdg.humanrights.dk/en/instrument/signees/39 [https://perma.cc/N29X-ND3G] (last visited Nov. 4, 2023); *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, U.N. TREATY COLLECTIONS, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-7-a&chapter=27&clang=_en [https://perma.cc/4BMJ-54VA] (last visited Nov. 4, 2023).

178. *See IMF Bailout Bid*, *supra* note 10; The World Bank, *supra* note 13.

upon Pakistan's domaine réservé, which, added to the circumstance of coercion, would render the measure unlawful under the principle of non-intervention.

However, this Note by no means suggests that other states should simply stand by and watch Pakistan suffer. Neither is it arguing that all measures of conditional aid, bilateral investments, and good governance initiatives should be prohibited by international law. Although it requires another full endeavor to articulate good practices of engagement, this Note offers a few preliminary thoughts. First, strong awareness of local conditions, knowledge, and decision-making can ameliorate the arrogance and autonomy problems and place an intervenor in a position of supporting rather than dictating local development. In particular, providing unconditional funds to local grassroots organizations can be much more effective than designing policy prescriptions based on external expertise. Second, when engaging with a less powerful state in need, procedural guardrails may be helpful. Having the weaker state initiate a request for assistance or involving a third-party mediator to ensure free and informed consent can lower the risk of coercion and preserve space for states' autonomous decision-making.

Conclusion

As ICJ Judge Rosalyn Higgins aptly puts, "[t]he purpose of the international law doctrine of intervention is . . . to provide an acceptable balance between the sovereign equality and independence of states on the one hand and the reality of an interdependent world and the international law commitment to human dignity on the other."[179] Recent decades of public international law have witnessed sovereignty on the decline and global governance on the rise.[180] As a product of development projects, international human rights law, trade law, environmental law, and much more, how a state manages its own affairs and treats its own people has increasingly become the concern and object of influence for other states. Against the backdrop of these progressive developments, the principle of non-intervention remains a key doctrinal tool for states—especially those in the Global South—to safeguard against paternalistic interference that carry ulterior motives, prejudicial assumptions, and harmful effects. Despite the non-intervention principle's present ambiguity and lack of teeth in the context of non-forcible interventions, it has the potential of being utilized to reassert national autonomy and check the entrenchment of power imbalances in international politics. This Note makes the normative and doctrinal argument for revitalizing the principle of non-intervention.

179. Rosalyn Higgins, *Intervention and International Law*, *in* Themes and Theories 273 (Rosalyn Higgins ed., 2009).

180. *See* Koskenniemi, *supra* note 84, at 62–63.

Several important objections shall be addressed. First, it may be argued that this Note overstates how much international law matters to powerful states. If a powerful state can contravene the clear prohibition on the use of force, as evidenced by the U.S. invasion of Iraq and Russian invasion of Ukraine, why would the principle of non-intervention matter at all if their national interests direct otherwise? Without delving into the rich debate around the enforceability of public international law, it suffices to say that the doctrinal arguments in this Note are useful to the extent that states still care about the legality of interventions, whether for political or reputational purposes. Indeed, today's significant debates surrounding the law of cyber operations suggest that the boundary between lawful and unlawful intervention still maintains some currency among powerful states.[181]

Second, one may point to the many instances where the intervened state eagerly welcomes the import of Western policies, experiences, and institutional knowledge, not to mention financial assistance despite the conditions attached. While some exchanges may indeed be mutually beneficial, coercion can nevertheless operate beneath the appearance of voluntariness by shaping the underlying structures and constraints of a state's decision-making process. Many of the harms identified in this Note about paternalistic interference—such as the reinforcement of neo-imperialist assumptions and the debilitation of autonomous political communities—are not negated by the recipient state's eagerness to embrace the interference. Fundamentally, paternalistic interference is not just about an individual state or policy. It only becomes a phenomenon due to systematic Western dominance in military and economic might, as well as self-proclaimed superiority in knowledge production and universal morality.

Finally, and critically, one may argue that all the emphasis on sovereignty and non-intervention only serves to help authoritarian regimes and dictators of the world shield their actions from external pressure, while blocking desirable interference to address matters of international concern. At times, intervention may seem necessary to protect the livelihood and autonomy of oppressed populations in a state. The tension between state sovereignty and individual rights is ever-present in international law, and this Note does not claim to provide an easy answer. However, it does illustrate that the case for non-intervention does not only reflect the concern of authoritarian leaders—it also resonates with those whose lives are affected by the distributional consequences of interventions, as well as local communities who want to shape lasting policy decisions in their own countries. For the international community to maintain its ability and moral authority to address human rights abuses or advance global governance, it must take seriously the problems of an interventionist mindset and the

181. *See generally* Michael Schmitt, Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations (Michael N. Schmitt ed., 2017); Goldsmith & Loomis, *supra* note 80.

discontent from local societies about being told what to do. The risks of pretext, arrogance, and autonomy infringement should alert international actors to be more conscious when engaging with other states and supporting progressive changes.

The people of Pakistan may be struggling to recover from the devastating floods and desperate for international help. The Pakistani government may have serious fiscal troubles. But that does not mean they shall lose the ability to govern themselves and be demanded to follow the reforms prescribed by foreign actors. The ideals of sovereign equality and self-governance require new scrutiny of these interventions.