2025, Vol. 14, Issue 1

Florian Bayer

Christian Albrechts University of Kiel, Germany
ORCID 0009-0000-6640-361X
https://doi.org/10.21697/2025.14.1.02

FROM NON-INTERVENTION TO POSITIVE OBLIGATIONS: ADDRESSING PRIVATISED POLITICAL INTERFERENCE UNDER INTERNATIONAL LAW

Abstract: This article examines whether international law can address the issue of foreign political interference by powerful private actors whose actions distort public discourse, interfere with free and fair elections, and undermine public trust in democratic institutions. This encroaches upon the sovereignty of states. At the heart of the inquiry lies a structural tension: while international law focuses on the behaviour and accountability of states, the most disruptive forms of political influence today often originate from entities that lack governmental authority or recognised legal status. Therefore, the central question is whether international law can meaningfully engage with this emerging form of privatised interference and, if so, how. Firstly, the article analyses whether the principle of non-intervention, which lies at the core of protecting the sovereign equality of states, can be applied to such interferences. Secondly, it considers how the conduct of private actors can be attributed to a state. Finally, the article explores whether existing legal doctrines that impose positive obligations on states, such as the no-harm principle or human rights obligations, can address the resulting accountability gap. Rather than providing definitive answers, the article draws attention to the limitations of a state-centric legal system when faced with privatised power. At the same time, it outlines interpretive pathways through which international law might evolve to address this issue.

Keywords: non-intervention; political interference; positive obligations; attribution

1. Setting the Scene: a Case without a Rule?

Imagine the following: a well-known foreign billionaire actively intervenes in the affairs of another state. He financially supports an extremist party, makes widely publicised statements that influence transnational discourse, and uses his privately owned social media platform to disseminate and promote disinformation in favour of the party. He selectively amplifies voices that support his views while suppressing those that do not. Opposition candidates are shadow-banned, investigative journalism is deprioritised, and false, incendiary narratives are circulated, some of which target minorities and others of which discredit democratic institutions and established media. The result is not just the distortion of public debate; instead, it is the structural erosion of democratic values, orchestrated by one unhinged private actor. Although this scenario may seem like something from a chapter of George Orwell's "1984", its constituent elements are based on recent events. What once required clandestine services can now be achieved through capital, infrastructure, and control of visibility. The ability to influence regimes, which was once the exclusive power of states, has become decentralised and privatised by actors who are not accountable to any electorate and only interested in their own advantage.

When Russia interfered in the 2016 United States presidential election through coordinated disinformation campaigns, strategic leaking of hacked materials, and targeted social media operations, the global response was one of alarm. Much of this activity was carried out by the Internet Research Agency, a privately owned but effectively state-controlled company based in Russia. Its conduct was widely condemned as an assault on democratic sovereignty.[1] Yet less than a decade later, such forms of influence are no longer limited to state and their proxies. In the United States, Elon Musk actively supported Donald Trump's 2024 presidential campaign, reportedly spending millions and mobilising his media assets to sway electoral outcomes.[2] Under his ownership, the widely-used social media platform X (formerly Twitter) became rife with systemic bias: individuals banned

1 The Mueller Report documented these efforts in detail, describing the Internet Research Agency's role in executing a sophisticated and sustained foreign influence operation on behalf of the Russian government. Mueller, "Report on the Investigation Into Russian Interference in the 2016 Presidential Election"; See also Dawson and Innes, "How Russia's Internet Research Agency Built Its Disinformation Campaign".

2 Reid and Lange, "Musk Spent over a Quarter of a Billion Dollars to Help Elect Trump".

because of their extreme views were reinstated, content labels were removed, and critical journalism was given less visibility.[3] Ahead of the 2025 German federal election, Musk publicly endorsed members of the far-right party 'Alternative für Deutschland' (AfD), denounced public broadcasters and journalists as partisan, and cast doubt on the legitimacy of democratic institutions.[4] He has also made public statements in the United Kingdom expressing interest in opposing the Labour government, including support for alternative parties capable of unseating the sitting Prime Minister.[5] In another case, during Romania's 2024 presidential campaign, a previously unknown candidate who lacked formal party backing rose to prominence almost exclusively through TikTok. The accounts promoting him were newly created and used AI-generated content shared in synchronised waves. Researchers and journalists noted amplification patterns consistent with coordinated inauthentic behaviour, yet the origin of the campaign remained unclear.[6] The candidate won a significant share of the vote. Yet, the election was later annulled by the Romanian Constitutional Court due to violations of the right to free expression resulting from foreign interference.[7]

Such cases are no longer exceptional. They reflect a structural shift in the modalities of international power. International political influence is no longer mediated through diplomatic channels alone; it is increasingly executed via platform ownership, algorithms, and the social authority of individuals with disproportionate reach. For now, these dynamics may be viewed by many as mere showmanship or speculative posturing, but there remains a risk that such rhetoric could one day be backed up by concrete action. While domestic institutions remain responsible for safeguarding electoral integrity, their power is limited by borders. It is at this point that international law becomes both indispensable and indeterminate. Indispensable, because the disruption crosses borders, effectively making it an international issue. Indeterminate, because the existing legal framework was not designed to constrain private actors.

3 Ingram and Horvath, "How Elon Musk Is Boosting Far-Right Politics across the Globe"; Conroy, "How Elon Musk's X Became the Global Right's Supercharged Front Page".

4 Siggelkow, "Wie Musk Sich in Den Wahlkampf Einmischt"; see also 'Regierungspressekonferenz Vom 20. Dezember 2024".

5 Gross and Miller, "Musk Examines How to Oust Starmer as UK Prime Minister before next Election".

6 Bjola, "Algorithmic Invasions: How Information Warfare Threatens NATO's Eastern Flank".

7 Ruling No. 32, *Curtea Constituţională a României*, paras. 13f.

This article considers whether, and if so how, international law can effectively address foreign interference by private actors. It begins by highlighting the limitations of domestic legislation to explain why it is necessary to shift to international law. Then, the principle of non-intervention is examined, which remains the most structured doctrinal expression of the idea that certain forms of foreign influence violate state autonomy. It traces its doctrinal scope and the threshold requirements for establishing whether political intrusions fall within its remit. The article then moves on to address the issue of attribution, demonstrating how the existing framework of state responsibility law restricts the legal accountability of non-state actors to instances of state control. Finally, the article considers whether there are other means available under international law that could be used to address this influence.

2. Interlude: Why Turn to International Law?

The relations between states are governed by international law, which means that no state can, by virtue of its own domestic legislation, impose obligations on another *par in parem non habet imperium*. Therefore, any behaviour by states that infringes upon the political independence or sovereign prerogatives of another state must be addressed under international law. However, as soon as private actors are involved, states can seek to regulate such interference through their own domestic legal orders, since private individuals and corporations generally fall within the personal or territorial reach of national jurisdiction. In fact, states have long sought to safeguard their political processes by regulating the involvement of private actors.

Domestic laws often govern not only the conduct of national political parties and candidates but also address the influence of foreign individuals and entities. However, these tend to focus almost exclusively on funding rules and financial reporting requirements. For instance, according to the German *Political Parties Act* (Parteiengesetz), political parties are prohibited from accepting donations from individuals or entities based outside the European Union, unless the donor is a German citizen residing abroad.[8] Article

8 'Von der Befugnis der Parteien, Spenden anzunehmen ausgeschlossen sind: Spenden von außerhalb des Geltungsbereiches dieses Gesetzes, es sei denn, dass diese Spenden aus dem Vermögen eines Deutschen im Sinne des Grundgesetzes, eines Bürgers der Europäischen Union oder eines Wirtschaftsunternehmens, [...] dessen Hauptsitz in einem Mitgliedstaat der Europäischen Union ist, unmittelbar einer Partei zufließen.' (Author's translation: 'The parties'

L52-8 of the French Electoral Code is even more restrictive, as it imposes a blanket ban on all foreign campaign financing.[9] Most recently, Australia's *Electoral Legislation Amendment (Electoral Reform) Act 2025* introduced a general gift cap and prohibited donations from entities lacking a domestic connection.[10] Although these rules aim to protect the integrity of elections from foreign interference, they mostly target domestic recipients rather than foreign sources. The laws presuppose the cooperation – or at least passive acquiescence – of domestic actors and impose no obligations on external influencers. They also frequently fail to address unauthorised external influence that occurs without coordination or consent of the beneficiary, such as targeted advertising and candidate endorsements. While some jurisdictions do prohibit independent expenditure by foreign actors, such rules are limited in scope and difficult to enforce against foreign individuals.[11] The result is a structural blind spot. Influence that bypasses domestic cooperation frequently escapes legal accountability. By the time it is identified, the electoral process may already be compromised.

One of the most fragile elements of modern democracy is access to impartial and accurate information. Those non-state actors seeking to subvert elections have recognised this and exploited vulnerabilities by producing fake news and algorithmically manipulating visibility. They create fake news or use algorithms to disseminate partisan messages, and election laws are rarely effective in regulating such behaviour. In response, several states have set out to regulate media environments. This includes setting up media oversight bodies, introducing rules to make online content

---

authority to accept donations does not extend to donations from outside the scope of this law, unless these originate from the assets of a German citizen within the meaning of the Basic Law, a citizen of the European Union, or a commercial enterprise [...] whose headquarters are located in a Member State of the European Union, and are paid directly to a party.'), *Parteiengesetz* [Political Parties Act], § 25 Abs. 2 No. 3 (Germany); see also Jochum, "§ 25", paras. 26ff.

9 'Aucun candidat ne peut recevoir, directement ou indirectement, pour quelque dépense que ce soit, des contributions ou aides matérielles d'un État étranger ou d'une personne morale de droit étranger.' (Author's translation: 'No candidate may receive, directly or indirectly, for any expenditure whatsoever, contributions or material assistance from a foreign State or a legal entity governed by foreign law.'), *Code électoral* [Electoral Code], Article L. 52-8 (France).

10 'Acceptable recipient action is taken in relation to a gift that exceeds the annual gift cap for a calendar year if: (a) the gift, or an amount equal to the amount or value by which the gift exceeds the applicable gift cap, is returned by, or on behalf of, the recipient to the donor. [...] annual gift cap for a calendar year means AUD 50,000.' *Electoral Legislation Amendment (Electoral Reform) Act 2025*, Schedule 3, Part 1, amending Sections 302B of the *Commonwealth Electoral Act 1918*.

11 See for example Jochum, "§ 27", paras. 17ff.

more transparent, and passing legislation against online disinformation. For example, in France, the audiovisual regulatory authority is empowered to suspend broadcasters who disseminate false information during election periods, and platforms are required to disclose the sponsors of content.[12] Similarly, in the United Kingdom, the *Office of Communications* enforces standards of impartiality in election coverage.[13] In the United States, a bipartisan group of Senators introduced the 2017 *Honest Ads Act*, which was intended to enhance transparency in digital political advertising. Yet, the bill stalled in the Senate.[14] Once again, most measures apply only to actors within territorial jurisdiction.

This highlights a broader limitation of domestic election regulation: laws that address foreign influence tend to focus on domestic actors, thereby, implicitly acknowledging that the state has no direct control over foreign conduct. The very structure of recent political and legal responses suggests an awareness of this limitation. Instruments like the European Union's *Code of Practice on Disinformation*, which relies on voluntary platform commitments illustrate an attempt to project influence extraterritorially

12 'Pendant les trois mois précédant le premier jour du mois de l'élection [...] et jusqu'à la date du tour de scrutin où ces élections sont acquises, le Conseil supérieur de l'audiovisuel, s'il constate que le service ayant fait l'objet d'une convention conclue avec une personne morale contrôlée, [...] par un État étranger ou placée sous l'influence de cet État diffuse, de façon délibérée, de fausses informations de nature à altérer la sincérité du scrutin, peut, pour prévenir ou faire cesser ce trouble, ordonner la suspension de la diffusion de ce service par tout procédé de communication électronique jusqu'à la fin des opérations de vote.' (Author's translation: 'During the three months preceding the first day of the month of the election [...] and until the date of the ballot in which these elections are decided, the Audiovisual Council, if it finds that the service that is the subject of an agreement concluded with a legal entity controlled [...] by a foreign State or under the influence of that State deliberately broadcasts false information likely to affect the integrity of the election, may, in order to prevent or stop such disruption, order the suspension of the broadcasting of that service by any electronic means of communication until the end of the voting operations.'), *Loi contre la manipulation de l'information* [Law on the Fight Against the Manipulation of Information], Loi no 2018-1202 du 22 décembre 2018, Article 6 (France). c.f. Sauvé and Coutant, "Loi Française Contre La Manipulation de l'information En Période Électorale et Pratiques Professionnelles Des Journalistes Face Au Phénomène Des Fake News", 106.

13 'The rules made by OFCOM for the purposes of this section may, in particular, include provision for determining the political parties on whose behalf party political broadcasts may be made; in relation to each political party on whose behalf such broadcasts may be made, the length and frequency of the broadcasts. [...]' *Communications Act 2003*, p. 333 (UK).

14 *Honest Ads Act*, S. 1989, 115th Cong. (U.S.); see also Beyersdorf, "Regulating the Most Accessible Marketplace of Ideas in History", 1090f.

despite lacking coercive reach.[15] Domestic laws imposing data localisation or takedown obligations on offshore providers remain largely aspirational or symbolic.[16] The difficulty of regulating foreign private interference through domestic law highlights the critical need to turn to international law. Yet these measures remain largely aspirational or symbolic. The difficulty of regulating foreign private interference through domestic law highlights the critical need to turn to international law.

3. A Rule Entangled: the Principle of Non-intervention in Contemporary International Law

Of the many rules of international law, three principles are frequently invoked in response to external interference: the prohibition of the use of force; the principle of territorial sovereignty; and the principle of non-intervention. However, the prohibition of the use of force, enshrined in Article 2(4) of the UN Charter, is confined to acts of armed violence and offers no recourse against forms of interference that do not involve physical coercion.[17] Although the principle of territorial sovereignty has a broader scope – extending protection to both physical territory and political independence – its normative stance is essentially passive. It presupposes respect for the autonomy

15 The European Union *Code of Practice on Disinformation* is an agreement brokered by the European Commission with representatives of major technology and social media firms, empowering the companies to adhere to self-regulatory standards aimed at combating disinformation. It includes concrete commitments, such as enabling fact-checking of posts and preventing the advertising of content identified as disinformation. See *The Strengthened Code of Practice on Disinformation* (2022), available at https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation (last accessed 15 May 2025).

16 For example, the German Network Enforcement Act (Netzwerkdurchsetzungsgesetz) which obliges large social media platforms to remove manifestly unlawful content within 24 hours or to face fines. While territorially framed, German authorities have occasionally requested takedowns of content located outside Germany, raising concerns about conflicting legal standards especially with regard to the right of free speech as it is interpreted differently in different jurisdictions. c.f. Kettemann and Schulz, "Setting Rules for 2.7 Billion: A (First) Look into Facebook's Norm-Making System; Results of a Pilot Study", 8ff. Similarly, France's 2018 Law on the Fight Against the Manipulation of Information gives courts the power to suspend the dissemination of false information during election periods, including by foreign-controlled outlets such as RT and Sputnik. Although it is enforceable domestically (e.g. by limiting cable and satellite broadcasting), it is almost impossible to enforce in practice with regard to foreign-hosted content. c.f. Sauvé and Coutant, "Loi Française contre la manipulation de l'information en période électorale et pratiques professionnelles des journalistes face au phénomène des fake news", 116.

17 Dörr, "Use of Force, Prohibition of", para. 11.

of states and does not establish specific rules for indirect or non-consensual political influence.[18] By contrast, the principle of non-intervention directly addresses such forms of interference. It prohibits coercive conduct by one state in the internal or external affairs of another. As such, it offers the most structured doctrinal entry point for evaluating the legality of transnational political interference.[19]

Yet the principle remains conceptually elusive and doctrinally contested. In international relations, allegations of unlawful intervention frequently arise – ranging from the manipulation of electoral processes to the sponsorship of opposition movements – but these are often met with sharp disagreement over the underlying facts and the applicable legal standard. This ambiguity allows the principle to serve two functions: it can be invoked by states to protect their political autonomy, and it can be used as a rhetorical device to resist international scrutiny, particularly in contexts of human rights violations or democratic backsliding.[20]

Understanding the concept of intervention and its prohibition therefore requires an acknowledgement of this ambiguity. Intervention often involves informal, unconventional or covert practices that may nevertheless be legally relevant.[21] This chapter therefore traces the historical development of the principle of non-intervention to illustrate how its contested and evolving nature shapes contemporary interpretations, clarifies its content and scope, and analyses the threshold of coercion that distinguishes unlawful intervention from mere influence – with particular attention to its relevance for non-forcible, digitally mediated conduct.

3.1. The Genealogy of the Principle of Non-intervention

The elusiveness of the principle of non-intervention is neither accidental nor merely political. It reflects the principle's position at a structural fault line of international law, caught between the ideal of sovereign equality and the geopolitical reality of asymmetric power. While often associated with Article 2(7) of the United Nations Charter, which prohibits the UN from

18 Marxsen, "Territorial Integrity in International Law", 10f.

19 Kriener, "Intervention, Prohibition of", para. 1.

20 Athen, *Der Tatbestand Des Völkerrechtlichen Interventionsverbots*, 22f.; Kriener, *Proteste Und Intervention*, 497; Jamnejad and Wood, "The Principle of Non-Intervention", 358.

21 Wu, " Challenging Paternalistic Interference: The Case for Non-Intervention in a Globalized World", 256; Rosenau, 'The Concept of Intervention', 168.

intervening in matters essentially within the *domaine réservé* of a state, this reference is mostly misplaced.[22] Article 2(7) restricts the actions of the United Nations itself not the conduct of states *vis-à-vis* one another.

Its roots instead can be traced to the emergence of the modern state system in early modern Europe. The Peace of Westphalia, often invoked as a founding moment in international legal history, affirmed that states are sovereign entities entitled to exercise authority over their internal affairs. This conception was shaped by theorists such as Bodin, whose account of indivisible sovereignty imagined a political order insulated from external interference.[23] While this early model did not yet articulate a legal prohibition on intervention, it laid the normative foundation for its later development.[24]

The legalistic idea of a prohibition of intervention emerged in the nineteenth century. A prominent early formulation is found in the Monroe Doctrine of 1823, in which the United States warned European powers not to interfere with the affairs of the young American nation. In return, the United States pledged not to intervene in the internal affairs of European powers. Although unilateral and regionally limited in scope, the doctrine marked an early articulation of the idea of non-intervention in international relations.[25] From the late nineteenth century onwards, the principle began to take on a more legal character.[26] In 1933, the Montevideo Convention on the Rights and Duties of States was the first treaty to codify the prohibition of intervention in Article 8 an explicit prohibition of intervention, stating broadly that no state has the right 'to intervene in the internal or external affairs of another'.[27] This was a significant step in articulating the principle as a rule of international law rather than a political doctrine. Following

22 For an account of such misinterpretation see Australia's position paper, '*Voluntary National Contributions on the UN Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security,*' UN Doc. A/76/136 (2021) 3, 5 (hereafter: Australia's position paper).

23 Athen, *Der Tatbestand Des Völkerrechtlichen Interventionsverbots*, 29f.; Jamnejad and Wood, 'The Principle of Non-Intervention', 349; Kelsen, "The Principle of Sovereign Equality of States as a Basis for International Organization", 212.

24 Tladi, "The Duty Not to Intervene in Matters within Domestic Jurisdiction", 90.

25 Grant, "Doctrines (Monroe, Hallstein, Brezhnev, Stimson)", paras. 3, 5; Jamnejad and Wood, "The Principle of Non-Intervention", 350.

26 Athen, *Der Tatbestand Des Völkerrechtlichen Interventionsverbots*, 41ff.

27 Convention on Rights and Duties of States, LNTS 165, 19, adopted by the Seventh International Conference of American States, signed at Montevideo, Argentine on 26 December 1933, Article 8; "Intervention, Force & Coercion: A Historical Inquiry on the Evolution of the Prohibition on Intervention", 225.

the Second World War, the principle was reaffirmed in Article 19 of the Charter of the Organisation of American States.[28] Although these provisions remained general in scope, they were increasingly framed as safeguards for the right of states to determine their political, economic, and social systems free from external pressure. Latin American states, in particular, became consistent proponents of this formulation, shaped by their historical experiences of foreign intervention.[29] Although these developments laid the groundwork, a general prohibition on intervention between states was not firmly entrenched in universal treaty law. The UN Charter did not explicitly prohibit intervention, but several early commentators, including Kelsen, argued that such a prohibition was implied, particularly through the ban on the threat or use of force in Article 2(4).[30] Around the same time, the International Court of Justice (ICJ or the Court) in *Corfu Channel* affirmed the absence of any right of intervention, stating:

> The Court can only regard the alleged right of intervention as the manifestation of a policy of force such as has, in the past, given right to most serious abuses and such as cannot [...] find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be reserved for the most powerful States and might easily lead to perverting the administration of international justice itself.[31]

Although the Court did not interpret the principle in detail, this statement marked a significant doctrinal affirmation. It clearly rejected the idea that intervention could be justified as a right, thus providing a normative boundary against the use of power to override sovereign discretion.

In the decades that followed, the principle was further clarified through a series of multilateral declarations.[32] Formerly colonised and non-

28 Charter of the Organisation of American States, UNTS 3, 119, adopted at Bogota, Colombia on 30 April 1948, entered into force on 13 December 1951, Article 19.

29 Damrosch, "Politics Across Borders: Nonintervention and Nonforcible Influence over Domestic Affairs", 7.

30 Kelsen, *The Law of the United Nations*, 770.

31 *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgement of 9 April 1949, I.C.J. Rep 1949, 4, p. 35 (hereafter: *Corfu Channel)*.

32 Examples include: Article 8 of the 1945 *Pact of the League of Arab States*, UNTS 70, 237, which binds all signatories to respect the form of government of the other states and to refrain

aligned states were among its most vocal advocates.[33] The most notable early articulation came in the 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States, almost unequivocally adopted by the UN General Assembly.[34] This was followed by the more authoritative 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (Friendly Relations Declaration).[35] This declaration remains the most comprehensive multilateral elaboration of the principle.[36] It explicitly extended the prohibition beyond armed force to include 'economic, political or any other type of measures' intended to compel a state to subordinate the exercise of its sovereign will. It also expressly prohibited indirect forms of intervention, such as organising or supporting armed, terrorist, or subversive activities against another state. From this point, the principle began to exhibit broader normative elasticity, capturing non-forcible acts designed to interfere with domestic matters of other states.

Despite this apparent consolidation, the principle was often disregarded in practice. Damrosch even compared its relevance to New York

---

from 'any actions tending to change that form'; the Preamble of the 1954 *Agreement on Trade and Intercourse Between Tibet Region and India*, INTSer 1954, 5, which introduced 'mutual non-interference' as one of the basic principles governing relations between the two nations; the 1955 *Final Communiqué of the African-Asian Conference of Bandung*, which included the duty to abstain 'from any other form of interference or attempted threat against the personality of the state'; Article 3(2) of the 1963 *Charter of the Organisation of African Unity*, ILM 2, 766, which defined non-intervention in the internal affairs of states as one of its guiding principles; the 1957 UN General Assembly *Resolution on Peaceful and Neighbourly Relations among States*, UNGA Res 1236(XII), which called upon all states to respect the 'equality and territorial integrity and non-intervention in one another's internal affairs'; and Principle 6 of the 1975 *Helsinki Final Act of the Conference on Security and Co-operation in Europe*, which likewise recognised non-intervention as a guiding principle. See further *Nicaragua*, Merits, Judgement of 27 June 1986, I.C.J. Rep 1986; Wu, "Challenging Paternalistic Interference: The Case for Non-Intervention in a Globalized World", 259; Damrosch, "Politics Across Borders: Nonintervention and Nonforcible Influence over Domestic Affairs", 7f.

33 Jamnejad and Wood, "The Principle of Non-Intervention", 350.

34 *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty,* UNGA Res. 2131(XX) (Friendly Relations Declaration).

35 *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, UNGA Res. 2625(XXV).

36 Athen, *Der Tatbestand Des Völkerrechtlichen Interventionsverbots*, 55f; Jamnejad and Wood, "The Principle of Non-Intervention", 353.

City's rarely observed jaywalking laws.[37] Nevertheless, even amidst frequent transgressions, the ICJ in its 1986 *Nicaragua* judgment confirmed that the prohibition of intervention 'is part and parcel of customary international law'.[38] In its interpretation, the court drew heavily on the Friendly Relations Declaration.[39] The Courts decision has not been without criticism. Its method of identifying customary law was questioned by several judges in dissenting or separate opinions, and subsequent commentary has highlighted the gaps in its reasoning.[40] However, in its 2005 *Armed Activities* judgment, the Court reaffirmed this position.[41] In addition, ever since *Nicaragua,* the principle attracted broad support in scholarship, with some commentators suggesting that it may have attained the status of a peremptory norm.[42] That claim, however, remains highly contested.[43] What is clear, however, is that the principle of non-intervention forms constitutes customary international law, with wide and sustained support across states and regions.[44] However, the principle's historical trajectory highlights why its scope and boundaries are still disputed today. The question that now arises is whether a rule shaped by histories

37 Damrosch, "Politics Across Borders: Nonintervention and Nonforcible Influence over Domestic Affairs", 2.

38 *Nicaragua*, Merits, Judgement, I.C.J. Rep 1986, 392, para. 202.

39 Ibid., paras. 206ff.

40 Judges Ago and Schwebel were critical of the methodology employed by the Court to establish the prohibition of intervention as customary international law. Judge Ago concluded that there was insufficient state practice to support the *opinio iuris*. c.f. *Nicaragua*, Merits, Separate Opinion of Judge Ago, I.C.J. Rep 1986, 171 at 174. Similarly, Judge Schwebel outright asserted that there was 'hardly any sign of custom – of the practice of states'. See *Nicaragua*, Merits, Dissenting Opinion of Judge Schwebel, I.C.J. Rep 1986, 259, para 98. By contrast, Judge Sette-Camara took a completely different approach, asserting that the prohibition of intervention would even qualify as *jus cogens*. See *Nicaragua*, Merits, Separate Opinion of Judge Sette-Camara, I.C.J. Rep 1986, 182 at 189.

41 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Merits, Judgment of 19 December 2005, I.C.J. Rep 2005, 168 at para. 162 (hereafter: *Armed Activities)*; Damrosch, "Politics Across Borders: Nonintervention and Nonforcible Influence over Domestic Affairs", 34.

42 See for example Kunig, "Intervention, Prohibition Of", para. 7. The majority of scholars, however, have been critical of the *jus cogens* classification, while generally accepting the principle of non-intervention as part of customary international law: Helal, "Intervention, Force & Coercion: A Historical Inquiry on the Evolution of the Prohibition on Intervention", 219f.; Athen, *Der Tatbestand Des Völkerrechtlichen Interventionsverbots*, 103f.; Tladi, "The Duty Not to Intervene in Matters within Domestic Jurisdiction", 91; Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 314.

43 Jamnejad and Wood, "The Principle of Non-Intervention", 359.

44 Schmitt, "Foreign Cyber Interference in Elections", 745; Ossoff, "Hacking the Domaine Réservé: The Rule of Non-Intervention and Political Interference in Cyberspace", 301.

of violent intervention can be meaningfully extended to more subtle forms of political influence. The following sections address this issue by analysing the boundaries of the requirements that lie at the heart of the principle.

3.2. Sovereignty and the *Domaine Réservé*

The first element of illegal intervention concerns interferences that touch upon domains protected by the sovereignty of a state – its internal or external affairs, its legal personality or its sovereign equality. These otherwise vague formulations can be understood, both synonymously and cumulatively, as referring to the *domaine réservé* of a state.[45]

An *ex negativo* definition of this rather vague concept was offered by the Permanent Court of International Justice (PCIJ) in its 1923 Advisory Opinion on *Nationality Decrees Issued in Tunis and Morocco*, where it defined *domaine réservé* as encompassing all 'matters which are not, in principle, regulated by international law'.[46] Nearly sixty years later, this definition was adopted by the ICJ in *Nicaragua* with minor change of wording, moving the Court towards a more positive articulation of the concept, derived from the principle of sovereign equality.[47] What both definitions imply is that the boundaries of the *domaine réservé* are determined not by the nature of the matter itself, but by the absence of international legal regulation, whether treaty-based or customary.[48] Which, as the PCIJ made clear, is 'an essentially relative question; [that] depends on the development of international relations.'[49]

The implications of this formulation are significant. Both courts emphasise that there are no fixed or inherently domestic matters. The scope of the *domaine réservé* depends on the state of international legal regulation and evolves over time.[50] The existence of a relevant international rule

45 Ossoff, "Hacking the Domaine Réservé: The Rule of Non-Intervention and Political Interference in Cyberspace", 305.

46 *National Decrees Issued in Tunis and Marocco,* Advisory Opinion of 7 February 1923, P.C.I.J. Rep 1923 (Series B) No. 4, p. 24 (hereafter: *National Decrees*)

47 In its Nicaragua Judgment, the Court defined a prohibited intervention as 'one bearing on matters in which each state is permitted, by the principle of state sovereignty, to decide freely. *Nicaragua*, Merits, Judgement, I.C.J. Rep 1986, 392, para. 205.

48 Kunig, "Intervention, Prohibition Of", para. 3.

49 *National Decrees*, Advisory Opinion, P.C.I.J. Rep 1923 (Series B) No. 4, p. 24.

50 Arnauld, *Völkerrecht*, para. 356f.; Crawford, *Brownlies Principles of Public International Law*, 439; Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 315.

removes the matter from the *domaine réservé*.[51] Accordingly, the *domaine réservé* is constantly shrinking as international legal regulation expands. Accordingly, the scope of purely domestic authority has diminished over time. With the progressive legalisation of international relations – particularly in the areas of human rights, environmental protection and economic governance – the *domaine réservé* has narrowed considerably.[52] This is why an *ex negativo* approach, defining the *domaine réservé* by what international law does not regulate, remains preferable in an era of expanding international obligations.[53]

Nonetheless, international law continues to recognise certain core areas as inherently domestic – most notably the free 'choice of a political, economic and cultural system, which the ICJ in *Nicaragua* identified as a central element of *domaine réservé*.[54] While reliance on such *ex positivo* formulations may be limited, especially given the dynamic development of treaty and customary law in adjacent areas, it remains clear that certain state prerogatives are off-limits to external interference.[55] Among these, the choice of a political system has been repeatedly affirmed as an essential expression of sovereign autonomy.[56] This core competence necessarily includes the institutional framework through which political authority is constituted and exercised. It undoubtedly encompasses the conduct of elections and the formation of government.[57] These processes are not only foundational to statehood, but also structurally embedded in the concept of political self-determination. As such, they continue to lie at the centre of the *domaine réservé* protected

51 Nolte, "Article 2(7)", para. 29.

52 Arnauld, *Völkerrecht*, paras 309, 356; Nolte, "Article 2(7)", para. 30.

53 Kriener, "Intervention, Prohibition Of", paras. 14ff.

54 *Nicaragua*, Merits, Judgement, I.C.J. Rep 1986, 392, para. 205; Schmitt, "Foreign Cyber Interference in Elections", 746.

55 For example, European Union member states have brought core areas that were traditionally considered part of the *domaine réservé* under the remit of European law. Kriener, "Intervention, Prohibition Of", para. 16.

56 In its *Nicaragua* Judgment, the Court held that a 'state's domestic policy falls within its exclusive jurisdiction, provided of course that it does not violate any obligation of international law.' This position was later echoed by the International Group of Experts involved in drafting the Tallinn Manual 2.0, who observed that 'the matter most clearly within a State's *domaine réservé* appears to be the choice of both the political system and its organisation, as these lie at the heart of sovereignty.' c.f. *Nicaragua*, Merits, Judgement, I.C.J. Rep 1986, 392, para. 258; Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 22, 313, 315.

57 Netherland's position paper, *'Voluntary National Contributions on the UN Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security,'* UN Doc. A/76/136 (2021), 54, 57.

by the principle of non-intervention.[58] Furthermore, interference in these processes does not necessarily affect the state's infrastructure; rather, it is sufficient for the state to lose sole authority over its *domaine réservé*.[59]

This is central to the present inquiry. It confirms that the integrity of elections and government formation implicates are an inherently protected domain, which also extends to the circumstances surrounding the election itself. In other words, the difficulty lies not in identifying a protected domain, but in determining which form of political interference meets the required threshold to invoke the principle of non-intervention.

3.3. Coercion as the Threshold of Prohibited Intervention

While the existence of a *domaine réservé* defines the sphere in which intervention may take place, it is the element of coercion that marks the threshold between unlawful intervention and permissible influence.[60] As the ICJ stated in *Nicaragua*, coercion is 'the very essence of prohibited intervention.'[61] This requirement is also reflected in customary international law, which considers intervention to occur only when a state is compelled to subjugate the exercise of its sovereign will.[62] The coercion threshold thus limits the scope of the principle, ensuring that not every act affecting the internal affairs of another state qualifies as a violation – only those that override or suppress sovereign autonomy.[63]

However, as with other elements of the rule, the threshold of coercion remains unsettled in terms of doctrine. This uncertainty is rooted in the principle's pedigree of forcible intervention, which continues to cast a long shadow over attempts to define non-forcible coercion legally. The ICJ

58 Kriener, *Proteste Und Intervention*, 127; Tladi, "The Duty Not to Intervene in Matters within Domestic Jurisdiction", 90, 92; See also Athen, *Der Tatbestand Des Völkerrechtlichen Interventionsverbots*, 295f., 307f.

59 Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 315f.

60 The restrictive notion of coercion can be understood in light of the historical development of the principle of non-intervention, which has traditionally been understood as prohibiting all forms of intervention, with intervention defined as 'dictatorial interference' – that is, conduct implying the use of force or comparable forms of imperative pressure. Nolte, "Article 2(7)", para. 10; Kunig, "Intervention, Prohibition Of", paras. 5f.

61 *Nicaragua*, Merits, Judgement, I.C.J. Rep 1986, 392, para. 206.

62 Milanovic, "Revisiting Coercion as an Element of Prohibited Intervention in International Law", 602f.; David, "Portée et Limite Du Principe de Non-Intervention", 352, 354.

63 "Hacking the Domaine Réservé: The Rule of Non-Intervention and Political Interference in Cyberspace", 308.

has affirmed its necessity but offered little guidance as to its content. In *Nicaragua*, the Court simply noted that intervention may occur 'with or without force', a view reiterated in *Armed Activities*.[64] Thus, its interpretation encompasses both, *vis compulsiva* and *vis absoluta*, extending the concept beyond physical compulsion.[65] Yet this broad formulation is of limited legal utility. It does not clarify the threshold at which non-forcible acts become coercive, nor does it offer tangible criteria for borderline cases. The examples provided by the ICJ, such as the threat of force and the provision of material support to armed groups, suggest that coercion may also include indirect measures. However, they do not address how to assess conduct that does not fit into the largely homogeneous, force-centred categories of its case law.[66] Instead, the analysis relies heavily on context, such as the nature of the relationship between the involved states, the intent behind the conduct and its actual effects. There is no fixed threshold; coercion is qualitative rather than quantitative.[67]

In such cases, one must turn to subsidiary sources of interpretation. In doctrinal terms, coercion can be understood as any action that nullifies or significantly manipulates the sovereign will of a state within a protected domain.[68] The most paradigmatic form thereof is the attempt to bring about regime change, the central issue in *Nicaragua*.[69] This includes all attempts to destabilise any government with the intention of overthrowing it, as well as providing support to armed or political groups seeking to change the regime. This support can take the form of external aid or premature recognition of said groups as legitimate authorities.[70] However, beyond these extreme cases, the legal assessment becomes ambiguous. While the manipulation of electoral infrastructure is widely accepted as coercive because it leads

64 In both instances, the Court did not find it necessary to engage further with the threshold of intervention, as the conduct at issue was clearly forcible and therefore qualified without difficulty. *Nicaragua*, Merits, Judgement, I.C.J. Rep 1986, 392, para. 206; *Armed Activities*, Merits, Judgment, I.C.J. Rep 2005, 168 at para. 164; Kriener, *Proteste Und Intervention*, 128.

65 Arnauld, *Völkerrecht*, para. 361; Ossoff, "Hacking the Domaine Réservé: The Rule of Non-Intervention and Political Interference in Cyberspace", 308.

66 Kriener, *Proteste Und Intervention*, 128ff.; Milanovic, "Revisiting Coercion as an Element of Prohibited Intervention in International Law", 613.

67 Moynihan, "The Application of International Law to State Cyberattacks: Sovereignty and Non-Intervention", para. 86; Jamnejad and Wood, "The Principle of Non-Intervention", 367.

68 Jamnejad and Wood, "The Principle of Non-Intervention", 367.

69 *Nicaragua*, Merits, Judgement, I.C.J. Rep 1986, 392, para. 241.

70 Arnauld, *Völkerrecht*, paras 362, 366; David, "Portée et Limite Du Principe de Non-Intervention", 356f.

to the seizure of state power, the funding of opposition movements and the support of civil society actors are far more contested.[71] These acts may influence political outcomes without necessarily undermining institutional autonomy. However, as scholars remain divided, state practice leads to assessments of individual cases that reflect political rather than strictly legal considerations.[72] This highlights a deeper normative issue: the current approach to coercion is often based on subjective assessments of what constitutes acceptable external behaviour in a pluralistic international system. Consequently, this principle has been criticised for being overly dependent on political discretion.[73]

Thus, more recent scholarship has moved away from a strict interpretation of the ICJ in favour of the definition provided by the Friendly Relations Declaration. This provides a more structured doctrinal reference point, urging states to abstain from 'military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any state.'[74] This provision has served as a valuable interpretive aid in

71 Schmitt, "Foreign Cyber Interference in Elections", 746f.; Efrony and Shany, "A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice", 642. They argue, that the ursurpation of governmental functions may constitute a breach of the principle of non-intervention, even in the absence of classical forms of coercion.even in the absence of classical forms of coercion.

72 However, some argue that the constant transboundary activities of states, which have at times been tolerated or even encouraged, raise doubts as to whether they fall within the scope of the non-intervention principle. Damrosch, "Politics Across Borders: Nonintervention and Nonforcible Influence over Domestic Affairs", 5. Several scholars consider the U.S. funding of peaceful protests in Maidan Square, Kyiv, in 2014, which aimed to overthrow the pro-Russian Ukrainian government of Viktor Yanukovych, to be a violation of the principle of non-intervention. See for example: Vylegzhanin et al., "Forcible Discharge of Ukrainian President Yanukovich from Power: Complicity of the Obama Administration", 172f. A different position has been adopted in relation to foreign support for the protests in Hong Kong in 2019–2020. Several measures undertaken by foreign states in support of the human rights of the Hong Kong population were criticised by the Chinese government but were considered as legally overall. Sudworth, "Hong Kong Protests Test Beijing's 'Foreign Meddling' Narrative"; Kriener, *Proteste Und Intervention*, 144f. However, when considered alongside the premature recognition of the Guaidó government and the significant economic sanctions imposed on the incumbent government of President Nicolás Maduro, these actions could be considered so severe as to constitute unlawful coercion, particularly as they made alternative political responses by the Venezuelan state significantly more difficult or impossible. Puma, 'The Principle of Non-Intervention in the Face of the Venezuelan Crisis", 22, 25f.

73 Wu, "Challenging Paternalistic Interference: The Case for Non-Intervention in a Globalized World", 276.

74 *Friendly Relations Declaration*, UNGA Res. 2131(XX).

both state practice and academic commentary.[75] Accordingly, several scholars have proposed a functional approach to coercion that more accurately reflects structural and non-violent forms of interference.[76] Under this approach, Arnauld has suggested that electoral disinformation campaigns that are aggressive or harmful may constitute coercion.[77] Furthermore, he argues that supporting opposition actors can become coercive when it contravenes the domestic laws of the targeted state.[78] Similarly, Koh and Ohlin, contend that disinformation campaigns and targeted manipulation of information environments not only influence elections, but also distort the free formation of political will. Also as such contravene the collective right to self-determination and constitute coercive interference with a state's sovereign identity.[79]

These doctrinal shifts are also reflected in contemporary state practice, which appears to have evolved in two distinct ways. One adheres to the approach taken by the ICJ, while the other is more effects-based, emphasising the impact of foreign conduct on the target state's sovereign functions. The latter approach coincides with the scholarly perspectives.[80]

Additionally, recent state practice and expressions of *opinio iuris* suggest a cautious but growing understanding that forms of electoral interference that extend beyond traditional coercive methods may be subject to the principle of non-intervention. Thus, a gradual expansion of the principle's doctrinal scope is indicated.[81] With a more restrictive

75 Ohlin, "Did Russian Cyber Interference in the 2016 Election Violate International Law?", 1593.

76 Sander, "Democracy Under The Influence: Paradigms of State Responsibility for Cyber Influence Operations on Elections", 22; Banks, "State Responsibility and Attribution of Cyber Intrusions After Tallinn 2.0", 1501.

77 Arnauld, *Völkerrecht*, para. 367.

78 Ibid., para. 364; A similar approach has been taken by Jamnejad and Wood, "The Principle of Non-Intervention", 368.

79 Koh, "The Trump Administration and International Law", 450f.; Ohlin, "Did Russian Cyber Interference in the 2016 Election Violate International Law?", 1594f.

80 Mačák, Dias, and Kasper, *Handbook on Developing a National Position on International Law and Cyber Activities*, 84.

81 Norway considers any attack on a state with the intent to alter electoral results a violation of the prohibition of intervention. Norway's position paper, '*Voluntary National Contributions on the UN Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security*,' UN Doc. A/76/136 (2021), p. 65, 69; Australia's position paper, ibid., p. 3, 5; Brazil's position paper, ibid., 17, 19; Estonia's position paper, ibid., 23, 25; *Ministerio de Relaciones Exteriores y Culto, Costa Rica's Position on the Application of International Law in Cyberspace* (2023), https://tinyurl.com/4vhdrxty (hereafter: Costa Rica's position paper), para. 25.

stance, Germany has stated that electoral disinformation may only qualify as coercive where it leads to serious destabilisation, such as riots or violent unrest.[82] Austria took a slightly broader view, accepting that certain forms of disinformation could amount to coercion if they caused the state to alter its behaviour involuntarily.[83] Costa Rica takes the broadest stance, asserting that even cyber operations that interfere indirectly with the conduct of an election, including coordinated disinformation campaigns seeking to mislead the electorate about the election itself or the candidates, amount to prohibited intervention under customary international law.[84]

Taken together, these developments signal an evolving understanding of coercion – even states that have adopted the classical notion of coercion, seem to be partially open to broaden their stance.[85] While the precise threshold remains contested, there is growing support, both doctrinally and in state practice, for the view that broad non-forcible forms of influence can constitute coercion when they override the institutional expression of sovereign will. The Friendly Relations Declaration, previously dismissed as merely rhetorical, now provides textual support for this interpretation.[86]

This article takes a functional approach to coercion, defining it as any politically motivated conduct, including disinformation, that has the same effect as force or compulsion. As forcible interventions decline and non-forcible interference increases, a narrow interpretation of coercion could render the principle obsolete. A functional interpretation restores the coherence of the principle, enabling it to address not only military subversion, but also extensive digital interference with democratic processes. While coercion remains the threshold, it must be interpreted considering the principle's purpose of safeguarding sovereign autonomy.

3.4. Against Obsolescence: a Modern Defence of the Principle

The preceding analysis has shown that, while the principle of non-intervention has gained doctrinal clarity at its core, it remains contested at

82 Germany's position paper, supra, 31, 34.

83 Position Paper of the Republic of Austria: Cyber Activities and International Law, April 2024, https://tinyurl.com/3nrwb2ej (hereafter: Austria's position paper).

84 Costa Rica's position paper, para. 25.

85 Mačák, Dias, and Kasper, *Handbook on Developing a National Position on International Law and Cyber Activities*, 85f.

86 Wu, "Challenging Paternalistic Interference: The Case for Non-Intervention in a Globalized World", 276.

its margins. It undoubtedly prohibits all kinds of interference that forcibly coerce a state to act against its sovereign will, particularly regarding the choice of its political system, the conduct of elections and the formation of government. These domains continue to enjoy categorical protection under international law, as reaffirmed in ICJ jurisprudence and multilateral declarations. However, the question is whether emerging, non-forcible modes of interference, that can also be undertaken by private actors, can meet the legal threshold of coercion. As argued in this chapter, coercion should be understood functionally – as conduct that overrides or undermines the expression of a state's will. On this view, forms of digitally mediated electoral interference, would satisfy the material elements of a prohibited intervention. However, whether international law can meaningfully address such interference in the absence of state attribution remains an open question. The next chapter addresses this issue, examining the limits of attribution, the role of state responsibility, and the potential of alternative doctrines to address the accountability gap.

4. Non-state Actors and the Principle of Non-intervention

Where non-state actors engage in conduct that would, in principle, fulfil the constitutive elements of a prohibited intervention, the question arises whether such acts can give rise to accountability. As the principle of non-intervention is rooted in the sovereign equality of states and has been traditionally formulated as a rule of inter-state conduct, its application to private actors is doctrinally limited. Yet this state-centric structure raises a deeper normative tension: can a system that purports to safeguard sovereign autonomy remain doctrinally coherent while ignoring powerful private actors whose transnational influence may exceed that of many states?

This question is not merely theoretical. If a violation of international law results in harm to a state, that state may seek accountability. Such responses may take the form of reparation, unilateral self-help, or countermeasures.[87] However, under the law of state responsibility, countermeasures may only be directed against the one that is responsible for the breach.[88] Accordingly,

87 *General commentary to the Articles on the Responsibility of States for Internationally Wrongful Acts*, Report of the International Law Commission on the work of its Fifty-third session, U.N. Doc. A/56/10 (2001) II/2 YB ILC 31, Article 1, para. 5. See also Schmitt, "Foreign Cyber Interference in Elections", 763.

88 Crawford, *State Responsibility: The General Part*, 83.

the central question is whether, and under what conditions, the conduct of a private actor can be imputed to a state under the existing rules of attribution. This is critical, since a state can only lawfully defend itself if it can demonstrate that the act of political disruption is attributable to another state. Absent such attribution, any retaliatory or defensive measures would themselves constitute internationally wrongful acts.[89]

4.1. Attribution under the Doctrine of State Responsibility

International law does not generally impose direct obligations on private actors, even when their conduct would, if undertaken by a state, constitute a violation of the non-intervention principle. While legal scholarship has long debated the possibility of treating corporations as subjects of international law – particularly in the field of human rights – this has not translated into a general doctrinal shift.[90] The principle of non-intervention, as formulated in the Friendly Relations Declaration and the case law of the ICJ, applies exclusively to states.[91] This means that even egregious transboundary interference by powerful private actors falls outside the scope of direct responsibility under current doctrine. As a result, the legality of any international legal response to such conduct depends on whether it can be attributed to a state under the rules of state responsibility. Attribution in this sense determines whether the actions of private individuals can be considered the actions of a state under the law. Historically, international law

89 Sander, "Democracy Under The Influence: Paradigms of State Responsibility for Cyber Influence Operations on Elections", 25f.

90 In 2003, the United Nations Sub-Commission on the Promotion and Protection of Human Rights recognised, for the first time, that 'transnational corporations and other business enterprises, as organs of society, are also responsible for promoting and securing the human rights set forth in the Universal Declaration of Human Rights'. The document went further still by acknowledging that these duties extend to 'generally recogni[s]ed responsibilities and norms contained in United Nations treaties', including the Convention on the Prevention and Punishment of the Crime of Genocide, the Slavery Convention, and the four Geneva Conventions of 1949 with their Additional Protocols. However, these *Draft Norms* remained non-binding and were ultimately not adopted by the UN Commission on Human Rights, highlighting the contested nature of corporate obligations under general international law. See *Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights*, UN Doc E/CN.4/Sub.2/2003/Rev.2. Adeyeye, "Corporate Responsibility in International Law: Which Way to Go?", 141. For notions from outside the human rights context see Crawford, *Brownlies Principles of Public International Law*, 111; Danielsen, "Corporate Power and Global Order", 86ff.

91 *Nicaragua*, Merits, Judgement, I.C.J. Rep 1986, 392, paras. 202, 205; *Armed Activities*, Merits, Judgment, I.C.J. Rep 2005, 168 at para. 164

has addressed state involvement in private wrongdoing through the doctrine of complicity, based on a state's tolerance or benefit from the private act.[92] This early notion, however, has since been replaced by the structured framework of attribution provided by the International Law Commission's (ILC) *Articles on the Responsibility of States for Internationally Wrongful Acts* (ARSIWA).[93] Under this framework, attribution does not depend on the legality of the conduct itself, but on the nature of the relationship between the state and the private actor in question.[94] In general, a state incurs international responsibility only where two cumulative conditions are met: the conduct must be attributable to the state, and it must constitute a breach of an international legal obligation binding upon that state.[95]

The legal test turns on the nature and degree of the connection between the state and the non-state actor.[96] To conceptualise the relevant links between states and private actors, Boon has reconstructed a tripartite typology that systematises the attribution framework embedded in the ARSIWA.[97] This classification clarifies the operative logic of the ARSIWA provisions as they apply to non-state actors: institutional attribution, where the actor is structurally integrated into the state apparatus (Article 4); functional attribution, where the actor exercises elements of governmental authority (Article 5); and control-based attribution, where the conduct is directed or controlled by the state (Article 8). Among these categories, it is the criterion of control that assumes relevance for the present inquiry. It provides that conduct by a private entity is attributable to a state if the entity is acting on the instructions of, or under the direction or control of, that state. Yet the text and commentary offer little guidance on the required degree of control. Instead, attribution is assessed on a case-by-case basis, which has led to divergent interpretations in international jurisprudence.[98]

92 Aust, *Complicity and the Law of State Responsibility*, 92f.

93 *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Report of the International Law Commission on the work of its Fifty-third session, U.N. Doc. A/56/10 (2001) II/2 YB ILC 26-30.

94 Crawford, *State Responsibility: The General Part*, 113.

95 *General commentary to the Articles on the Responsibility of States for Internationally Wrongful Acts*, Report of the International Law Commission on the work of its Fifty-third session, U.N. Doc. A/56/10 (2001) II/2 YB ILC 31, Article 2, para. 1.

96 Boon, "Attribution in International Law: Challenges and Evolution", 25.

97 Ibid., 28.

98 Report of the International Law Commission on the Work of Its Fifty-Third Session, UN Doc. A/56/10 (2001), 32–144 (Commentary to Article 8), para. 5; Boon, "Are Control Tests Fit for the Future? The Slippage Problem in Attribution Doctrines", 12; Crawford, *State Responsibility:*

In *Nicaragua*, the ICJ most famously defined the control paradigm, requiring states to exercise 'effective control' over non-state actors.[99] In contrast, the International Criminal Tribunal for the Former Yugoslavia (ICTY), in *Tadić*, adopted a more permissive overall control test, holding that general coordination or sustained support may suffice where the private actor is part of an organised and hierarchically structured group.[100] The ICTY reasoned that such groups do not require specific orders for each individual act, and that overall control better captures the structure of modern paramilitary relationships.[101] The divergence between the ICJ and ICTY can be partially explained by reference to the different primary norms at stake.[102] Nonetheless, the ICJ rejected this distinction, reaffirming its standard in *Armed Activities* and again in *Bosnian Genocide*.[103] In the latter, the Court examined the control requirement in detail and doctrinally reaffirmed the requirement of effective control, stating that a 'State is responsible only for its own conduct, that is to say the conduct of persons acting, on whatever basis, on its behalf.'[104]

While this jurisprudence remains doctrinally authoritative, it has attracted sustained criticism for being too narrow. Since its introduction in

---

The General Part, 146f.; Talmon, "The Responsibility of Outside Powers for Acts of Secessionist Entities", 502.

99 *Nicaragua*, Merits, Judgement, I.C.J. Rep 198, 392, para. 115.

100 In its judgment, the ICTY Appeals Chamber suggested that a rigid threshold such as that of effective control, as applied by the ICJ, would contravene the logic of the law of state responsibility, making it vulnerable to abuse. States, it warned, could 'flee' into the private domain, thereby avoiding responsibility simply by demonstrating the absence of effective control over the non-state actors committing the internationally wrongful act. The effect of such rigorous approach would be to render the distinction between organs of the state and non-organs illusory. *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Chamber, Judgment, 15 July 1999, paras. 108–109, 117, 120 (hereafter: *Tadić*); Crawford, *State Responsibility: The General Part*, 152.

101 *Tadić*, Case No. IT-94-1-A, Appeals Chamber, Judgment, para. 131; De Hoogh, "Articles 4 and 8 of the 2001 ILC Articles on State Responsibility, the Tadic Case and Attribution of Acts of Bosnian Serb Authorities to the Federal Republic of Yugoslavia", 263.

102 Boon, "Are Control Tests Fit for the Future? The Slippage Problem in Attribution Doctrines", 11, 19f.

103 Ibid., 18. See also *Armed Activities*, Merits, Judgment, I.C.J. Rep 2005, 168 at para. 160; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgement of 26. February 2007, I.C.J. Rep 2007, 43 at paras. 402ff. (*Bosnian Genocide)*.

104 *Bosnian Genocide,* Judgement, I.C.J. Rep 2007, 43 at para. 406. At the same place, the court went further on and stated, that 'the "overall control" test is unsuitable, for it stretches too far, almost to breaking point, the connection which must exist between the conduct of a State's organs and its international responsibility.'

Nicaragua, the effective control test has been criticised for enabling impunity, especially in cases involving diffuse relationships between states and private entities. [105] In the post-9/11 context, several states have asserted a right of self-defence against non-state actors operating from another state's territory, even in the absence of effective control.[106] State practice and *opinio iuris* following 9/11 therefore tend to show a departure from that strict approach and towards the concept of aiding and abetting – thereby in a way returning to the historical notion of complicity that was once the standard under international law. This shift suggests a departure from the ICJ's strict model and a move toward standards of complicity or tacit support.[107] Even though, state practice and *opinio iuris* indicate a growing willingness to consider attribution based on looser forms of connection, this practice remains fragmented and lacks the consistency required to displace the ICJ's effective control standard, which continues to represent the most widely accepted articulation of the law by states and international tribunals alike.

For the purposes of this article, this doctrinal rigidity has significant implications. Given that actors like Elon Musk, through his private platform X, acted without any (known) direction, instruction, or coordination by a state authority, it is impossible under the prevailing attribution standard to assign his conduct to any state. Accordingly, even if the material elements of a prohibited intervention were fulfilled, his actions would fall outside the scope of international legal responsibility.[108] The specifics of cyberspace – anonymity, decentralisation and territorial ambiguity

105 Slaughter and Burke-White, "An International Constitutional Moment", 19f.; Boon, "Are Control Tests Fit for the Future? The Slippage Problem in Attribution Doctrines", 17, 19; Boon, "Attribution in International Law: Challenges and Evolution", 33ff.; Crawford, *State Responsibility: The General Part*, 156f.

106 The issue was particularly relevant in the context of Article 51 of the UN Charter, which permits states to invoke the right of self-defence in response to an armed attack. Since the provision traditionally applies to inter-state violence, the legal question arose whether and under what conditions attacks by terrorist non-state actors may be attributed to a state. Given that a state's involvement with such groups may range from merely tolerating their presence to providing financial or logistical support, or ultimately exercising direction and control, it is striking that – under the prevailing attribution standard – only the latter suffices to engage state responsibility or allow for self-defence. Tams, "The Use of Force against Terrorists", 384ff.

107 Ibid., 385.

108 This applies particularly to any conduct undertaken by Musk prior to his appointment to a governmental position. However, even following his designation by President Trump as Senior Advisor to the President, a distinction must be drawn between acts carried out in his official capacity and those undertaken either as a private individual or in his role as the head of the company X.

– make this problem even worse by making attribution more difficult than ever before.[109] Cyber operations may originate from outside the territorial jurisdiction of the targeted state, involve multiple intermediaries, or leave behind ambiguous technical traces, all of which complicate the identification of those responsible. Even where the effect of a cyber operation may breach the principle of non-intervention, the stringent requirement of control is seldom provable in practice. The Romanian case, which involved opaque disinformation campaigns on TikTok during the 2024 presidential election, highlights this issue clearly. Where no direct evidence exists to establish a link between the actor and a state, and no clear chain of command can be demonstrated, attribution under Article 8 ARSIWA becomes legally untenable. In such cases, a narrow alternative path to attribution exists under Article 11 ARSIWA, permitting attribution where a state expressly adopts the conduct as its own. [110] Yet such acknowledgment is exceedingly rare. The case of Romania offers no indication that any state has formally accepted responsibility for the conduct in question, leaving attribution impossible under current doctrine.

4.2. Conclusion

The foregoing analysis has shown that the principle of non-intervention cannot apply directly to non-state actors. This doctrinal exclusion is not simply the result of an accidental omission, but rather stems from the structural logic of a state-centric international legal order.

Furthermore, the doctrinal pathway of attribution, while formally available, proves ill-suited to protect states from the realities of contemporary influence. As the jurisprudence of the ICJ confirms, the threshold for attributing private conduct to a state remains that of effective control – a test that demands specific operational direction or command. This challenge is especially acute in cases of electoral interference mediated by digital platforms. Actors such as Elon Musk, with his platform X, operate beyond

109 Talmon, "The Responsibility of Outside Powers for Acts of Secessionist Entities", 503. Georgia instituted proceedings against the Russian Federation before the International Court of Justice (ICJ "A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice", 632f.

110 *Report of the International Law Commission on the work of its Fifty-third session*, U.N. Doc. A/56/10 (2001) II/2 YB ILC 26-30, Article 11. The ICJ also recognised this rule as customary international law in *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, Judgement, I.C.J. Rep 1980, 3, para. 74.

the formal structures of state control. As such, their actions – even when materially indistinguishable from those prohibited under the principle of non-intervention – fall outside the reach of international legal responsibility. Even alternative routes, such as under Article 11 ARSIWA, are of limited use in the absence of express acknowledgment.

This limitation is not merely doctrinal, but structural. International law's state-centric architecture is ill-equipped to address contemporary forms of interference that are decentralised, digitally mediated, and privately orchestrated. The Romanian case, in which the presidential election was annulled due to political interference using a private platform, further illustrates this gap. Accountability fails not because the harm caused is trivial, but because it evades enforcement under municipal law. Under international law, as no link to a state can be substantiated, the state is unable to take any countermeasures.

The result is a systemic accountability gap. Although breaching the principle of non-intervention would provide a legal basis for action, the constitutive elements of this principle are met, yet international law offers no means of assigning responsibility for the breach. Conventional international law, which is predominantly based on negative duties of restraint, is limited in its ability to effectively address such scenarios. This doctrinal impasse calls for a change of direction. The focus must shift from the conduct of non-state actors to the obligations of states to prevent, mitigate or regulate cross-border interference originating from within their jurisdiction.[111]

5. Beyond Attribution: Legal Approaches to Non-state Actor Interference

As the previous chapter demonstrated, the doctrine of attribution under the law of state responsibility demands a high level of direction or control. Without such a link, politically disruptive conduct by private actors remains beyond the reach of international responsibility. This limitation highlights a deeper, more structural challenge. In an increasingly interconnected world, risks are no longer confined by territorial boundaries or attributable to individual actors. Globalisation has multiplied the sources of potential

111 Boon, "Are Control Tests Fit for the Future? The Slippage Problem in Attribution Doctrines", 44.

harm – economic, public health and political – while diffusing responsibility across a wide array of state and non-state entities. As complexity and uncertainty deepen, the focus of international law must evolve. Instead of addressing only discrete violations through retrospective adjudication, it must develop preventive legal frameworks that respond to decentralised risks. This entails not only a shift in normative focus – from enforcement to prevention and mitigation – but also moving from mere reactive damage-based responsibility to forward-looking obligations of vigilance and risk management.[112]

This chapter explores whether international law contains – or could be interpreted to contain – obligations, that could be applied in the context of severe political interference arising from non-state actors. The aim is not to assert that a positive obligation to regulate or constrain such conduct already exists, but to examine doctrinal pathways through which such an obligation might be inferred or constructed. One question is whether the principle of non-intervention could also impose duties to prevent actions that undermine the institutional autonomy of other states. Such positive duties might also find support in the no-harm principle, which prohibits states from knowingly allowing activities within their jurisdiction to cause serious harm to the rights of other states. Additionally, human rights law may give rise to positive duties, particularly when foreign manipulation affects the conditions necessary for political participation or undermines democratic integrity. The chapter thus maps the boundaries of these frameworks and considers whether they can be extended to address decentralised political interference by private actors.

5.1. Non-intervention and the Possibility of Correlative Obligations

The principle of non-intervention is widely recognised as a corollary of sovereign equality.[113] Its underlying function is to safeguard the independence of the political society to other states.[114] As the preceding analysis has shown, the current formulation of the principle does not address politically destabilising conduct carried out by private actors. In response to this accountability gap, some scholars have proposed relaxing attribution thresholds. Yet

112 Peters and Krieger, "Due Diligence and Structural Change in the International Legal Order", 353f.

113 Germany's position paper, UN Doc. A/76/136 (2021), 31, 34.

114 Wheaton, *History of the Law of Nations in Europe and America*, 29.

international courts have increasingly explored an alternative path: holding states responsible not for the acts themselves, but for failing to prevent harmful conduct originating from their territory.[115] While international law recognises responsibility for both acts and omissions, an omission only gives rise to responsibility where it violates a specific legal duty to act.[116] In the absence of such a duty, no legal consequence follows.[117] In certain contexts, it has been recognised that states may be under a positive obligation to prevent harm. In *Armed Activities*, the ICJ grounded such an obligation in Article 43 of the 1907 *Hague Convention IV*, which requires an occupying power to restore and maintain public order.[118] In *Bosnian Genocide*, the Court held that Article 1 of the *Genocide Convention* imposes not only a duty to refrain from committing genocide, but also a duty to take all reasonably available measures to prevent it.[119] In both instances, the preventive duty was derived from a specific primary rule of international law. Outside such treaty-based or otherwise established frameworks of positive law, no general obligation to prevent transboundary harm exists – even where a state is aware of private conduct within its jurisdiction that may have serious extraterritorial effects.[120]

This doctrinal limitation brings the argument back to the principle of non-intervention. Although the principle protects the *domaine réservé* of states, it does so through a purely negative structure, imposing no corresponding obligation to restrain private actors. Yet the rationale on which

115 Boon, "Are Control Tests Fit for the Future? The Slippage Problem in Attribution Doctrines", 23.

116 For a written formulation of this principle, see Article 2 of the ARSIWA which provides: 'There is an internationally wrongful act of a State when conduct consisting of an action *or omission* [emphasis added] is attributable to the State under international law and constitutes a breach of an international obligation of the State.' See *Report of the International Law Commission on the Work of Its Fifty-Third Session*, UN Doc. A/56/10 (2001), ch. IV, Article 2.

117 Crawford, *State Responsibility: The General Part*, 218.

118 *Hague Convention (IV) Respecting the Laws and Customs of War on Land*, adopted on 18 October 1907 (entered into force 26 January 1910), Article 43. Uganda's failure to prevent looting, plundering, and the exploitation of natural resources was found to constitute a breach of this duty of vigilance. *Armed* Activities, Merits, Judgment, I.C.J. Rep 2005, p. 168 at paras. 228f., 245ff.

119 'The Contracting Parties confirm that genocide, whether committed in time of peace or time of war, is a crime under international law which they undertake to prevent and to punish' [emphasis added], *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951), Article 1; *Bosnian Genocide*, Judgment, I.C.J. Rep 2007, p. 43 at para. 460.

120 Boon, "Are Control Tests Fit for the Future? The Slippage Problem in Attribution Doctrines", 36.

it rests – preserving the sovereign autonomy of states – raises the question whether the principle might, in certain circumstances, generate positive duties, especially where politically destabilising conduct emanates from within the territorial state.

A rare but illustrative instance in which a state appeared to treat the principle of non-intervention as entailing such a duty occurred in 2016. Then, Ecuador restricted Julian Assange's internet access while he was seeking refuge in its embassy in London.[121] The decision followed WikiLeaks' publication of leaked emails during the 2016 U.S. presidential campaign – an act widely seen as capable of influencing the electoral process. According to Milanović, Ecuador's action may be interpreted as state practice with an expression of *opinio iuris* that the customary principle of non-intervention required it to prevent a private actor, operating from a place under its jurisdiction, from interfering with the political process of a third state.[122]

Even if this interpretation reflects Ecuador's understanding, it cannot singlehandedly expand the scope of obligations under customary international law. Nor has Milanović's reading gained broader acceptance. Some commentators have suggested that Ecuador's motives itself were political rather than legal – aimed at avoiding further disclosures harmful to presidential candidate Clinton rather than complying with international obligations.[123] While the sole example of Ecuador does not provide conclusive evidence to assert a customary duty to restrain private actors under the principle of non-intervention, it illustrates that such a reading is not entirely unmoored from contemporary legal reasoning. The fact that some states may at least perceive such obligations opens the possibility that the normative logic of sovereignty, and its corollary the principle of non-intervention, could evolve to support positive duties in specific contexts. However, in the absence of consistent state practice or *opinio iuris*, no such duty can currently be derived from the principle of non-intervention. As such, it cannot – at least not at this time – serve as a doctrinal basis for an obligation to prevent cross-border political interference by private actors.[124] The next section therefore turns to the no-harm principle, a more

121 *Official Communiqué of the Ministry of Foreign Affairs and Human Mobility of the Republic of Ecuador*, 19 October 2016, available at https://x.com/MFAEcuador/status/788511494296272896 (last accessed 15 May 2025).

122 Milanovic, "Ecuador Turns Off Julian Assange's Internet Access".

123 Ratner, "Ecuador's Disconnect of Assange: Politics or Principle?".

124 Milanovic, "Ecuador Turns Off Julian Assange's Internet Access".

established doctrinal pathway, to examine whether its logic of territorial responsibility might extend to politically disruptive conduct by private actors.

5.2. The No-harm Principle and the Challenge of Political Harm

The no-harm principle, which prohibits states from knowingly permitting conduct within their jurisdiction that infringes the rights of other states, could form the basis of a tentative approach to addressing political interference.[125] Traditionally understood as a corollary of the principle of territorial sovereignty, the rule imposes a duty of vigilance where a state is – or should be – aware that harm originates from within its territory.[126]

The obligation not to cause harm to other states and the duty to prevent harm are often associated and may appear to overlap in their practical operation. Yet, they are doctrinally distinct. The duty to prevent is formulated as a primary obligation, arising from positive international law. The no-harm principle, by contrast, lacks a single codified source. Rather than imposing strict liability, it operates as a due diligence-based obligation that seeks to allocate responsibility after harm has become foreseeable or materialised.[127]

The conceptual foundation of the principle can be retraced to the 1928 *Island of Palmas* arbitration, where the tribunal found that territorial sovereignty entails the duty to prevent one's territory from being used to harm the rights of other states.[128] This rationale was reinforced by the ICJ in *Corfu Channel*, where it held that it is a 'well-established principle' that

125 For the purposes of this article, the term 'no-harm principle' refers to the general obligation of states to prevent any harm originating from their territory from affecting other states, irrespective of the nature of that harm. According to this definition, environmental harm and other forms of transboundary injury fall under a single, unified obligation. However, some draw a distinction between a narrow no-harm principle, limited to environmental contexts, and a broader due diligence obligation, which addresses other types of harm. I reject this distinction, as both obligations share the same normative foundation and substantive content. Mačák, Dias, and Kasper, *Handbook on Developing a National Position on International Law and Cyber Activities*, 90; Bäumler, "Rise and Shine: The No Harm Principle's Increasing Relevance for the Global Community".

126 Mačák, Dias, and Kasper, *Handbook on Developing a National Position on International Law and Cyber Activities*, 90.

127 Peters and Krieger, "Due Diligence and Structural Change in the International Legal Order", 354f.

128 *Island of Palmas Case (Netherlands v. United States),* Permanent Court of Arbitration, Award, RIAA, vol. II (1928), 829, 839 (hereafter: *Islands of Palmas*).

every State 'must not permit knowingly the use of its territory for purposes injurious to the interests of other states in a manner contrary to international law.'[129] While *Corfu Channel* articulated the rule in general terms, it was a few years earlier that the obligation not to cause harm acquired its most famous expression. In the 1941 *Trail Smelter* arbitration, involving air pollution from Canadian smelting operations affecting the United States, the tribunal declared that 'no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes [...] to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.'[130] This ruling is widely regarded as the fundamental statement of the environmental no-harm principle. With its strict requirement of physical harm, it became the starting point for the rule's further spread.[131] Several legal instruments, such as the *Stockholm Declaration*, the *Rio Declaration* and the ILC's *Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities*, restated and further developed the principle by specifying a standard of due diligence.[132] Notably, these instruments not only affirmed a duty to abstain from causing physical harm, but also developed it further into a duty to diligently prevent foreseeable harm from occurring in the first place.[133] The ICJ confirmed the existence of such a preventive obligation in *Pulp Mills*, holding that states 'must use all means at their disposal' to prevent all activities within their jurisdiction causing transboundary harm.[134]

129 *Corfu Channel*, Merits, Judgement, I.C.J. Reports 1949, 4, 22.

130 *Trail Smelter Arbitration (United States v Canada)*, Permanent Court of Arbitration, Arward, UNRIAA, vol. III, 1938, 1965 (hereafter: *Trail Smelter*).

131 Peters and Krieger, "Due Diligence and Structural Change in the International Legal Order", 356.

132 '*States have [...] the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.' Stockholm Declaration*, UN Doc. A/CONF.48/14/Rev.1 (1972), Principle 21; The exact wording was also integrated into the Principle 2 of the *Rio Declaration on Environment and Development*, UN Doc. A/CONF.151/26/Rev.1 (Vol. I), Annex I. *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities*, adopted by the International Law Commission at its Fifty-Third Session, UN Doc. A/56/10 (2001), at 370; GAOR, 56th Sess., Supp. No. 10, p. 370, Draft Article 3.

133 Duvic-Paoli, *The Prevention Principle in International Environmental Law*, 27f.; Peters and Krieger, "Due Diligence and Structural Change in the International Legal Order", 360.

134 'A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage

More recently, however, the principle has been invoked beyond environmental law and the concept of physical harm. As Bäumler observes, it now informs areas such as international economic law, financial regulation, and international tax cooperation. Consequently, it has been constantly extended to encompass economic harm.[135] These developments remain fragmented, however, and are, in most cases, embedded in specialised treaties or soft law instruments.[136] Nevertheless, there is an increasing acceptance that the no-harm principle can be considered a general principle of international law.[137]

Whether the principle is applicable to forms of political interference remains an open question. The strict harm requirement articulated in the 1941 *Trail Smelter* arbitration would seem to preclude such an application. Yet this requirement arose within a specific environmental context and should not be generalised. Judge Moore's dissent in the PCIJ's *Lotus* case had already advanced a broader view, asserting that 'a state is bound to use due diligence to prevent the commission within its dominions of criminal acts against another nation or its people.'[138] This view was later reinforced by the ICJ in *Corfu Channel*, which affirmed that states must not knowingly permit their territory to be used for acts contrary to the rights of other states – without requiring physical harm as a threshold.[139] This broader approach has

---

to the environment of another State.' *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgement, I.C.J. Reports 2010, 14, para. 101.

135 Bäumler, "Rise and Shine: The No Harm Principle's Increasing Relevance for the Global Community", 163ff.

136 Ibid., 171f.

137 While Bäumler accepts this classification only within specific domains of international law, the International Group of Experts responsible for the Tallinn Manual 2.0 appears to take a less restrictive view. See ibid., 172f.; Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 31.

138 *The Case of the S.S. Lotus (France v. Turkey),* Dissenting Opinion of Judge Moore of 7 September 1927, P.C.I.J. Series A, No. 10 (1927), 65, 88f; Brunnée, "Sic Utere Tuo Ut Alienum Non Laedas", para. 14.

139 This is particularly evident in the full formulation given by the Court in *Corfu Channel*, where it held: 'Such obligations are based, not on the Hague Convention of 1907, No. VIII, which is applicable in time of war, but on certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war; the principle of the freedom of maritime communication; and every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.' In doing so, the Court expressly affirmed that this duty is not confined to one particular category of harm – as the tribunal in *Trail Smelter* had done – but instead grounded the obligation in general international law, establishing it as applicable across cases. *Corfu Channel,* Merits, Judgement, I.C.J. Reports 1949, 4, p. 22. Mačák,

also found expression in contemporary legal commentary. Similarly, Rule 6 of the Tallinn Manual 2.0 – an academic restatement of international law applicable to cyberspace – recognises the rights of states as protected interests under the no-harm principle.[140] While not binding, it reflects an emerging consensus among scholars and practitioners that state obligations may extend to non-physical forms of cross-border interference.

Against this evolving doctrinal backdrop, further support can be found in the reports of the UN Group of Governmental Experts on Information and Telecommunications (GGE). While not explicitly addressing political interference by private actors, both the 2015 and 2021 GGE reports contain extensive discussion of the no-harm principle in the context of cyber space and include written submissions from states that may constitute *opinio iuris*. In particular, each report affirms that states 'should seek to ensure that their territory is not used by non-state actors to commit such [internationally wrongful] acts [using information and communications technology],' thus articulating a minimum standard of due diligence *vis-à-vis* non-state actors.[141] These formulations set out a cautious common baseline and several states have gone further in interpreting the principle's relevance to political interference.[142] Norway, for instance, maintains that the relevant threshold should not depend on physical damage but on whether the activity obstructs inherently governmental functions – explicitly naming electoral processes.[143] Costa Rica has likewise clarified that the obligation extends to the prevention of electoral interference conducted in cyberspace.[144] Some states have further acknowledged that these obligations apply even in the absence of attribution to the state.[145] Taken together, these positions reflect a cautious but growing recognition that the no-harm principle may entail an obligation to prevent any politically disruptive conduct by private actors arising from a state's territory. This interpretation is supported by the Oxford Statement on

---

Dias, and Kasper, *Handbook on Developing a National Position on International Law and Cyber Activities*, 91; Bäumler, 'Rise and Shine', 154f.

140 Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 30.

141 Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, UN Doc. A/70/174 (2015), para. 28(e); Report of the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security, UN Doc. A/76/135 (2021), Norm 13(c), paras. 29ff.

142 Roscini, *International Law and the Principle of Non-Intervention*, 402.

143 Norway's position paper, *supra* note 76, 71f.

144 Costa Rica's position paper, *supra* note 76, 68.

145 Switzerland's position paper, *supra* note 76, 92f., 101f.

International Law Protections Against Foreign Electoral Interference Through Digital Means, which was developed and signed by legal experts from around the world. Rule 4(a) of Statement 3 explicitly acknowledges the duty of states to take all feasible steps to prevent, stop and mitigate any harm arising from cyber operations that could adversely affect electoral processes abroad.[146] Regarding the threshold required to trigger this obligation, Rule 4(b) suggests that it may extend to the deliberate dissemination of disinformation.[147]

Applying the established elements of the no-harm principle to electoral interference reveals both points of alignment and doctrinal tension. First, the key question is whether political interference, falls within the meaning of the rule. Recent legal conceptions have shifted toward recognising violations of a state's sovereign rights – rather than physical harm – as sufficient to trigger responsibility. As the conduct of elections lies at the core of governmental function, which is protected by the principle of sovereignty, any interference that compromises electoral integrity, democratic credibility or public trust may be subject to the rule. However, the threshold required for an action to fall within this scope has yet to be clarified. Second, the requirement of a territorial or jurisdictional nexus is clearly satisfied where the relevant digital infrastructure, or corporate entities operate from within the state's territory. Third, the element of knowledge – or constructive awareness – may be fulfilled where states are placed on notice, whether through prior incidents, press reporting, or formal notification by the affected state.

If certain acts of political interference are accepted as falling into the scope of the no-harm principle, the state from which such action originates must take appropriate measures to prevent it.[148] It is well established that this obligation gives rise to a due diligence and entails an obligation

146 Rule 4(a) reads 'When a state is or should be aware of a cyber operation that emanates from its territory or infrastructure under its jurisdiction or control, and which may have adverse consequences for electoral processes abroad, that state must take all feasible measures to prevent, stop and mitigate any harms threatened or generated by the operation.' *Oxford Statement on International Law Protections Against Foreign Electoral Interference Through Digital Means*, Oxford Process on International Law Protections in Cyberspace, available at https://www.elac.ox.ac.uk/the-oxford-process/the-statements-overview/the-oxford-statement-on-the-regulation-of-information-operations-and-activities.

147 Rule 4(b), which elaborates the duties arising for a state, contains the formulation that states may be required to 'take measures to prevent or thwart operations spreading misleading or inaccurate information'. Ibid.

148 Schmitt, "Foreign Cyber Interference in Elections", 759.

of conduct, rather than result.[149] However, its scope remains unsettled, as due diligence is a context-dependent, variable standard.[150] Several national positions however assert, that a minimum standard of due diligence entails the duty to inform the injured state.[151] However, several states have expressed a position that goes beyond the minimum standard. For example, Estonia states that, at a minimum, states must offer technical cooperation when they become aware of malicious cyber activity, including information sharing and support measures.[152]

On this reading, forms of digital electoral manipulation such as the spreading of fake news, mis- and disinformation, the privileging of partisan content on social media platforms or the coordinated and inauthentic promotion of candidates through foreign-based infrastructure – as illustrated in the Musk / X case and the Romanian TikTok campaign – may fall within the functional reach of the no-harm principle. Though the principle's applicability to political harm remains nascent, it marks a doctrinally grounded and progressively evolving pathway to regulate private electoral interference where traditional responsibility rules fall short.

5.3. Electoral Interference and the Protective Reach of Human Rights Law

In 2025, the Constitutional Court of Romania annulled the results of a presidential election due to grave violations of the freedom to vote. Citing misinformation, the aggressive promotion of one candidate, and circumvention of national electoral rules, the Court held that 'the free expression of the vote was violated by the fact that the voters were misinformed through an electoral campaign [...] carried out by circumventing national electoral legislation and by abusing the algorithms of social media platforms.'[153] The judgment affirmed that the right to vote includes not only the act of participation, but

149 Brunnée, "Sic Utere Tuo Ut Alienum Non Laedas", para. 12; Schmitt, "Foreign Cyber Interference in Elections", 758.

150 Mačák, Dias, and Kasper, *Handbook on Developing a National Position on International Law and Cyber Activities*, 92. For further elaboration on the standard of due diligence and the identification of duties arising under it see *Request for Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024, ITLOS Case No. 31, paras. 239ff.

151 Austria's position paper, *supra* note 78, 11.

152 Estonia's position paper, *supra* note 76, 26.

153 Ruling No. 32, *Curtea Constituțională a României*, 6 December 2024, published in *Official Gazette* No. 1231 of 6 December 2024 at paras. 11f. 14f.

also the right to receive accurate, accessible, and reliable information – and to be protected against covert or disproportionate influence.[154] Although the decision addressed rights under the Romanian Constitution and domestic electoral law, the underlying conduct involved foreign-based infrastructures and actors. This raises the broader question whether international human rights law can impose positive obligations on territorial states to prevent foreseeable human rights violations occurring extraterritorially, where such violations are enabled by actors or systems under their regulatory authority. This section proceeds in three steps. First, it examines the preventive structure of human rights obligations and their extension to private conduct. Second, it considers whether such duties can apply extraterritorially. Third, it evaluates whether specific rights engaged by electoral manipulation can ground such obligations.

5.3.1. Human Rights as Preventive Norms

The starting point is the recognition that international human rights law imposes both negative and positive obligations.[155] States must not only refrain from human rights violations but also take reasonable measures to prevent them. This dual structure is reflected in the treaty texts. Most major instruments oblige states to 'respect', 'ensure' or 'guarantee' the rights contained therein. The Inter-American Court of Human Rights (IACtHR) articulated this in *Vélasquez Rodríguez v. Honduras*, where it held that responsibility may arise

> not because of the act itself, but because of a lack of due diligence to prevent the violation or to respond to it as required [...] The same is true when the state allows private persons or groups to act freely and with impunity to the detriment of the rights recognised in the Convention.[156]

A similar formulation has been adopted by the European Court of Human Rights (ECtHR) in cases such as *Cyprus v. Turkey*.[157] Notably, this

154 Ibid at para. 13.

155 Schmitt, "Foreign Cyber Interference in Elections", 760.

156 *Velásquez Rodríguez v. Honduras*, Judgment (Merits), Inter-American Court of Human Rights, 29 July 1988, Series C No. 4, para. 172.

157 '[The Court] confines itself to noting at this stage that the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate

duty does not depend on attribution of the private conduct, but on whether the state had the capacity to prevent it.[158] Most notably, this duty goes further than the no-harm principle, which only covers the prevention of foreseeable harm, and requires states to take reasonable preventive measures.[159]

5.3.2. Extraterritorial Reach of Human Rights Obligations

While the duty to prevent violations of human rights in the first place is well established, the extraterritorial application of human rights remains contested. Most treaties include jurisdictional clauses limiting their spatial scope.[160] However, jurisdiction here refers not necessarily to physical control, but to a state's legal authority to prescribe, adjudicate, and enforce norms.[161] Extraterritoriality, by contrast, concerns the extension of a state's legal obligations beyond its borders – typically where its conduct, or failure to act, has consequences abroad.[162] The key legal question, therefore, is not whether the state itself committed a human rights violation, but whether it failed to act despite being in a position to prevent harm.[163]

There is growing recognition that, under certain conditions, human rights obligations may apply extraterritorially – particularly where state action or omission has a direct and foreseeable impact abroad.[164] The IACtHR

---

the Convention rights of other individuals within its jurisdiction may engage that State's responsibility under the Convention. Any different conclusion would be at variance with the obligation contained in Article 1 of the [European Convention on Human Rights].' *Cyprus v. Turkey*, Application No. 25781/94, Judgment (Merits), Grand Chamber, European Court of Human Rights, 10 May 2001, ECHR 2001IV, para. 81.

158 McCorquodale, "Spreading Weed Beyond Their Garden: Extraterritorial Responsibility of States for Violations of Human Rights by Corporate Nationals", 98.

159 Schmitt, "Foreign Cyber Interference in Elections", 761.

160 Compare, Article 2(1) ICCPR; Article 1, European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1 of the American Convention on Human Rights. See also Raible, "Between Facts and Principles: Jurisdiction in International Human Rights Law", 53.

161 *Banković and Others v. Belgium and Others*, Application No. 52207/99, Decision (Admissibility), Grand Chamber, European Court of Human Rights, 12 December 2001, para. 59. See also Janig, "Extraterritorial Application of Human Rights", para. 12; Duttwiler, "Authority, Control and Jurisdiction in the Extraterritorial Application of the European Convention on Human Rights", 139; Milanovic, *Extraterritorial Application of Human Rights Treaties*, 53.

162 Besson, "The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts To", 858.

163 Milanovic, *Extraterritorial Application of Human Rights Treaties*, 8.

164 Janig, "Extraterritorial Application of Human Rights", para. 1; McCorquodale, "Spreading Weed Beyond Their Garden: Extraterritorial Responsibility of States for Violations of Human Rights by Corporate Nationals", 99.

has affirmed that jurisdiction under international law may rest on several grounds, including authority and effective control.[165] In this context, authority must be understood in a normative sense – as the legal relationship between a state and an individual.[166] Effective control on the other hand, is a factual standard based on a state's capacity to influence outcomes.[167] Further support comes from the Human Rights Committee. In General Comment No. 36 on the right to life, it affirmed that states must exercise due diligence to prevent harm by non-state actors – even in an extraterritorial context.[168] This reasoning reflects the classical principle *ex facto jus oritur* – law arises from fact.[169] As patterns of transboundary rights interference emerge, especially where state inaction facilitates private conduct, the normative framework must be understood in light of these realities. What matters is not only the location of the affected individual, but whether the territorial state was able to anticipate and restrain the relevant conduct. In such cases, jurisdiction cannot be understood purely in geographical terms; it must also consider functional control. From this perspective, the extraterritorial application of human rights aims to close accountability gaps and prevent serious harm that would otherwise remain unaddressed.[170]

5.3.3. Limitations of Human Rights Law in Electoral Interference Cases

Even if preventive duties can extend extraterritorially, it remains to be determined whether they apply to electoral manipulation. The Romanian

165 'The Inter-American Court finds that a person is subject to the "jurisdiction" of a State in relation to an act committed outside the territory of that State (extraterritorial action) or with effects beyond this territory, when the said State is exercising authority over that person or when that person is under its effective control, either within or outside its territory.' Inter-American Court of Human Rights, *The Environment and Human Rights*, Advisory Opinion OC-23/17, paras. 75, 81.

166 Duttwiler, "Authority, Control and Jurisdiction in the Extraterritorial Application of the European Convention on Human Rights", 142, 157.

167 Ibid., 142ff; 160; Besson, "The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts To", 872.

168 Human Rights Committee, *General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, 30 October 2018, UN Doc. CCPR/C/GC/36, paras. 7, 22.

169 Giuffrè, "A Functional-Impact Model of Jurisdiction: Extraterritoriality before the European Court of Human Rights", 69f.

170 Raible, "Between Facts and Principles: Jurisdiction in International Human Rights Law", 59; Milanovic, *Extraterritorial Application of Human Rights Treaties*, 97f.

Constitutional Court based its decision on the violation of the right to the 'free expression of the citizens' vote.'[171] Internationally, Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to vote in periodic elections.[172] The Human Rights Committee has clarified that this includes the right 'to form opinions independently, free of violence or [...] manipulative interference of any kind.'[173] This reading would suggest that the widespread dissemination of misinformation and disinformation has the potential to violate the electorate's rights.[174] As a corollary, this would suggest that the state has a positive obligation to prevent the dissemination of misinformation by private individuals. However, the scope of this duty remains unclear as there has been no clarification nor state practice regarding the threshold of positive duties under Article 25(b).[175]

The analysis must therefore shift to a second human rights standard that is potentially in tension with the above: the right to freedom of expression, as articulated in Article 19(2) ICCPR and several regional human rights treaties.[176] It guarantees not only the freedom to express opinions, but also the right to seek, receive, and impartial information and ideas of all kinds, regardless of frontiers and irrespective of accuracy.[177] The ECtHR has affirmed both the individual and positive dimensions of the right to information. In *Sunday Times v. United Kingdom*, it held that the right includes not only

171 Ruling No. 32, *Curtea Constituțională a României*, 6 December 2024, published in *Official Gazette* No. 1231 of 6 December 2024 at para. 13.

172 *International Covenant on Civil and Political Rights*, adopted 16 December 1966, entered into force 23 March 1976, 999 UNTS 171.

173 UN Human Rights Committee, *General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote) – The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, UN Doc. CCPR/C/21/Rev.1/Add.7, para. 19.

174 Koh, "The Trump Administration and International Law", 451.

175 Shrivastava, "Tackling Foreign Election Interference Through Self-Determination"; Sander, "Democracy Under The Influence: Paradigms of State Responsibility for Cyber Influence Operations on Elections", 36.

176 Article 10, European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221. Article 13, American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123.

177 UN Commission on Human Rights, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Mr. Abid Hussain, Submitted in Accordance with Commission Resolution 1999/36*, UN Doc. E/CN.4/2000/63 (18 January 2000), paras. 42f.

freedom to speak but also the public's right to be informed.[178] In *Şahin Alpay v. Turkey*, the Court articulated a positive obligation to safeguard democratic values such as pluralism of opinion.[179] At the same time, the ECtHR has consistently held that even false, misleading, or controversial statements enjoy *prima facie* protection.[180] In *Salov v. Ukraine*, it held that disinformation remains protected unless it causes demonstrable and significant harm.[181] Some commentators suggest that the ECtHR hinted that this position could be changed if the disinformation would produce greater destabilising effects. Nonetheless, under current doctrine, the threshold remains high.[182] Unlike the ECtHR, which balances expression with democratic integrity, the IACtHR obliges states to uphold strict content neutrality, as a safeguard against political abuse.[183]

This divergence highlights the fundamental conflict between freedom of expression and the need to safeguard democratic processes. Although digital political content, such as partisan messages on social media or artificially generated content, can be misleading, or of an unclear origin, it does not easily fit into the existing categories of speech that can be regulated, such as incitement or hate speech.[184] Consequently, these forms of foreign interference evade current human rights protection.

178 *The Sunday Times v. the United Kingdom (No. 1)*, Application No. 6538/74, Judgment (Merits), European Court of Human Rights, 26 April 1979, Series A No. 30, para. 66.

179 *Şahin Alpay v. Turkey*, Application No. 16538/17, Judgment, European Court of Human Rights, 20 March 2018, para. 180.

180 Colomina, Sáchez Margalef, and Yongs, "The Impact of Disinformation on Democratic Processes and Human Rights in the World", 10.

181 *Salov v. Ukraine*, Application No. 65518/01, Judgment, European Court of Human Rights, 6 September 2005, para. 113.

182 Deluggi and Ashraf, "Liars, Skeptics, Cheerleaders: Human Rights Implications of Post-Truth Disinformation from State Officials and Politicians", 381.the paper examines how active dissemination of lies by figures of epistemic authority can be framed as a human rights issue and affects trust patterns between citizens, increases polarization, impedes dialogue, and obstructs access to politically relevant information by gatekeeping knowledge. Analyzing European Convention on Human Rights (ECHR

183 Lanza, "Impact of the IAHRS Principles on Freedom of Expression and the Need for Their Expansion in the Digital Age: Challenges to the IAHRS Principles on Freedom of Expression in the Digital Age", 512.

184 Article 20 ICCPR; See also Deluggi and Ashraf, "Liars, Skeptics, Cheerleaders: Human Rights Implications of Post-Truth Disinformation from State Officials and Politicians", 381. the paper examines how active dissemination of lies by figures of epistemic authority can be framed as a human rights issue and affects trust patterns between citizens, increases polarization, impedes dialogue, and obstructs access to politically relevant information by gatekeeping knowledge. Analyzing European Convention on Human Rights (ECHR

International and regional bodies have acknowledged this regulatory dilemma. Even though the joint declarations issued by the UN Special Rapporteur on Freedom of Opinion and Expression, the Organisation for Security and Co-operation in Europe, the Organization of American States, and the African Commission on Human and Peoples' Rights reaffirm that general bans on disinformation are incompatible with freedom of expression. Nevertheless, they encourage both states and private actors to adopt reasonable, non-coercive measures – such as transparency requirements and warning labels – to counteract the effects of electoral disinformation.[185] However, these instruments remain non-binding and aspirational and do not generate enforceable legal obligations. As a result, the current human rights framework remains cautious in articulating preventive duties that might unduly restrict free speech.[186]

5.3.4. Promise and Fragility of a Human Rights-based Approach

This section has shown that international human rights law can, under certain conditions, extend extraterritorially and contain provisions that oblige states to prevent harmful private conduct. Electoral manipulation implicates rights such as political participation and access to information, but converting these into enforceable duties of prevention remains legally uncertain. In particular, broad protections for freedom of expression – including for false or misleading speech – constrain the development of positive state obligations. While human rights law offers a compelling normative lens, it has yet to yield a robust doctrinal basis for regulating transboundary electoral interference by private actors. The promise of a rights-based approach thus remains, for now, more aspirational than operational.

185 Organization for Security and Co-operation in Europe, 'Joint Declaration on Freedom of Expression and Elections in the Digital Age'; Organization for Security and Co-operation in Europe, 'Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda'.

186 Deluggi and Ashraf, "Liars, Skeptics, Cheerleaders: Human Rights Implications of Post-Truth Disinformation from State Officials and Politicians", 382.the paper examines how active dissemination of lies by figures of epistemic authority can be framed as a human rights issue and affects trust patterns between citizens, increases polarization, impedes dialogue, and obstructs access to politically relevant information by gatekeeping knowledge. Analyzing European Convention on Human Rights (ECHR

5.4. Conclusion

This chapter has examined three doctrinal pathways through which international law might address politically disruptive conduct by private actors that transcends national borders: preventive obligations of primary international law, the no-harm principle, and positive obligations under international human rights law. Each framework responds differently to the accountability gap left by the high threshold of attribution under the law of state responsibility.

The analysis showed that the principle of non-intervention is too narrowly defined to support preventive obligations. On the other hand, human rights law is rich in norms. However, it has been paralysed by the broad scope of freedom of expression in relation to the regulation of disinformation. By contrast, the no-harm principle offers a more promising avenue. Although traditionally associated with environmental harm, it has evolved into a more general expression of territorial responsibility. Recent state practice, particularly in the context of cyber operations, suggests a cautious willingness to extend this principle to cases of electoral interference, provided that certain threshold, such as foreseeability, knowledge, and jurisdictional nexus are met. The no-harm principle may thus serve as a doctrinally sound and normatively flexible legal tool for addressing foreign political interferences caused by private infrastructures located within a state's regulatory reach. Taken together, these findings suggest that international law possesses underexplored conceptual resources for responding to privatised political interference – even if their application remains contingent, evolving, and doctrinally unsettled.

6. Conclusion

This article has explored the limits and potential of international law in responding to cross-border political interference by powerful private actors. Although the principle of non-intervention is foundational to the international legal order, it remains structurally tethered to state action. The doctrine of attribution, meanwhile, is precise in theory but narrow in practice, effectively excluding most forms of disruptive private interference that occur outside of state control. The result is a systemic accountability gap, reflecting the broader challenge of regulating transnational private power in a legal system built on the principle of sovereign equality. As foreign influence increasingly flows through digital infrastructures, media-corporations and

social networks, designed and operated by private entities, international law is confronted with a new modality of risks for which its institutional and doctrinal tools remain poorly adapted. The traditional focus on state-centric power, regulated through rules of prohibition and attribution, is ineffective when influence is non-violent, privatised and structurally elusive.

Yet this article shall not be a counsel of despair. While international law may not yet furnish a rule that prohibits such interference *per se*, it already provides promising doctrinal starting points from which more responsive frameworks could develop. As this article has demonstrated, the no-harm principle provides a normative template for interpreting duties of prevention where territorial infrastructures are used to disrupt foreign democratic processes. Similarly, certain human rights obligations – especially under evolving interpretations of extraterritorial jurisdiction – may support a duty to protect electoral integrity from private manipulation. While these developments are nascent and contested, they demonstrate that international law is not entirely passive in the face of privatised subversion.

More profoundly, the structural asymmetries at issue here call for a reorientation of how international law engages with domestic governance. In this sense, Slaughter and Burke-White's proposition that 'the future of international law is domestic' gains renewed significance.[187] International law may not alone abolish the problem of undue influence by private actors; on the contrary, given the lack of international legal personality of such actors, effective regulation depends on domestic legal orders. Yet international law retains an indispensable role: it can influence, support, and, where necessary, compel states to act against disruptive private conduct – whether through normative backstopping, coordinated diligence regimes, or the progressive development of obligations grounded in sovereignty, territorial responsibility, or political rights.[188] At the same time, this evolving terrain exposes tensions with other protected values – not least the freedom of expression. As disinformation and platform manipulation threaten democratic integrity, the imperative to respond legally often clashes with speech protections enshrined in international and regional human rights instruments. D'Aspremont's cautionary note on systemic integration is apposite: legal coherence does not necessarily entail progressive

187 Slaughter and Burke-White, "The Future of International Law Is Domestic (or, The European Way of Law)".

188 Ibid., 350.

development.[189] The interpretive interconnection of norms can yield either restraint or expansion.

Ultimately, when power – no matter if public or private – crosses borders but legal responsibility does not, international law faces a challenge that affects its fundamental principles. It is not only a question of whether a given act can be attributed to a state, but also of whether the law can remain credible when it fails to apply to those who exert coercive influence without a mandate from a sovereign authority. Rather than proposing entirely new legal frameworks, this article seeks to highlight the limitations and potential of existing legal doctrines. In this respect, adapting principles such as the no-harm principle or human rights-based obligations to new forms of privatised and digitalised power could be seen as using weapons from several wars ago against modern challenges. Yet, given the slow law-making processes in international law and the ongoing crisis of multilateralism, which hinders the creation of new legal instruments, it may be wiser – and more feasible – to adapt old concepts to new realities. Nevertheless, if international law is to remain committed to its core ideals, it must evolve. As the foregoing analysis has shown, this evolution does not require the complete abandonment of established doctrines or principles in favour of entirely new constructs.

Bibliography

1. Adeyeye, Adefolake. "Corporate Responsibility in International Law: Which Way to Go?" *Singapore Yearbook of International Law* 11 (2007): 141–161.
2. Arnauld, Andreas von. *Völkerrecht*. 4th ed. Heidelberg: C.F. Müller, 2019.
3. Aspremont, Jean d'. "The Systemic Integration of International Law by Domestic Courts: Domestic Judges as Architects of the Consistency of the International Legal Order." In *The Practice of International and National Courts and the (De) Fragmentation of International Law*. Hart Publishing, 2012.
4. Athen, Marco. *Der Tatbestand Des Völkerrechtlichen Interventionsverbots*. Baden-Baden: Nomos, 2017.
5. Aust, Helmut Philipp. *Complicity and the Law of State Responsibility*. Cambridge University Press, 2011.
6. Banks, William. "State Responsibility and Attribution of Cyber Intrusions After Tallinn 2.0." *Texas Law Review* 95, no. 7 (2017): 1487–1513.
7. Bäumler, Jelena. "Rise and Shine: The No Harm Principle's Increasing Relevance for the Global Community." In *The Global Community Yearbook of International*

189 d'Aspremont, "The Systemic Integration of International Law by Domestic Courts: Domestic Judges as Architects of the Consistency of the International Legal Order", 157.

Law and Jurisprudence 2017, edited by Giuliana Ziccardi Capaldo, 149–74. Oxford University Press, 2018.

8. Besson, Samantha. "The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts To." *Leiden Journal of International Law* 25, no. 4 (December 2012): 857–884.
9. Beyersdorf, Brian. "Regulating the Most Accessible Marketplace of Ideas in History: Disclosure Requirements in Online Political Advertisements after the 2016 Election." *California Law Review* 107 (2019): 1061–1100.
10. Bjola, Corneliu. "Algorithmic Invasions: How Information Warfare Threatens NATO's Eastern Flank." *NATO Review*, 7 February 2025. https://www.nato.int/docu/review/articles/2025/02/07/algorithmic-invasions-how-information-warfare-threatens-nato-s-eastern-flank/index.html.
11. Boon, Kristen E. "Are Control Tests Fit for the Future? The Slippage Problem in Attribution Doctrines." *Melbourne Journal of International Law* 15 (2014): 1-48.
12. Boon, Kristen E. "Attribution in International Law: Challenges and Evolution." In *States, Firms, and Their Legal Fictions: Attributing Identity and Responsibility to Artificial Entities*, edited by Melissa J. Durkee, 25–46. Cambridge: Cambridge University Press, 2024.
13. Brunnée, Jutta. "Sic Utere Tuo Ut Alienum Non Laedas." In *Max Planck Encyclopedia of Public International Law*. Oxford University Press, August 2022.
14. Colomina, Carme, Héctor Sáchez Margalef, and Richard Yongs. "The Impact of Disinformation on Democratic Processes and Human Rights in the World." Study. European Parliament, April 2021.
15. Conroy, Oliver. "How Elon Musk's X Became the Global Right's Supercharged Front Page." *The Guardian*, 4 January 2025. https://www.theguardian.com/technology/2025/jan/04/elon-musk-x-trump-far-right.
16. Crawford, James. *Brownlies Principles of Public International Law*. 9th ed. Oxford: Oxford University Press, 2019.
17. Crawford, James. *State Responsibility: The General Part*. Cambridge University Press, 2013.
18. Damrosch, Lori Fisler. "Politics Across Borders: Nonintervention and Nonforcible Influence over Domestic Affairs." *American Journal of International Law* 83, no. 1 (1989): 1-50.
19. Danielsen, Dan. "Corporate Power and Global Order." In *International Law and Its Others*, edited by Anne Orford, 85–99. Cambridge University Press, 2006.
20. David, Eric. 'Portée et Limite Du Principe de Non-Intervention'. *Revue Belge de Droit International*, no. 2 (1990): 350-367.
21. Dawson, Andrew, and Martin Innes. "How Russia's Internet Research Agency Built Its Disinformation Campaign." *The Political Quarterly* 90, no. 2 (June 2019): 245–256.
22. De Hoogh, André J.J. "Articles 4 and 8 of the 2001 ILC Articles on State Responsibility, the Tadic Case and Attribution of Acts of Bosnian Serb Authorities to the Federal Republic of Yugoslavia." *British Yearbook of International Law* 72, no. 1 (1 January 2002): 255–292.

23. Deluggi, Nicky, and Cameran Ashraf. “Liars, Skeptics, Cheerleaders: Human Rights Implications of Post-Truth Disinformation from State Officials and Politicians.” *Human Rights Review* 24, no. 3 (2023): 365–387.
24. Dörr, Oliver. “Use of Force, Prohibition Of.” In *Max Planck Encyclopedia of Public International Law*. Oxford University Press, August 2019.
25. Duttwiler, Michael. “Authority, Control and Jurisdiction in the Extraterritorial Application of the European Convention on Human Rights.” *Netherlands Quarterly of Human Rights* 30, no. 2 (2012): 137-162.
26. Duvic-Paoli, Leslie-Anne. *The Prevention Principle in International Environmental Law*. Cambridge University Press, 2018.
27. Efrony, Dan, and Yuval Shany. “A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice.” *American Journal of International Law* 112, no. 4 (2018): 583–657.
28. Grant, Thomas D. “Doctrines (Monroe, Hallstein, Brezhnev, Stimson).” In *Max Planck Encyclopedia of Public International Law*. Oxford University Press, March 2014.
29. Gross, Anna, and Joe Miller. “Musk Examines How to Oust Starmer as UK Prime Minister before next Election.” *Financial Times*, 9 January 2025. https://www.ft.com/content/dd4b066c-30a1-4ce4-a95e-82c334a740cf.
30. Helal, Mohamed S. “Intervention, Force & Coercion: A Historical Inquiry on the Evolution of the Prohibition on Intervention.” *International Law Studies* 106 (2025): 206-300.
31. Ingram, David, and Bruna Horvath. “How Elon Musk Is Boosting Far-Right Politics across the Globe.” *NBC News*, 16 February 2025. https://www.nbcnews.com/tech/elon-musk/elon-musk-boosting-far-right-politics-globe-rcna189505.
32. Jamnejad, Maziar, and Michael Wood. “The Principle of Non-Intervention.” *Leiden Journal of International Law* 22, no. 2 (June 2009): 345–381.
33. Janig, Philipp. “Extraterritorial Application of Human Rights.” In *Elgar Encyclopedia of Human Rights*, edited by Christina Binder, Manfred Nowak, Jane A Hofbauer, and Philipp Janig, 180–91. Edward Elgar Publishing, 2022.
34. Jochum, Heike. “§ 25.” In *Parteiengesetz*, edited by Jörn Ipsen, 2nd ed. München: C.H.Beck, 2018.
35. Jochum, Heike. “§ 27.” In *Parteiengesetz*, edited by Jörn Ipsen, 2nd ed. München: C.H.Beck, 2018.
36. Kelsen, Hans. *The Law of the United Nations*. London: Stevens & Sons Ltd., 1951.
37. Kelsen, Hans. “The Principle of Sovereign Equality of States as a Basis for International Organization.” *The Yale Law Journal* 53, no. 2 (1944): 207-220.
38. Kettemann, Matthias C., and Wolfgang Schulz. “Setting Rules for 2.7 Billion: A (First) Look into Facebook’s Norm-Making System; Results of a Pilot Study.” Edited by Leibniz-Institut Für Medienforschung, Hans-Bredow-Institut (HBI). *Working Papers of the Hans-Bredow-Institut | Works in Progress* 1 (2020).
39. Koh, Harold Hongju. “The Trump Administration and International Law.” *Washburn Law Journal* 56 (2017): 413–469.
40. Kriener, Florian. “Intervention, Prohibition Of.” In *Max Planck Encyclopedia of Public International Law*. Oxford University Press, August 2023.
41. Kriener, Florian. *Proteste Und Intervention*. Baden-Baden: Nomos, 2024.

42. Kunig, Philip. "Intervention, Prohibition Of." In *Max Planck Encyclopedia of Public International Law*. Oxford University Press, April 2008.
43. Lanza, Edison. "Impact of the IAHRS Principles on Freedom of Expression and the Need for Their Expansion in the Digital Age: Challenges to the IAHRS Principles on Freedom of Expression in the Digital Age." In *The Impact of the Inter-American Human Rights System*, edited by Armin Von Bogdandy, Flávia Piovesan, Eduardo Ferrer Mac-Gregor, and Mariela Morales Antoniazzi, 495–518. Oxford University Press, 2024.
44. Mačák, Kubo, Talita Dias, and Ágnes Kasper. *Handbook on Developing a National Position on International Law and Cyber Activities*. University of Exeter and NATO Cooperative Cyber Defence Center, 2025.
45. Marxsen, Christian. "Territorial Integrity in International Law – Its Concept and Implications for Crimea." *Zeitschrift Für Ausländische Öffentliches Recht Und Völkerrecht* 75 (2015): 7–26.
46. McCorquodale, Robert. "Spreading Weed Beyond Their Garden: Extraterritorial Responsibility of States for Violations of Human Rights by Corporate Nationals." *American Society of International Law Proceedings* 100 (2006): 95.
47. Milanovic, Marko. "Ecuador Turns Off Julian Assange's Internet Access." *EJIL:Talk!* (blog), 19 October 2016. https://www.ejiltalk.org/ecuador-turns-off-julian-assanges-internet-access/.
48. Milanovic, Marko. *Extraterritorial Application of Human Rights Treaties*. Oxford University Press, 2011.
49. Milanovic, Marko. "Revisiting Coercion as an Element of Prohibited Intervention in International Law." *American Journal of International Law* 117, no. 4 (October 2023): 601–650.
50. Moynihan, Harriet. "The Application of International Law to State Cyberattacks: Sovereignty and Non-Intervention." Research Paper. Chatham House, 2019.
51. Mueller, Robert S. "Report on the Investigation Into Russian Interference in the 2016 Presidential Election." U.S. Departement of Justice, March 2019.
52. Nolte, Georg. "Article 2(7)". In *The Charter of the United Nations: A Commentary*, edited by Bruno Simma, Daniel Erasmus-Khan, Georg Nolte, and Paulus, 4th ed., 421–56. Oxford: Oxford University Press, 2024.
53. Ohlin, Jens David. "Did Russian Cyber Interference in the 2016 Election Violate International Law?" *Texas Law Review* 95 (2017): 1579-1598.
54. Organization for Security and Co-operation in Europe. 'Joint Declaration on Freedom of Expression and Elections in the Digital Age', April 2020. https://www.osce.org/files/f/documents/9/8/451150_0.pdf.
55. Organization for Security and Co-operation in Europe. 'Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda', March 2017. https://www.osce.org/files/f/documents/6/8/302796.pdf.
56. Ossoff, William. "Hacking the Domaine Réservé: The Rule of Non-Intervention and Political Interference in Cyberspace." *Harvard International Law Journal* 62, no. 1 (2021): 295-323.
57. Peters, Anne, and Heike Krieger. "Due Diligence and Structural Change in the International Legal Order." In *Due Diligence in the International Legal Order*, edited by Heike Krieger, Anne Peters, and Leonhard Kreuzer. Oxford, 2020.

58. Puma, Giuseppe. “The Principle of Non-Intervention in the Face of the Venezuelan Crisis.” *Questions de Droit International - Questioni Di Diritto Internazionale* 79 (2021): 5–26.
59. Raible, Lea. “Between Facts and Principles: Jurisdiction in International Human Rights Law.” *Jurisprudence* 13, no. 1 (2022): 52–72.
60. Ratner, Steven. “Ecuador’s Disconnect of Assange: Politics or Principle?” *OpinioJuris* (blog), 23 October 2016. https://opiniojuris.org/2016/10/23/ecuadors-disconnect-of-assange-politics-or-principle/.
61. ‘Regierungspressekonferenz Vom 20. Dezember 2024’. Bundesregierung, 20 December 2024. https://www.bundesregierung.de/breg-de/service/archiv/regierungspressekonferenz-vom-20-dezember-2024-2328068.
62. Reid, Tim, and Jason Lange. “Musk Spent over a Quarter of a Billion Dollars to Help Elect Trump.” *Reuters*, 6 December 2024. https://www.reuters.com/world/us/musk-spent-over-quarter-billion-dollars-help-elect-trump-2024-12-06/.
63. Roscini, Marco. *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*. Oxford: Oxford University Press, 2024.
64. Rosenau, James N. “The Concept of Intervention.” *Journal of International Affairs* 22, no. 2 (1968): 165–176.
65. Sander, Barrie. “Democracy Under The Influence: Paradigms of State Responsibility for Cyber Influence Operations on Elections.” *Chinese Journal of International Law* 18, no. 1 (2019): 1–56.
66. Sauvé, Mathieu-Robert, and Alexandre Coutant. « Loi Française Contre La Manipulation de l’information En Période Électorale et Pratiques Professionnelles Des Journalistes Face Au Phénomène Des Fake News. » *Les Enjeux de l’information et de La Communication* N° 23/1A, no. S1 (2024): 103–122.
67. Schmitt, Michael N. “Foreign Cyber Interference in Elections.” *International Law Studies* 97 (2021): 739–764.
68. Schmitt, Michael N. (ed). *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*. 2nd ed. Cambridge University Press, 2017.
69. Shrivastava, Abhijeet. “Tackling Foreign Election Interference Through Self-Determination.” *Völkerrechtsblog* (blog). Accessed 15 May 2025. https://voelkerrechtsblog.org/tackling-foreign-election-interference-through-self-determination/.
70. Siggelkow, Pascal. „Wie Musk Sich in Den Wahlkampf Einmischt.“ *Tageschau*, 24 January 2025. https://web.archive.org/web/20250124043636/https://www.tagesschau.de/faktenfinder/kontext/musk-x-bundestagswahl-100.html. https://www.tagesschau.de/faktenfinder/kontext/musk-x-bundestagswahl-100.html.
71. Singh, Krittika, and Timo Koivurova. “Due Diligence.” In *Max Planck Encyclopedia of Public International Law*. Oxford University Press, August 2022.
72. Slaughter, Anne-Marie, and William Burke-White. “An International Constitutional Moment.” *Harvard International Law Journal* 43, no. 1 (2002): 1-21.
73. Slaughter, Anne-Marie, and William Burke-White. “The Future of International Law Is Domestic (or, The European Way of Law).” *Harvard International Law Journal* 47, no. 1 (2006): 327-352.

74. Sudworth, John. “Hong Kong Protests Test Beijing’s “Foreign Meddling” Narrative.” *BBC*, 15 December 2019. https://www.bbc.com/news/world-asia-china-50753963.
75. Talmon, Stefan. “The Responsibility of Outside Powers for Acts of Secessionist Entities.” *International and Comparative Law Quarterly* 58, no. 3 (2009): 493–517.
76. Tams, Christian J. “The Use of Force against Terrorists.” *European Journal of International Law* 20, no. 2 (1 April 2009): 359–397.
77. Tladi, Dire. “The Duty Not to Intervene in Matters within Domestic Jurisdiction.” In *The UN Friendly Relations Declaration at 50*, edited by Jorge E. Viñuales, 87–104. Cambridge University Press, 2020.
78. Vylegzhanin, Alexander N, Ekaterina A Torkunova, Sergey A Lobanov, and Kirill V Kritskiy. “Forcible Discharge of Ukrainian President Yanukovich from Power: Complicity of the Obama Administration.” *Chinese Journal of International Law* 20, no. 1 (26 July 2021): 165–172.
79. Wheaton, Henry. *History of the Law of Nations in Europe and America — From the Earliest Times to the Treaty of Washington, 1842*. New York: Gould Banks & Co, 1845.
80. Wrange, Pål. “Intervention in National and Private Cyberspace and International Law.” In *International Law and Changing Perceptions of Security*, edited by Jonas Ebbesson, Marie Jacobsson, Mark Adam Klamberg, David Langlet, and Pål Wrange, 307–326. Brill Nijhoff, 2014.
81. Wu, Cecilia Yae. “Challenging Paternalistic Interference: The Case for Non-Intervention in a Globalized World.” *Harvard International Law Journal* 65, no. 1 (2023): 253–282.