ZOOM IN

The question:

The 'elusive essence' of the principle of non-intervention in light of recent practice: The cases of Venezuela and Hong Kong

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It is not in doubt that the principle of non-intervention, which prohibits interference through coercive means by a State in the internal or foreign affairs of another State, is part of customary international law, as a corollary of the milestone principle of State sovereignty.[1] However, the precise content and reach of the prohibition of intervention is far from settled and still muddled: the variety of circumstances where the principle has been invoked and applied in State practice have left many issues unresolved.[2] This holds true with regard to the *affairs* considered to fall within the domestic jurisdiction of the State, which are to be protected from external interference, as well as the *means of coercion* that qualify the intervention as prohibited under general international law. In this latter respect, while it is undisputed that the (threat of) the use of force and military actions fall within the scope of the prohibition, of which it is the most relevant application, it is not self-evident to what extent economic, political and diplomatic means do constitute unlawful intervention.

The debate around the scope of application of the non-intervention principle has been recently nourished by the controversial practice of the adoption of sanctions – typically economic – by States individually, or by international organizations, outside the mandate entrusted to the Security Council, in reaction to alleged human rights abuses and disregard for democratic principles and the rule of law. The practice of Western

[1] ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 106-108 paras 202-205; UNGA Res 2625 (XXV) of 24 October 1970.

[2] See ie M Jamnejad, M Wood, 'The Principle of Non-Intervention' (2009) Leiden J Intl L 345-381. The Authors describe it as 'one of the most potent and elusive of all international principles'.

countries – with the United States leading the way – and international organizations, namely the European Union, is full of examples.[3] Yet, this phenomenon has also been on the rise elsewhere, as made evident by the sanctions adopted in 2017 by Bahrain, Egypt, the United Arab Emirates and Saudi Arabia against Qatar, which prompted scholars to question their lawfulness under the principle of non-intervention.[4] In some cases, this trend can be ascribed to a broader tendency to take a go-it-alone approach, a choice of paradigm in the conduct of foreign relations for addressing international issues and crisis.

Recently, the issue of non-intervention has emerged once again in two particularly intriguing and thought-provoking situations: the Venezuela and Hong Kong crises. Although the two cases differ significantly in a number of respects, also due to the peculiar status that Hong Kong has under domestic and international law, there are some common aspects that can be analyzed under the lens of the general principle of non-intervention. In fact, in both cases, the conduct of the (authoritarian) governments towards their people, and their very legitimacy, has been severely contested by other States. In the Venezuela case, the United States, several (but not all) European States, and the so called 'Lima Group' have denied to recognise Maduro as the legitimate president of Venezuela, following the (allegedly unfair and 'show') presidential election held in 2018 and against a wide context of human rights abuses. In the Hong Kong case, on the other hand, China has been harshly criticized and condemned by the majority of Western countries for how it handled the demonstrations sparked in the region after plans to allow extradition to mainland China were revealed. Further condemnations were provoked by the passing of the so-called 'National Security Law', which would allegedly restrict Hong Kongers' rights and freedoms.

In both cases, beside protests and statements of condemnation by foreign States and the European Union, which are *per se* lawful under

[3] For some instances see recently S Silingardi, *Le sanzioni unilaterali e le sanzioni con applicazione extraterritoriale nel diritto internazionale* (Giuffrè 2020); S Montaldo, F Costamagna, A Miglio (eds), *EU Law Enforcement: The Evolution of Sanctioning Power* (Routledge/Giappichelli 2020).

[4] A Hofer, L Ferro, 'Sanctioning Qatar: Coercive Interference in State's Domaine Réservé?' EJIL:Talk! (30 June 2017) <www.ejiltalk.org/sanctioning-qatar-coercive-interference-in-the-states-domaine-reserve/>.

international law,[5] unilateral initiatives have been undertaken, ranging from proposals to support the demonstrators,[6] to pure economic sanctions. Notably, both China and Venezuela stigmatized these actions as the interference of foreign States in what they consider 'purely internal matters', while reserving their right to take countermeasures against what they labelled as being a gross violation of international law.[7] Interestingly enough, the two countries have opposed foreign intervention in each other domestic affairs, backed by some States' position (Russia, among all).[8]

Against this backdrop, and regardless of the conflicting political positions held by different States in the international community on the crises at stake – a contraposition that obviously conceals the ever-lasting clash of interests between the Western and Eastern blocks – the Hong Kong and Venezuela cases raise a number of common questions that are worth considering. A first issue is whether the stigmatization of other States' conduct for interfering with domestic affairs has been purely political or, conversely, has been solidly grounded on *legal* considerations. This implies questioning, at the outset, if the multiple shades of foreign interference do account for intervention prohibited under general international law, as being *coercive* in nature, and whether they infringe upon the *domain réservé* of the affected States. Further questions which are worth exploring are: To what extent, and on which grounds, such unilateral initiatives have been contested by the targeted States and/or different States and even by international organizations? What legal grounds – if any – have been raised for defending that foreign interference? To what extent do the two cases stand out and differ from previous similar situations? And, finally, what do the two cases tell us about the enforcement of collective obligations and third-party countermeasures, from the angle

[5] On this issue see, among others, N Ronzitti, 'Sanctions as Means of Coercive Diplomacy: An International Law Perspective' in N Ronzitti (ed) *Coercive Diplomacy, Sanctions and International Law* (Brill 2016) 4.

[6] See for example, the United Kingdom and Australian motion to nationalize and grant migratory rights to Hong Kongers.

[7] This position has been upheld on several occasions (see eg <www.theguardian.com/world/2020/may/29/hong-kong-crisis-china-support-police-warns-us-interfere-trump>).

[8] See, for instance, <www.reuters.com/article/us-venezuela-politics-china/china-opposes-outside-interference-in-venezuelas-affairs-idUSKCN1PI18O>.

of Article 54 of the ILC Draft Articles on State Responsibility, now reaching the 20th anniversary of their adoption?

QIL asked two authors to discuss these controversial questions, bearing in mind the diversity of the two case-studies, as well as their possible similarities. Giuseppe Puma addresses the case of Venezuela, while Stefano Saluzzo explores the case of Hong Kong.

As was underlined by Maziar Jamnejad and Michael Wood in their 2009 seminal work on the subject matter, 'just as the reach of international law is constantly changing, so too is the line between what is, and what is not, prohibited under the non-intervention principle'.[9] Ultimately, examining current State practice, such as with respect to the Venezuela and Hong Kong crises, can contribute to better detecting where the law stands in our time. From this perspective, the present Zoom-in purports to enrich and contribute to the undergoing discussion featured by QIL on the non-intervention principle and third-party countermeasures.[10]

[9] Jamnejad, Wood (n 2) 346.
[10] See eg Zoom in (2016) 29 and (2018) 53 QIL-Questions Intl L.