Buchbesprechungen

***Roscini, Marco*: International Law and the Principle of Non-Intervention.** Oxford: Oxford University Press 2024. ISBN 978-0-19-878689-4. xxxv, 460 pp. £140.00

Non-intervention has been described as the most potent and elusive of international legal principles. Yet, as Marco Roscini's well-researched and well-presented book makes clear, the non-intervention principle remains topical, and its contours continue to be the subject of much debate. It is worth recalling at the outset the International Law Commission's important observation in relation to its 1949 draft Declaration on Rights and Duties of States (which included an article on the duty of every State to refrain from intervention in the internal or external affairs of any other State) that '[t]he articles of the draft Declaration enunciate general principles of international law, the extent and the modalities of the application of which are to be determined by more precise rules' (ILC Yearbook 1949, p. 290).

The 'principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State' is included in the Friendly Relations Declaration of 1970 as one of seven principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations. Yet the principle has only a shadowy presence in the Charter itself, being a corollary of the principle of sovereign equality in Article 2, paragraph 1, and reflected in Article 2, paragraph 7. The latter provision refers only to intervention by the United Nations itself. To speak of a 'principle' of non-intervention, as opposed to a prohibition of intervention, still less of specific legal prohibitions traceable to the principle, implies some overarching concept of non-intervention. But is there such a thing? Is the principle indeed a self-standing rule beyond the *jus ad bellum*? Is the law in this field as clear as Roscini suggests, or is it largely composed of 'grey areas', with States taking very different views? The International Court of Justice, the International Law Commission, and the United Nations General Assembly have shed relatively little light. There even seem to be differing views about what it should be called (a 'principle'; non-intervention/non-interference; domestic affairs/internal affairs/external affairs). And where practice is unclear, it is tempting to turn to writers. This book contributes to the renewed academic engagement with the prohibition of intervention that we have seen over the last few years.

The author is Professor of International Law at Westminster Law School (London); Swiss Chair of International Humanitarian Law at the Geneva Academy of International Humanitarian Law and Human Rights; and Visit-

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ing Professor of International Law at the University of Trento. His book offers a wealth of detail on all major aspects of non-intervention. His stated objective is to identify what the customary principle of non-intervention specifically prohibits, and what it does not (p. 1). It may indeed be asked whether to do so is possible, given that non-intervention is an essentially relative question, depending upon the ever-changing state of international law and upon developments in international relations, and given also the great variety of bilateral and other relationships between individual States (which the author brings out well, especially in Chapters V, VI and VII). Even if he does not attain his objective, the author elucidates many things; it is not his fault if there are no definitive answers.

The book deals systematically with a range of issues arising in connection with the non-intervention principle, which are captured in the sub-title 'History, Theory, and Interactions with Other Principles' – to which one might add 'Practice'. The importance of practice and *opinio juris* is obvious, and central to the author's project. He has done an excellent job of collecting relevant materials, even if on occasion one might question the weight given to certain of them, for example, the reference (at p. 249) to an oft-cited 1984 United Kingdom Foreign Office 'Planning Staff Paper' ('Is Intervention Ever Justified?'). This paper in fact began with a statement to the effect that, being a planning paper, it does not represent the views of the United Kingdom Government. This caveat was unfortunately not recorded in 'United Kingdom Materials on International Law' in the 1986 *British Year Book of International Law.*

The book has a broad sweep, discussing non-intervention in connection with major and difficult areas of international law. These include the threat or use of force, intervention by invitation (military action with consent, to use the term recently adopted for an International Law Association committee), and internal and external self-determination, as well as the sources of international law, *jus cogens* norms, and obligations *erga omnes*. The book is the more interesting for that, even if, given the inherent vagueness of the principle, readers may find some of the author's more definitive conclusions challenging and challengeable.

Despite the complexity of the subject-matter, the book is systematic and easy to navigate. Following a brief Introduction (helpfully dealing with scope and methodology), the book is divided into eight substantive and substantial chapters; it ends with a brief Conclusion.

As with most questions of international law, it is difficult to grasp the current significance of the non-intervention principle without understanding its historical development. Chapter I deals with the history of the principle and does so in considerable detail, adopting a largely chronological approach.

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The chapter ends, appropriately, with an extended section focusing on intervention and non-intervention in the Americas. Nevertheless, given the current limited role of writers in international law, some may find it a little surprising that, following what used to be a tradition among international lawyers, so much attention is paid throughout the chapter to great names from a very different past.

The book then moves from a period when the principle was mostly considered in the context of the use of force, a matter now regulated by specific Charter provisions and customary international law, to the post-1945 era and the status of the principle today. Chapter II looks in turn at treaty provisions and at customary international law, and at the significance of the prohibition being a 'principle'. It then briefly considers whether, beyond the prohibition of the use of force or aggression, the principle creates an *erga omnes/erga omnes partes* obligation and whether it is a *jus cogens* norm. The author's answer in both cases, after carefully reviewing the evidence and writings, is 'no'. Some of the 'post-1945 scholarship' is next touched on, mainly in relation to 'intervention by invitation' (to which the author returns in Chapter IV). Chapter II concludes: 'it is undeniable that, as demonstrated by this chapter's survey of scholarship, the exact normative content of the principle of non-intervention has remained the object of contention' (p. 143).

Chapter III seeks to analyse 'the content of the principle of non-intervention'. It shows how general (and vague) principles like non-intervention tend to be applied in light of the overall political context. Thus, both sides during the Cold War invoked the principle of non-intervention (or non-interference) in a way that coincided with their ideological aims. Ambiguity made it possible to agree a text in the Friendly Relations Declaration, adopted at the height of the Cold War well over 50 years ago. In one sense that instrument belongs to a different era, but it remains fundamental to any consideration of each of the seven principles covered therein, including non-intervention. One of the many merits of the present book is that it enquires deeply into certain aspects of the Declaration's *travaux* (e. g., at pp. 173-174). The careful work in this regard confirms that an overall study of all the Friendly Relations Declaration's *travaux*, which are not particularly easy to locate, would make a great contribution to our understanding of important aspects of modern international law.

Chapter IV begins the treatment of what may be seen as a key issue: intervention in 'civil strife'. This chapter goes over well-trodden ground but does so with an unusual degree of clarity. Chapters V and VI turn to the interaction between the principle of non-intervention and 'internal' and 'external' self-determination. Closely related is Chapter VII, which considers the relationship between non-intervention and respect for both international

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human rights law and international humanitarian law. These four chapters raise difficult legal and political issues; neither time nor space permits them to be discussed in this review. They will be considered within the current International Law Association Committee on 'Military assistance with consent'; its members and other readers will benefit from the book's thoughtful discussion.

The final chapter, Chapter VIII, turns to 'non-intervention in the information age'; cyber operations can be, in the author's words, 'a new means of coercion in the domestic affairs of States'. The discussion is inevitably largely speculative and may be overtaken by future events; it is nevertheless a useful (and extensive) contribution to the ongoing debate.

As noted above, intervention initially focused on the use of force, but that is now fully covered by the rules of the *jus ad bellum* (or *jus contra bellum*, as the author prefers). More recently, 'intervention by invitation' has been a major object of debate; but it is most often dealt with in works on the *jus ad bellum*. More challenging, more nuanced perhaps, are current debates about the application of the principle of intervention beyond the *jus ad bellum*, for example, when it involves political, economic or cultural pressure. It may be that generalisations are not possible; that any assessment depends on weighing a large range of elements; and that the outcome is very much in the eye of the beholder. But this is not unusual with international law and does not detract from the legal quality of the principle and the need to apply it when necessary or appropriate to a given set of facts. The International Court of Justice can be expected to find ways to apply the principle in specific cases, however much writers or even those representing States may speculate. The relativity of the prohibition of intervention does not diminish its binding character.

Writers on international law nowadays tend to over-theorise, when what is needed by students and especially practitioners is solid information. This tendency is doubtless encouraged by universities which seem interested in pursuing novelty above all, perhaps at the instance of their funders. The author strikes a careful balance: he does not ignore the theories underlying the rules, and his command of the literature in a wide range of languages is much to be welcomed. At the same time, a large part of the book is devoted to presenting the reader with useful information.

With its wealth of detail, and its careful scholarship, Roscini's book will surely remain an important resource for anyone seeking to understand the principle of non-intervention. It is highly recommended, for lawyers, for international relations specialists, and for anyone interested in the history and current state of international law.

Sir Michael Wood, London

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