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POLITICS ACROSS BORDERS: NONINTERVENTION AND NONFORCIBLE INFLUENCE OVER DOMESTIC AFFAIRS

By Lori Fisler Damrosch*

It is time for a fresh look at the norm of nonintervention in domestic affairs, as applied to nonforcible efforts to influence another state's internal politics. The existence of such a norm is widely proclaimed, and it is commonly assumed to be a legal obligation rather than a mere practice of comity or aspirational objective.¹ For governments, scholars and international organs alike, the "rule" against interference in internal politics seems to be an article of faith;² but despite the frequency of its incantation in international discourse, how the norm applies to nonforcible conduct is inadequately understood.

This article considers the norm of nonintervention in relation to nonforcible support for political movements, political parties or political candidates in other states, focusing on two concrete problems of current concern. The first is transnational campaign funding: does a state violate international law when it sends money to influence a political contest in another state? The second is economic leverage applied for political purposes: does interna-

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¹ In its recent Judgment on the Merits in the *Nicaragua* case, the International Court of Justice found that United States activities in support of Nicaraguan counterrevolutionaries violated a legally binding prohibition on intervention in domestic affairs. *Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.)*, Merits, 1986 ICJ REP. 14, 123-27, 146 (Judgment of June 27). One judge even suggested that the norm should enjoy *jus cogens* status. *Id.* at 199-200 (Sette-Camara, J., sep. op.). Although the focus of the case was the use of force, the Judgment also deals with certain nonforcible activities that Nicaragua claimed to be violations of the nonintervention norm. See text at note 144 *infra*.

² See, e.g., T. NARDIN, *LAW, MORALITY, AND THE RELATIONS OF STATES* 269-70 (1983) (duty of nonintervention is one of "certain principles of customary international law that are so basic that it makes sense to say that they reflect the requirements of society in the circumstances of international relations"). See also J. RAWLS, *A THEORY OF JUSTICE* 378-79 (1971) (principles of justice among nations include "the right of a people to settle its own affairs without the intervention of foreign powers"); Falk, Comments, 69 ASIL PROC. 192, 196-97 (1975) ("For the most fundamental postulate underlying the state system is the notion that one does not try to control political developments in foreign societies").

tional law prohibit states from implementing policies affecting trade, aid or other economic relations, where their objective is to affect the outcome of another state's internal political process?

A conception of the norm that would prohibit these forms of nonforcible involvement in domestic politics is problematic, because state practice diverges markedly from it. The two superpowers compete for influence in the Third World by using these techniques to promote the political fortunes of forces that they believe will be sympathetic to their respective interests and ideologies. Thus, the Soviet Union supports Marxist-Leninist and other political parties in various parts of the globe, while the United States works through overt and covert means to aid political groups that it believes to be prodemocratic in their values and pro-West in orientation. Both superpowers also use economic leverage to affect local politics in Central America, southern Africa and elsewhere. But the superpowers are hardly the only states that attempt to exert transnational political influence. For reasons of geography, history or national security, small and middle-sized countries often maintain an intense interest in other states' domestic politics. Some of the very states that have been objects of superpower attention are themselves trying to influence political developments beyond their borders, both in their own regions and half a world away. Indeed, small states have occasionally tried to assist the election and reelection campaigns of favored candidates in the United States and other major democracies.³ Among larger powers, Western European countries not only have been involved in the political affairs of their former colonies, but also have assisted political parties struggling for survival or striving for ascendancy in sister European states.⁴ Patterns of transnational political influence cut across every ideological, economic and regional grouping of states.

These patterns demonstrate a rather serious gap between what a broad view of the nonintervention norm would require and what states actually do. The attempt to prove the content of a presumed rule of nonintervention by testing tentative hypotheses against states' known behavior turns out to be as difficult as trying to confirm theories about New York City's jaywalking laws by observing pedestrian traffic patterns in midtown Manhattan. What does it mean that the "rule," if that is the proper term, seems to be breached with disturbing frequency?

Of course, the fact of some deviation from a norm does not necessarily destroy its legally binding character,⁵ but a persistent pattern of conduct

³ For examples, see text at notes 47-48 and 81-92 *infra*.

⁴ For examples, see text at notes 45-46, 51-53 and 68 *infra*.

⁵ The most prominent (and controversial) example of this proposition concerns the prohibition against the use or threat of force in international relations. Despite numerous breaches of the peace since the end of World War II, most international lawyers continue to believe that the prohibition retains its legally binding character. As proof of the continuing validity of the rule, scholars assert that most states comply with it most of the time, that states attempt to justify and explain their conduct in terms consistent with the rule and with generally acknowledged exceptions to it (such as self-defense), that states condemn the behavior of violators of the rule in legal terms, and that the international community makes efforts to impose sanctions

inconsistent with the norm would undermine at least to some extent the hypothesis that states consider themselves under a legal obligation to comply with it. The presence of some deviation would be less troublesome if other states could be shown to be protesting and imposing sanctions, but, again, the evidence is ambiguous: although verbal protests against interference are common enough, the protesters are often engaging in similar behavior themselves, and there is little indication of efforts to respond to violations with sanctions or demands for redress. This article will explore some of the apparent discrepancies between the putative norm and the actual practice of states and will probe their potential legal significance.⁶

Most of the scholarly literature on intervention in internal affairs has focused on forcible forms of influence.⁷ Indeed, the prevailing viewpoint until well into the 20th century was that the international legal concept of intervention concerned itself only with the use or threat of force against another state and not with lesser techniques.⁸ Debate continues to swirl

on violators even though those sanctions are not always effective. *See, e.g.*, L. HENKIN, *HOW NATIONS BEHAVE: LAW AND FOREIGN POLICY* 138–39, 146–53 (2d ed. 1979); Schachter, *In Defense of International Rules on the Use of Force*, 53 U. CHI. L. REV. 113, 128–31 (1986); Schachter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620, 1623–24 (1984) [hereinafter *The Right of States*]. *But see* Rostow, *Disputes Involving the Inherent Right of Self-Defense*, in *THE INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS* 264, 270 (L. Damrosch ed. 1987).

⁶ In the *Nicaragua* case, the Court asserted the existence of “established and substantial practice” in support of the principle of nonintervention and concluded that recent instances of conduct prima facie inconsistent with the principle of nonintervention did not change the legal character of the principle or its content. In the Court’s view, the intervening states had not asserted a legal justification for their conduct, nor had other states agreed in principle on any change in the norm. 1986 ICJ REP. at 106, 108–09. Judge Ago’s separate opinion indicated surprise at the Court’s assurance in finding the requisite degree of practice. *Id.* at 184 n.1. Judge Schwebel’s dissent contended that state practice could at most support a formulation of the rule “much narrower” than that applied by the Court. *Id.* at 305.

For the argument that the Court improperly disregarded the role of state practice in its treatment of the nonintervention norm, see D’Amato, *Trashing Customary International Law*, 81 AJIL 101 (1987).

⁷ *See, e.g.*, L. HENKIN, *supra* note 5, at 18 n.*, 153–62; M. WALZER, *JUST AND UNJUST WARS* (1977); *INTERVENTION IN WORLD POLITICS* (H. Bull ed. 1984); F. TESÓN, *HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY* (1988) (with detailed bibliography); and other authorities cited in note 5 *supra* and note 9 *infra*.

⁸ Tomislav Mitrović, in his essay *Non-Intervention in the Internal Affairs of States*, in *PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND COOPERATION* 219 (M. Šahović ed. 1972), traces the evolution of two different conceptions of intervention in international law. Under the narrow view, which began to crystallize with Vattel’s first usage of the term in 1758, “intervention” consisted of dictatorial interference involving elements of force. Among the scholars espousing such a conception were Bluntschli, von Martens, Rivier, Oppenheim, Brierly, Hyde, Siebert, Rousseau, Dupuy, Delbez, Mosler, Menzel and Verdross. A broader view took hold in the 20th century and extended the concept of intervention to nonforcible techniques, including (depending on the context) refusal of recognition, economic and financial pressure, propaganda and infiltration. Mitrović identifies Jessup, Friedmann, von Glahn, Cavaré, Berber, Wengler and Dahm with the broader conception of intervention. *Id.* at 223–36.

around the legality of outside assistance to armed insurgencies,⁹ and the recent decision of the International Court of Justice condemning the United States for aiding the contra forces in their armed opposition to the Nicaraguan Government has stirred, rather than stilled, the controversy.¹⁰ By comparison, nonforcible political influence merits far more scholarly attention than it has heretofore received.¹¹ As traditional methods of forcible intervention wane in their attractiveness (because of increased dangers as well as legal condemnation), states will find it expedient to resort to nonforcible methods for promoting political change in other states where they believe they have interests at stake. Since the use of nonforcible techniques of influence is likely to grow rather than diminish, it becomes all the more important to examine their legality.

The dividing line between forcible influence and the nonforcible influence that is the subject of this article is not always clear.¹² In many recent instances, the two have gone hand in hand, as covert paramilitary operations have supplemented the influencing state's political programs, or vice versa. U.S. covert assistance to the Nicaraguan opposition and to forces in Angola and elsewhere has had both paramilitary and political components.¹³ In the Dominican Republic and Grenada, an overt military operation was followed by intensive attention to fostering political institutions modeled on those of the influencing state. Furthermore, even where the influencing state's principal involvement is political rather than military or paramilitary, the recipient might itself be engaged in armed insurgency, terrorism or preparations for a violent coup (or if the recipient is a government, it might be relying on its military forces to repress political opposition). In such cases, funds intended for political purposes might be diverted to the recipient's own military or paramilitary programs, or at least might enable the recipient to allocate more of its own resources to such programs.¹⁴ Moreover, regardless

⁹ See, e.g., Reisman, *Coercion and Self-Determination: Construing Charter Article 2(4)*, 78 AJIL 642 (1984); Schachter, *The Legality of Pro-Democratic Intervention*, 78 AJIL 645 (1984); Cutler, *The Right to Intervene*, 64 FOREIGN AFF. 96 (1985); and other articles cited in notes 5 and 7 *supra*.

¹⁰ For conflicting views on the Court's decision, see generally *Appraisals of the ICJ's Decision: Nicaragua v. United States (Merits)*, 81 AJIL 77 (1987).

¹¹ As to covert action, this article is concerned with what the U.S. intelligence community calls "political action programs" or "political operations" rather than paramilitary activities. Experts estimate that about one-third of all covert actions in the postwar period have been political operations. See G. TREVERTON, *COVERT ACTION: THE LIMITS OF INTERVENTION IN THE POSTWAR WORLD* 13, 265 n.3 (1987).

¹² For a discussion of the difficulties in distinguishing between nonforcible and forcible forms of influence, see generally *id.* at 9, 17, 136-43, 175.

¹³ See generally SENATE SELECT COMM. TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, FINAL REPORT [hereinafter CHURCH COMM. REPORT], S. REP. NO. 755, 94th Cong., 2d Sess., BK. 1, FOREIGN AND MILITARY INTELLIGENCE 151-52 (1976); G. TREVERTON, *supra* note 11, at 17-25; *CIA Gave Political Aid to Contras*, Wash. Post, Apr. 14, 1986, at A20, col. 1.

¹⁴ Some revolutionary or insurgent movements have both military and political arms (for example, the Irish Republican Army and its political counterpart, Sinn Fein). It has been estimated that the African National Congress's annual budget of about \$100 million is divided

of the initial or ultimate objectives of the influencing state, its nonmilitary support might wittingly or unwittingly increase the likelihood that an indigenous insurgency or military coup will succeed (or fail). For example, despite the Nixon administration's denials of direct involvement in the Chilean coup that overthrew President Salvador Allende and installed General Augusto Pinochet, the admitted long-term involvement of the United States in anti-Allende political programs undoubtedly contributed to the climate in which the coup could succeed.¹⁵

Notwithstanding these difficulties of definition and line drawing, forcible and nonforcible forms of influence are sufficiently different to warrant separate legal treatment. Forcible activities, of course, must be judged against Article 2(4) of the United Nations Charter, which enjoins states to "refrain in their international relations *from the threat or use of force* against the . . . political independence" of other states. In contrast, nonforcible actions are not directly regulated by Article 2(4), although its concept of "political independence" is relevant to the nonintervention norm. From time to time in the pages below, analogies will be drawn to legal principles involving the use of force, in order to illuminate issues of nonforcible political influence. In each such instance, it is important not to lose sight of the significant differences between force and nonforce and to bear in mind that our focus is on the latter.

This article contends that there is a legally binding norm of nonintervention that reaches certain kinds of nonforcible political influence, but that the conduct it regulates is not as broad as is often assumed. Because states have tolerated and, indeed, encouraged certain transboundary political activity, international law cannot be said to prohibit all the kinds of external involvement in internal political affairs that are the subject of this article. On the other hand, the position that interference in internal affairs is unlawful only if it entails the use or threat of force is too narrowly framed since the international community does treat certain nonforcible forms of intervention as legally impermissible. The traditional formulation of intervention as "dictatorial interference" resulting in the "subordination of the will" of one sovereign to that of another is also unsatisfactory,¹⁶ because some subtle techniques of political influence may be as effective as cruder forms of domination and because the metaphoric abstraction of the "sovereign will" of the target state tends to confuse rather than assist analysis.

about equally between military and political operations and that most of the ANC's funds come from foreign governments, including the Soviet Union, East Germany, Czechoslovakia, Sweden and Norway. *See South Africa's Curbs Harden Rebels*, N.Y. Times, June 7, 1988, at A8, col. 1.

¹⁵ See generally G. TREVERTON, *supra* note 11, at 124-43.

¹⁶ The "dictatorial interference" formulation comes from Oppenheim. *See* 1 L. OPPENHEIM, INTERNATIONAL LAW §134 (H. Lauterpacht 8th ed. 1955). It has also been used by various other scholars. *See, e.g.*, authorities cited in A. THOMAS & A. J. THOMAS, JR., NON-INTERVENTION: THE LAW AND ITS IMPORT IN THE AMERICAS 67-68 (1956); *see also* E. STOWELL, INTERVENTION IN INTERNATIONAL LAW (1921); Bull (ed.), *supra* note 7. In the *Nicaragua* case, Judge Schwebel's dissent took the position that the Court had erred in applying a nonintervention rule broader than the "dictatorial interference" standard. 1986 ICJ REP. at 305.

The nonintervention norm must be reformulated to deal with the categories of political activity that the international legal system of today treats as unacceptable. The methodology for this reformulation must take account of both practice and principle—that is, what states actually do, how other states react to those actions, and the elements of legal principle that motivate both actions and reactions. Prominent among those elements are principles of international human rights law that ensure rights of political participation to the people of every state. Under the reformulated norm, actions by one state that deny the people of another the opportunity to exercise free political choice violate an international legal obligation, even though, regrettably, states sometimes violate even this narrower standard.

Part I of this article introduces the themes of principle and practice that will recur throughout, by examining the texts that enunciate a norm of intervention as a principle of international law. As the factual predicate for evaluating states' behavior in normative terms, parts II and III then explore two different aspects of state practice from the points of view both of states that attempt to influence other states' domestic politics and of parties that react to such attempts. Part II concentrates on funding for political campaigns that comes from foreign governments or their surrogates; part III looks at affirmative and negative techniques of economic leverage to affect another state's internal politics, including government-to-government aid and economic sanctions. The techniques discussed in parts II and III are illustrative of a whole range of nonforcible means that states use to affect other states' domestic politics. Lobbying, propaganda, direct satellite broadcasting, activities of diplomats and decisions on recognition of states or governments are among the many other available techniques. As one cannot possibly do justice in an article-length work to the specialized sub-literatures dealing with the peculiarities of each of these, I have chosen for attention two techniques that seem to be of particular interest in light of contemporary events and that vividly illustrate the problem of the apparent gap between principle and practice.

Against the background of state practice developed in parts II and III, part IV returns to the element of principle and elaborates a normative framework for evaluating transnational political influence. This framework locates the nonintervention norm at the intersection of the human rights values and state system values of the international legal order. Part IV maintains that under certain conditions, the two kinds of nonforcible political influence discussed in this article have the potential both for enhancing internationally protected human rights and for promoting constructive, nonviolent relations between states. Part IV concludes, however, that a state violates the nonintervention norm when its nonforcible political activities prevent the people of another state from exercising the political rights and freedoms that form part of the evolving body of international human rights law.

I. THE NONINTERVENTION NORM AS A TEXTUAL PRINCIPLE

The norm of nonintervention has a long and noble textual foundation. It has found expression in numerous international instruments, including uni-

versal, regional and bilateral documents. Through formally binding treaties as well as declarations and resolutions of international organizations and conferences, states have evidenced the view that nonforcible as well as forcible intervention is prohibited. A convenient starting point is the 1933 Montevideo Convention on the Rights and Duties of States, which succinctly provides: "No state has the right to intervene in the internal or external affairs of another."¹⁷ Many of the other important instruments of the inter-American legal system have reemphasized the norm, as exemplified by the following provision of the Charter of the Organization of American States:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.¹⁸

The Latin American states are specially sensitive to the concept of nonintervention, in view of painful episodes in many of their histories, and are justifiably proud of their contribution to the legal formulation of the norm. But the norm has also been enthusiastically endorsed by other groups of states and in other regions, including in Europe,¹⁹ Africa and Asia,²⁰ and by the Warsaw Pact states.²¹

¹⁷ Dec. 26, 1933, 49 Stat. 3097, TS No. 881, 165 LNTS 19, Art. 8.

¹⁸ Apr. 30, 1948, 2 UST 2394, TIAS No. 2361, 119 UNTS 3, Art. 18; *see also* Art. 19 (on "coercive measures of an economic or political character"). Other inter-American documents embodying the nonintervention norm are described and cited in A. THOMAS & A. J. THOMAS, *supra* note 16, at 62-64.

¹⁹ Conference on Security and Co-operation in Europe, Final Act (Helsinki Accord), Aug. 1, 1975, 73 DEP'T ST. BULL. 323 (1975), *reprinted in* 14 ILM 1292 (1975), provides in Principle VI (Non-Intervention in Internal Affairs) that the participating states "will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating State, regardless of their mutual relations." The succeeding paragraphs prohibit not only armed intervention or threats thereof, but also "any other act of military, or of political, economic or other coercion," including "subversive or other activities directed towards the violent overthrow" of a state's government.

²⁰ *See, e.g.*, ORGANIZATION OF AFRICAN UNITY, CHARTER, May 25, 1963, 2 ILM 766 (1963), Art. III ("non-interference in the internal affairs of States"); Pact of the League of Arab States, Mar. 22, 1945, 70 UNTS 237, Art. 8 (each member "shall respect the form of government obtaining in the other States of the League . . . and shall pledge itself not to take any action tending to change that form").

The principle of mutual noninterference in internal affairs is one of the "Five Principles of Peaceful Coexistence" espoused by the People's Republic of China and embodied in, among other instruments, the Sino-Indian Trade Agreement of 1954. *See* J. COHEN & H. CHIU, PEOPLE'S CHINA AND INTERNATIONAL LAW 156-201 (1971); Kim, *The Development of International Law in Post-Mao China: Change and Continuity*, 1 J. CHINESE L. 117, 148-57 (1987).

²¹ Treaty of Friendship, Co-operation and Mutual Assistance (Warsaw Pact), May 14, 1955, 219 UNTS 3, Art. 8 ("principles of respect for each other's independence and sovereignty and of non-intervention in each other's domestic affairs"). For references to nonintervention provisions in other bilateral and multilateral treaties entered into by socialist countries with each other and with capitalist countries, *see* Mitrović, *supra* note 8, at 255.

The United Nations Charter did not adopt the formulation of the Montevideo Convention or other early instruments. Its prohibition in Article 2(7)²² against intervention in domestic jurisdiction is addressed to the United Nations Organization rather than to states, but this fact should not be taken to mean that the framers of the Charter intended to legitimize intervention by states. On the contrary, several key principles of the Charter reflect implicit rights of states to be free from intervention on the part of other states and correlative duties to refrain from intervention. Among the Charter provisions that imply a nonintervention norm are Articles 1(2) and 55, which affirm the "principle of equal rights and self-determination of peoples"; Article 2(1), which provides that "[t]he Organization is based on the principle of the sovereign equality of all its Members"; and Article 2(4), which requires states to "refrain in their international relations from the threat or use of force against the territorial integrity or *political independence* of any State."²³

The UN General Assembly has taken steps to flesh out the implicit Charter norm of nonintervention, in several important declarations adopted by consensus, beginning in 1965 with the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (Declaration on Intervention).²⁴ Principles of nonintervention, in terms substantially similar to the 1965 Declaration on Intervention, were embodied in the 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).²⁵ At least in the Friendly Relations Declaration, the participating states acted with the purpose of giving expression to principles of a legal character,²⁶ and several of its operative provisions, including those on nonintervention, purport to define "violations of international law" in specific terms. In recognition of this manifest

²² "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . ."

²³ Emphasis added. For discussion of these principles and their application to nonforcible activities, see text at notes 145-57 *infra*. See generally H. KELSEN, *THE LAW OF THE UNITED NATIONS* 770 (1950) ("An obligation of the Members to refrain from intervention in domestic matters of other states is not expressly stipulated by the Charter but is implied in the obligation established by Article 2, paragraph 4"). But see Hoffman, *The Problem of Intervention*, in Bull (ed.), *supra* note 7, at 21.

²⁴ GA Res. 2131 (XX) (Dec. 21, 1965); see also GA Res. 2225 (XXI) (Dec. 19, 1966).

²⁵ GA Res. 2625 (XXV) (Oct. 24, 1970). Other General Assembly resolutions also enunciate a nonintervention concept. Two of the best known are the Charter of Economic Rights and Duties of States, GA Res. 3281 (XXIX) (Dec. 12, 1974), ch. I(d) and ch. II, Art. 1; and the Declaration on the Establishment of a New International Economic Order, GA Res. 3201 (S-VI) (May 1, 1974), para. 4.

²⁶ In contrast, a number of countries took the view that the 1965 Declaration on Intervention represented a political, rather than a legal, act. In its judgment in the *Nicaragua* case, the International Court of Justice concluded that even though the United States had considered the Declaration on Intervention to be only a statement of political intention, the United States had made no disclaimer of the legal effect of the Friendly Relations Declaration. 1986 ICJ REP. at 107; see also *id.* at 133.

lawmaking intent, the Friendly Relations Declaration has been aptly described as an authoritative interpretation of the UN Charter.²⁷

The Declaration on Intervention and the Friendly Relations Declaration are sufficiently similar in their operative paragraphs on nonintervention to be discussed together. Among the most important passages are the following:

No State *or group of States* has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are [condemned] *in violation of international law*.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights [or] *and* to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.²⁸

Despite the emphatic language—"for any reason whatever," "all other forms of interference," "any other type of measures," "advantages of any kind," "without interference in any form," and so on—the terms in the two declarations are hardly self-defining. Unless we know what the terms "intervention" and "interference" mean, we cannot hope to make much sense out of phrases like "interference *in any form*." The interpretational difficulties of giving effect to words like "in any form" are compounded by the relatively restricted catalog of examples in the text, such as "subversive, terrorist, or armed activities directed towards the violent overthrow of the régime of another State," which any lawyer acquainted with the maxim

²⁷ See Schachter, *International Law in Theory and Practice*, 178 RECUEIL DES COURS 113, 361 n.189 (1982 V); Šahović, *supra* note 8, at 47–49; Rosenstock, *The Declaration of Principles of International Law concerning Friendly Relations: A Survey*, 65 AJIL 713 (1971). In addition to its relevance as an aid to the interpretation of that treaty, the Friendly Relations Declaration may also serve as evidence of *opinio juris* with respect to the customary law norm of nonintervention.

²⁸ The brackets and underlining indicate the changes made from the Declaration on Intervention in the drafting of the Friendly Relations Declaration. The major substantive change is the shift from "condemning" intervention in the Declaration on Intervention to declaring it "in violation of international law" in the Friendly Relations Declaration. The addition in the first line of the phrase "or group of States" is a drafting change only, since the Declaration on Intervention also rules out collective intervention by defining the term "States" to cover "both individual States and groups of States."

expressio unius est exclusio alterius could cleverly manipulate. The drafters' dilemma is apparent: in a phrase like "armed intervention and all other forms of interference," we see an unresolved tension between the desire to find some sort of limiting principle and the reluctance to adopt one that might be *too* limiting.

One needs only to read the records of the Special Committee on Friendly Relations, which was established by the General Assembly to elaborate the nonintervention and other principles,²⁹ and of the First (Political and Security) and Sixth (Legal) Committees, where the special committee's work was debated,³⁰ to understand that the formulations in the declarations attempt to cover over the deep divisions among the participants about what the declarations should be doing. In the mid-1960s when the declarations were in preparation, it was natural that delegates from adversary blocs would use the occasion of an exercise on intervention to trade charges and countercharges about blame for the ongoing conflict in Vietnam.³¹ In addition to such intractable issues as the legality of support for national liberation movements, the participating states had little shared notion of what sorts of nonforcible conduct would fall under the proscriptions in the declarations. Clearly, the words "armed intervention *and all other forms of interference*" imply an intent to reach at least some kinds of nonforcible activities, but exactly what kinds eluded agreement.

As regards the subject of this article—nonforcible support for political candidates, parties and movements—the text neither clearly permits nor clearly prohibits it, and the *travaux préparatoires* suggest that the delegates disagreed profoundly over whether these relatively common activities would fall within the scope of the declarations. Several Western states offered a proposal concerning the "generally recognized freedom of States to seek to influence the policies and actions of other States, in accordance with international law and settled international practice."³² This proposal was not accepted, at least in part because delegates from states that saw themselves as historical victims of "settled international practice" did not want to legitimize it. Their view is reflected in the following excerpt from a report of the special committee:

One representative thought that the idea of "interference", though included in the broader idea of "intervention", probably covered acts that were far less serious than armed intervention or subversion, and would include, for example, . . . acts of lesser gravity than those

²⁹ The committee, whose full name was Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, was created by GA Res. 1966 (XVIII) (Dec. 16, 1963). See also GA Res. 1815 (XVII) (Dec. 18, 1962).

³⁰ Important records of the work of these committees, including detailed reports of the committees' discussions on the subject of intervention, can be found in UN Docs. A/5671 (1963), A/5746 (1964), A/6165 (1965), A/6220 (1965), A/6230 (1966), A/6547 (1966), A/6598 (1966), A/6799 (1967), A/6955 (1967) and A/8018 (1970).

³¹ For an acrimonious example, see 21 UN GAOR (1499th plen. mtg.) at 26-28, UN Doc. A/PV.1499 (1966).

³² See Report of the Special Committee, UN Doc. A/6230, at 148-50 (1966).

directed towards the violent overthrow of the host government, *such as foreign financing of political parties*. Another representative referred in this connexion to *foreign assistance to build up the political image of some personality in a State*, without necessarily aiming at civil strife.³³

But the special committee did not resolve the issues in favor of this position any more than it did in favor of the Western delegates' proposal. Accordingly, the texts that the General Assembly approved represent compromise formulations that are open to multiple interpretations.

Among other texts,³⁴ several are worthy of note in light of current events. In 1981, as part of the Algiers Accords that ended the Iran hostage crisis, the United States pledged that it would not intervene in Iran's internal affairs.³⁵ The insistence of Iran on this point echoes the position it took in refusing to appear before the International Court of Justice in the suit brought by the United States concerning the hostages: in a telegram to the Court, Iran had argued that the hostage question was "marginal and secondary" as compared to "more than 25 years of continual interference by the United States in the internal affairs of Iran."³⁶ Yet despite the U.S. affirmation in 1981 of an obligation not to interfere in Iran's internal politics, in 1985–1986 the United States was involved in a covert plan to strengthen the influence of "moderate" factions within Iran's ruling circles in anticipation of an eventual succession struggle.³⁷ In another recent devel-

³³ See Report of the Special Committee, UN Doc. A/6799, at 161 (1967) (emphasis added).

³⁴ Several other important texts also embody a nonintervention concept. Most notably, the Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 UST 3227, TIAS No. 7502, 500 UNTS 95, Art. 41(1), and the Vienna Convention on Consular Relations, Apr. 24, 1963, 21 UST 77, TIAS No. 6820, 596 UNTS 261, Art. 55(1), both provide in essentially similar terms that persons enjoying diplomatic or consular privileges and immunities "have a duty not to interfere in the internal affairs" of the receiving state. The *travaux préparatoires* of these two Conventions are rather clearer than those of the two General Assembly declarations in specifying that involvement in political campaigns is the type of activity comprehended by this prohibition. The commentary of the International Law Commission on the draft provision in the Diplomatic Relations Convention specifically mentions political campaigns, and the concept was apparently not controversial. [1958] 1 Y.B. INT'L L. COMM'N 250, UN Doc. A/CN.4/SER.A/1958; 2 *id.* at 104, UN Doc. A/CN.4/SER.A/1958/Add.1. In the drafting of the Consular Relations Convention, virtually the only debate regarding the applicability of this provision to political conduct concerned the rights of honorary consuls who are nationals of the receiving state. [1960] 1 *id.* at 109–10, UN Doc. A/CN.4/SER.A/1960. Legal commentators agree that involvement by diplomats or consuls in local electoral politics is illegitimate and that any person engaging in such activity risks being declared *persona non grata*. See E. SATOW, GUIDE TO DIPLOMATIC PRACTICE, sec. 15.32 (Gore-Booth 5th ed. 1979); B. SEN, A DIPLOMAT'S HANDBOOK OF INTERNATIONAL LAW AND PRACTICE 75–79 (1979); E. DENZA, DIPLOMATIC LAW 265–66 (1976); I. L. OPPENHEIM, *supra* note 16, §383.

³⁵ Declaration of the Government of the Democratic and Popular Republic of Algeria, DEP'T ST. BULL., No. 2047, February 1981, at 1, 2, *reprinted in* 75 AJIL 418, 418 (1981) ("The United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, *politically* or *militarily*, in Iran's internal affairs") (emphasis added).

³⁶ United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 ICJ REP. 3, 8 (Judgment of May 24).

³⁷ See generally PRESIDENT'S SPECIAL REVIEW BOARD, THE TOWER COMMISSION REPORT (1987).

opment, in mid-1987, five Central American Presidents signed an agreement in which, among other things, they affirmed "the right of all nations to determine freely and without outside interference of any kind their economic, political, and social models."³⁸ Without recognition of any irony, the same document contains the signatories' undertakings to establish specific political institutions, including "total pluralism of political parties," and to submit to international verification of compliance. As a final example, the accords signed in April of 1988 by Afghanistan and Pakistan, and guaranteed by the United States and the Soviet Union, contain more than a dozen references to the principles of noninterference and nonintervention in internal affairs,³⁹ including elaborate undertakings to refrain from nonforcible as well as forcible intervention.⁴⁰

We now turn to the examination of state practice, taking up first the question of transnational funding of political campaigns. To be able to analyze the legality of one state's involvement in another's domestic politics, we need a vocabulary that will allow us to describe the conduct without prejudging its legal consequences. Typically, foreign intervention in domestic politics is discussed in metaphors that are as imprecise as they are vivid: one government "topples" another, "installs" its preferred leader, "props up" a "tottering" regime (which may or may not be a "puppet"), "meddles" in an election, "buys votes" in a legislature, and so on. Metaphors of this kind signal moral and political judgments against the conduct, yet rarely do they convey much information about the actions that the intervening government is supposed to have taken to achieve its objectives. Let us therefore put aside for the moment the sister terms "intervention" and "interference" since both are fraught with connotations of illegality and immorality,⁴¹ and let us use the descriptive term "influence" to refer to the forms of conduct—legal or illegal, benign or misguided—by which states

³⁸ Procedure for Establishing Firm and Lasting Peace in Central America, Aug. 7, 1987, reprinted in 26 ILM 1164, 1169 (1987). The agreement is based on the plan developed by President Oscar Arias Sánchez of Costa Rica. For a comment on the agreement in the light of traditional Latin American insistence on the principle of nonintervention, see Purcell, *A Flaw in the Latin Plan*, N.Y. Times, Aug. 12, 1987, at A23, col. 1.

³⁹ See Bilateral Agreement on the Principles of Mutual Relations, in Particular on Non-Interference and Non-Intervention, Apr. 14, 1988, Afghanistan-Pak., together with Declaration on International Guarantees, Apr. 14, 1988, U.S.-USSR, and other related instruments, reprinted in 27 ILM 577, 581, 584 (1988).

⁴⁰ Explicit and implicit references to nonforcible intervention are found in, inter alia, the Bilateral Agreement, *supra* note 39, Art. II, paras. 5 ("armed intervention . . . or any other form of intervention . . . or any act of military, political, or economic interference in the internal affairs"), 7 ("any other action which seeks to . . . undermine or subvert the political order of the other High Contracting Party"), and 10 ("To abstain from any defamatory campaign, vilification or hostile propaganda for the purpose of intervening or interfering in the internal affairs of the other High Contracting Party").

⁴¹ I differ here from the approach of one political scientist, who deliberately chose to use the term "interference" instead of "influence" in his study. He reasoned that "the suggestion that a substitute be found for interference is somewhat analogous to arguing that Kinsey should have found a euphemism for the term 'sex.'" R. COTTAM, *COMPETITIVE INTERFERENCE AND TWENTIETH CENTURY DIPLOMACY* 76 (1967).

try to affect the course of political developments in another state. We will call a state that attempts to exercise such influence the "influencing state" and the object of its efforts the "influenced state" or "target state."

Many states (including the United States) have been both influencing and influenced states, sometimes at the same time. Because of this shifting and doubling of roles, a given state may not necessarily have a clear perspective on where its national interests lie with respect to the nonintervention norm. Thus, the situation may be more complicated than that of coastal and landlocked nations or capital-exporting and capital-importing nations, where each state (in theory at least) can predict with relative confidence whether it stands to gain or lose from a particular legal rule. Nor is it like the situation of sending and receiving states under diplomatic law, where each state knows that it will occupy both roles at all times and where consistency and predictability seem to serve all states' interests. It is therefore not surprising that efforts to codify the nonintervention norm have left many questions unanswered and that state practice reflects considerable ambivalence toward the content of the norm.

II. FINANCIAL ASSISTANCE TO ELECTORAL CAMPAIGNS

The following sections examine several aspects of the practice of states concerning financial assistance to foreign electoral campaigns, with attention to factors that may bear on the legality of such conduct. The first issue concerns the extent of electoral assistance: how often does it occur and who is involved? Section A reveals a substantial pattern of governmental involvement in transnational electoral assistance, sufficient to cast doubt on the proposition that states necessarily consider it unlawful and to warrant consideration of other issues relevant to the legality of the conduct. One such issue, addressed in section B, is whether it is possible to draw inferences about attitudes toward legality from covert or overt patterns of behavior: patterns of concealment might suggest consciousness of illegality, while overt behavior could tend to indicate that the participating states believe the conduct to be lawful. Section B shows that at least some of the activity in question is now being carried out openly, under circumstances that may suggest changing attitudes toward what is acceptable under international law. Finally, section C looks at selected national legislation on campaign finance, both to show the range of attitudes of target states—from absolute prohibition to relative tolerance of foreign assistance—and to suggest that in at least some cases, domestic laws restricting such assistance have formed part of an incumbent regime's strategy for suppressing local opposition.

The patterns of state practice in the area of transnational campaign funding do not support a simplistic hypothesis that states consider all such conduct to be prohibited by international law. Part IV will therefore return to elements of principle that may bear on legality.

A. Frequency and Methods of Electoral Assistance

Electoral transfers may occur more frequently than is generally recognized. Since they are often undertaken secretly, reliable estimates of the

numbers of countries or amounts of money involved are hard to come by, but some examples may suggest the diversity of participants. Several episodes involving the United States have achieved considerable notoriety, especially the U.S. aid to the French and Italian Christian Democratic parties beginning in the late 1940s⁴² and to anti-Allende parties in Chile in the 1960s and 1970s.⁴³ According to the Church Committee, which conducted a thorough investigation in the mid-1970s of U.S. intelligence activities, at the peak of U.S. covert operations in the Third World, "[f]inancial support was provided to parties, candidates, and incumbent leaders of almost every political persuasion, except the extreme right and left."⁴⁴ Of other Western powers, France has recently had its own series of revelations of transactions with former African colonies, in which France has apparently been both an influencing and an influenced state.⁴⁵ The Federal Republic of Germany uses an overt mode of transferring funds to parties in other countries, through the vehicle of foundations established by the major German political parties.⁴⁶ Of equal interest are transfers from smaller states into the campaign coffers of candidates in large states. One element of the Watergate scandal was the allegation that the Nixon campaign had received contributions from a variety of foreign sources, including some governments and governmental officials;⁴⁷ and from time to time, evidence surfaces of

⁴² 1 CHURCH COMM. REPORT, *supra* note 13, at 22, 48-49, 145, 154, 494; *id.*, Bk. 4, SUPPLEMENTARY DETAILED STAFF REPORTS ON FOREIGN AND MILITARY INTELLIGENCE 26-31. The United States continued heavy funding of Italian candidates and parties into the 1970s. Details are described in a report of the House Select Committee on Intelligence (Pike Committee), which—though never officially released—was reprinted in substantial part in the *Village Voice*, Feb. 16, 1976, at 70, and Feb. 23, 1976, at 60. From 1948 to 1968, total U.S. election funding in Italy amounted to \$65 million; and in connection with the 1972 Italian election, the United States expended some \$10 million in contributions to parties, affiliates and 21 candidates. *Id.*, Feb. 16, 1976, at 71, 84-86. The Carter administration discontinued such funding. For a summary by President Carter's ambassador to Italy of U.S. policy toward Italian politics, see Gardner, *Diplomacy Kept This Domino From Falling*, *Wall St. J.*, Sept. 2, 1987, at 18, col. 3; a fuller account may be found in the European edition. *How President Carter Dealt With Italy's Communists*, *id.*, Aug. 18, 1987, at 6, col. 3 (Eur. ed.). Memoranda to President Carter on which the U.S. policy was based are reprinted in L. WOLLEMBORG, STELLE, STRISCE, E TRI-COLORE 589-96 (1983).

⁴³ See generally *Intelligence Activities: Senate Resolution 21, Hearings Before the Senate Select Comm. to Study Governmental Operations with Respect to Intelligence Activities: Vol. 7, Covert Action*, 94th Cong., 1st Sess. 156-57, 161-71, 175-76 (1975) [hereinafter 7 *Church Comm. Hearings*]. The Chilean program is probably the most thoroughly documented covert action ever exposed.

The covert political programs mentioned in the text at note 13 *supra* also involved electoral transfers to Nicaraguan opposition groups.

⁴⁴ 1 CHURCH COMM. REPORT, *supra* note 13, at 146; see also 4 *id.* at 49-50.

⁴⁵ See generally Lewis, *Hidden French "Parallels,"* *N.Y. Times*, Aug. 15, 1986, at A27, col. 2 (summarizing recent disclosures of partisan financial transfers between France and Africa).

⁴⁶ See text at note 68 *infra*. For discussion of the German party foundations' involvement in strengthening centrist parties in Central America, see Mertes, *Europe's Role in Central America: A West German Christian Democratic View*, in *THIRD WORLD INSTABILITY: CENTRAL AMERICA AS A EUROPEAN-AMERICAN ISSUE* 106, 131-32 (A. Pierre ed. 1985).

⁴⁷ For discussion of these allegations and of changes in U.S. legislation as a result of investigations into them, see text at notes 89-92 *infra*.

other attempts by governments around the world to buy influence in Washington through contributions to presidential or congressional campaigns.⁴⁸

Many episodes of transnational electoral funding involve complex interactions among governmental and ostensibly private actors. The most important reason for this phenomenon is that governments frequently desire to conceal their external political operations. Labor unions, business organizations, the press and other ostensibly private groups have been used as conduits (sometimes unwitting ones) for supporting foreign parties or candidates. Some of the arrangements linking political parties with foreign state backers can be quite ingenious: it has been reported, for example, that the Soviet Union has financed as much as a third of the expenditures of the Italian Communist Party through such indirect mechanisms as generating profits or commissions for party-run enterprises involved in trade or tourist ventures with Soviet bloc countries.⁴⁹ Such arrangements can be factually intricate and difficult to document, but conceptually they represent deliberate attempts by governments to transfer funds for the purpose of influencing political developments abroad.⁵⁰

The international confederations of political parties are conceptually more complex. Factually, such confederations and their member parties clearly offer various forms of financial and moral support to likeminded

⁴⁸ Such allegations concerning various foreign governments were explored in the 1960s in hearings chaired by Senator Fulbright. See text at notes 80–88 *infra*.

For references to allegations of contributions from the Greek junta to the Nixon campaigns in 1968 and 1972, and evidence concerning those allegations received by the House Intelligence Committee in 1976, see S. HERSH, *THE PRICE OF POWER* 137–39, 648–49 (1983).

For evidence that the Marcos Government of the Philippines made or planned to make contributions to various U.S. presidential and congressional campaigns, see R. BONNER, *WALTZING WITH A DICTATOR* 140–41 (1987) (Nixon campaigns); *Plan for Contributions to Reagan and Carter Found in Marcos Files*, N.Y. Times, Mar. 19, 1986, at A1, col. 4; *The Case of the Marcos Millions*, *NEWSWEEK*, Oct. 31, 1988, at 47.

For references to campaign contributions by the Nationalist Chinese Government in the 1950s and 1960s, see R. COTTAM, *supra* note 41, at 42, 59–60.

South Africa's Information Department channeled hundreds of thousands of dollars through "front organizations" and sympathetic individuals in the United States in successful operations in 1976 and 1978 to defeat two incumbent U.S. senators (John Tunney and Dick Clark) who had taken positions adverse to South Africa's interests. See Ungar, *South Africa's Lobbyists*, N.Y. Times, Oct. 13, 1985, §6 (Magazine), at 30.

For testimony concerning offers by agents of South Korea to contribute to congressional and gubernatorial campaigns, see *Activities of the Korean Central Intelligence Agency in the United States: Hearings Before the Subcomm. on International Organizations of the House Comm. on International Relations*, 94th Cong., 2d Sess. 66, 68, 101 (1976).

These examples are intended to be illustrative, not exhaustive.

⁴⁹ Ledeen & Sterling, *Italy's Russian Sugar Daddies*, *NEW REPUBLIC*, Apr. 3, 1976, at 18, cited in CONG. RESEARCH SERVICE, *REPORT ON WEST EUROPEAN COMMUNIST PARTIES* 54 (1977).

⁵⁰ Through vehicles such as the Communist International (Comintern), and later the Communist Information Bureau (Cominform) and successor networks, the Soviet Union has engaged in ongoing financial support to pro-Soviet Communist parties all over the globe and seeks to control or at least influence their political direction. The *REPORT ON WEST EUROPEAN COMMUNIST PARTIES*, *supra* note 49, contains information on funding sources and Soviet influence on Communist parties in Italy, *id.* at 52–55, 66–68; France, *id.* at 87–88, 102–04; Portugal, *id.* at 126–27, 136; Spain, *id.* at 155–56, 164–65; and elsewhere.

parties in different countries. For example, the West European Socialist parties sheltered Portuguese and Spanish Socialists when they were outlawed under the dictatorships in their respective countries, and those parties and the Socialist International eventually played a constructive role in aiding the consolidation of Socialist political strength in Portugal and Spain during the transition to electoral democracy.⁵¹ In another part of the globe, the Socialist International and the World Union of Christian Democrats have been actively involved in Central American political affairs for some time, including during the period that the Sandinistas gained ascendancy in Nicaragua and more recently in efforts to strengthen centrist and pro-democratic trends in the region.⁵² Conceptually, whether these party-to-party transfers implicate Western *states* in transnational political influence would depend on whether ruling governments use transnational party networks to promote their own national policies toward target states and whether party affiliates have access to public funds to finance their transnational activities.⁵³

Often both governmental and nongovernmental actors are involved in the same events, as when the United States Government and the International Telephone and Telegraph Co., a U.S. corporation, both provided funds to anti-Allende candidates in the Chilean elections of the 1960s and 1970s.⁵⁴ It may be difficult to determine in particular cases whether the political activities of a private corporation are in any way attributable to its government. Investigations into foreign political payments have revealed many instances of campaign contributions by corporations with close links to their home governments, such as defense contractors and recipients of government loan guarantees.⁵⁵ Even if the government had no direct involvement in the political activities in question, its denials may be disbelieved when evidence of the corporate payments comes to light. The possibility that private efforts might diverge from government policy or be misconstrued as governmentally sponsored has caused certain states to take steps to

⁵¹ A. PELINKA, *SOCIAL DEMOCRATIC PARTIES IN EUROPE* 124 (1983); G. PRIDHAM & P. PRIDHAM, *TRANSNATIONAL PARTY COOPERATION AND EUROPEAN INTEGRATION* 72, 198-99 (1981).

⁵² J. DOMINGUEZ & M. LINDENBERG, *CENTRAL AMERICA: CURRENT CRISIS AND FUTURE PROSPECTS* 49, 53 (1985); Mertes, *supra* note 46.

⁵³ For information on party finances, including state financing, see generally K. VON BEYME, *POLITICAL PARTIES IN WESTERN DEMOCRACIES* 196-211 (1985); A. PELINKA, *supra* note 51, at 57-63; Paltiel, *Campaign Finance*, in *DEMOCRACY AT THE POLLS* 138 (D. Butler, H. Penniman & A. Ranney eds. 1981).

⁵⁴ ITT's involvement was studied in depth by several U.S. congressional committees and is described in 7 *Church Comm. Hearings*, *supra* note 43, at 158-60. See also G. TREVERTON, *supra* note 11, at 161-64.

⁵⁵ See generally N. JACOBY, P. NEHEMKIS & R. EELS, *BRIBERY AND EXTORTION IN WORLD BUSINESS: A STUDY OF CORPORATE POLITICAL PAYMENTS ABROAD* (1977) (surveying attitudes and practices in various countries); J. NOONAN, JR., *BRIBES* 637-79 (1984) (discussing the Lockheed Corporation's links to the U.S. Government at pp. 654-68); see also *Multinational Corporations and U.S. Foreign Policy: Hearings Before the Subcomm. on Multinational Corporations of the Senate Comm. on Foreign Relations*, 94th Cong., 1st Sess. (1975).

keep their nationals and companies out of foreign political life,⁵⁶ or at least to require them to inform their government of their activities.⁵⁷ Although the regulation of wholly private conduct is outside the scope of this article,⁵⁸ it could be argued that states should be under a duty to restrain their nationals from interfering in foreign political affairs,⁵⁹ or that states could be held responsible under international rules of attribution for political activities of companies that carry out state policy.⁶⁰

B. Covert and Overt Activities

If most transnational political activity were carried out in a covert mode, that fact could itself be relevant to the content of the nonintervention norm, since pervasive patterns of concealment or denial might indicate that the influencing states believed the activities in question to be illegal. In fact, the evidence is more complex. Major influencing states have shifted some of their political programs from covert to overt vehicles in recent years, while expressly reserving the possibility of continuing to conduct both covert and overt political operations.

In the period of soul-searching in the 1970s that coincided with disclosures of U.S. efforts to influence political developments abroad, many voices

⁵⁶ Measures used in the past have included threatening denial of a U.S. passport or withdrawal of diplomatic protection to persons engaging in the local politics of foreign countries. See 3 G. HACKWORTH, *DIGEST OF INTERNATIONAL LAW* 509 (1942); 5 *id.* at 709–10 (1943). Statutory provisions concerning loss of citizenship for voting in a foreign election or assuming a foreign governmental office were in force in the United States for many years but were held unconstitutional in *Afroyim v. Rusk*, 387 U.S. 253 (1967), *overruling* *Perez v. Brownell*, 356 U.S. 44 (1958), and thus are no longer in effect.

⁵⁷ U.S. measures currently in force that regulate or require disclosure of certain foreign political activities by private companies include the Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2(a)(2) (1982); and the International Traffic in Arms Regulations, 22 C.F.R. §130 (1988).

⁵⁸ International efforts to prohibit involvement of transnational corporations in host country politics have not borne fruit so far. A draft code of conduct for transnational corporations has been in preparation under the auspices of the UN Commission on Transnational Corporations for many years. One of the issues in continuing dispute is how the draft code should deal with corporate political activities, in view of widely diverse attitudes and practices in different parts of the world. See, e.g., Commission on Transnational Corporations, *Work on the Formulation of the United Nations Code of Conduct on Transnational Corporations: Outstanding issues in the draft Code of Conduct on Transnational Corporations*, UN Doc. E/C.10/1985/S/2, at 24–26.

The Guidelines for Multinational Enterprises adopted by the Organisation for Economic Co-operation and Development in 1976, *reprinted* in 15 *ILM* 969 (1976), stop short of a binding prohibition. They provide that enterprises “should, . . . (8) unless legally permissible, not make contributions to candidates for public office or to political parties or other political organizations; (9) abstain from any *improper* involvement in local political activities.” *Id.* at 972 (emphasis added).

⁵⁹ Fatouros, *Transnational Enterprise in the Law of State Responsibility*, in *INTERNATIONAL LAW OF STATE RESPONSIBILITY FOR INJURIES TO ALIENS* 361, 374–75, 378, 400 n.38 (R. Lillich ed. 1983).

⁶⁰ Christenson, *The Doctrine of Attribution in State Responsibility*, in *id.* at 321, 327–29, 332–33, 338.

urged that the United States should renounce certain particularly controversial modes of influence, especially covert electoral funding. These voices included not only the usual critics of U.S. policy toward the Third World, but also key figures from the foreign policy establishment. Nicholas deB. Katzenbach, former Under Secretary of State and Attorney General, wrote in *Foreign Affairs* that the United States should abandon the attempt to affect foreign political trends through covert partisan funding.⁶¹ Cyrus Vance, former Deputy Secretary of Defense and future Secretary of State, testified before the Church Committee that he would favor legislation prohibiting interference with electoral processes in other countries.⁶² The committee seriously debated such a proposal and indeed referred to the international legal norm of nonintervention in internal political affairs as relevant to its study of covert action.⁶³

Nonetheless, the United States has by no means forsworn the possibility of attempting to influence political developments in foreign countries, even by covert means. The Church Committee's final report did not go so far as to advocate a prohibition on covert political operations but rather contained recommendations designed to strengthen accountability and consistency with overall U.S. policy objectives.⁶⁴ At about the same time, the U.S. Congress adopted the first important milestone in legislative supervision of U.S. covert activities, without any limitation on covert political operations,⁶⁵ indeed, the House of Representatives rejected an amendment that would have banned the use of covert techniques to undermine or destabilize any government.⁶⁶ Similarly, the subsequent measures to improve congressional control over intelligence activities have concentrated on procedures and have not restricted political action;⁶⁷ rather, the Congress has assumed and understood that such action would continue on executive initiative, subject only to congressional oversight.

Significantly, however, there has also been a recent trend toward increased openness about certain kinds of transnational political influence. After a major study in the early 1980s, the United States decided to follow the lead of West Germany and other countries⁶⁸ in setting up a publicly funded foundation to carry out overtly some of the same kinds of political

⁶¹ Katzenbach, *Foreign Policy, Public Opinion and Secrecy*, 52 FOREIGN AFF. 1, 15-16 (1973). Cf. Rositzke, *America's Secret Operations: A Perspective*, 53 *id.* at 334, 345-47 (1975) (stressing inevitable political implications of intelligence relationships); G. BALL, *DIPLOMACY FOR A CROWDED WORLD* 211-30 (1976).

⁶² 7 *Church Comm. Hearings*, *supra* note 43, at 54.

⁶³ 1 CHURCH COMM. REPORT, *supra* note 13, at 33; 7 *Church Comm. Hearings*, *supra* note 43, at 6.

⁶⁴ 1 CHURCH COMM. REPORT, *supra* note 13, at 154-61, 448.

⁶⁵ Hughes-Ryan Amendment of 1974 to the Foreign Assistance Act, codified at 22 U.S.C. §2422 (1982).

⁶⁶ 1 CHURCH COMM. REPORT, *supra* note 13, at 502-03 (citing 120 CONG. REC. H9492-93 (daily ed. Sept. 24, 1974)).

⁶⁷ See, e.g., Intelligence Oversight Act of 1980, as amended, 50 U.S.C. §413 (1982).

⁶⁸ The U.S. Congress was informed not only of the foundations affiliated with the four major West German political parties, which at that time collectively received over \$150 million

activities that had previously been handled covertly. The result was the National Endowment for Democracy (NED), created in 1983, which has among its purposes "to strengthen democratic electoral processes abroad through timely measures in cooperation with indigenous democratic forces."⁶⁹ The NED awards grants in support of a variety of programs with prodemocratic purposes, including voter registration, civic education, election monitoring, polling and media access. The legislative history makes clear that proponents of the NED viewed openness as a virtue in itself.⁷⁰ Although the NED was not intended to be a replacement for all of the Central Intelligence Agency's political operations, the possibility of transferring at least some of the CIA's political programs to an overt mode has been viewed as a major benefit of the NED's creation.⁷¹

Supporters of the NED have taken pains to explain that in their view its programs can in no way be considered intervention in internal affairs.⁷² One Senate supporter found precedent in the political assistance of the Socialist International and Christian Democrats International to affiliates throughout the world, and stated that such action by the NED "is not a revolutionary idea nor would it constitute interference in the affairs of sovereign states."⁷³ In its own literature, the NED describes its programs as "rooted in universally recognized principles of international law," in particular human rights law.⁷⁴

Some NED projects, however, have tested the limits of legal and political acceptability. In the wake of certain controversial NED grants, including ones that were made in connection with election campaigns,⁷⁵ Congress amended the governing statute to provide that NED funds "may not be

annually from the Bundestag for political activities in some five dozen countries, but also of similar programs undertaken by Spain, Portugal, Finland and Venezuela. *See* H.R. REP. NO. 130, 98th Cong., 1st Sess. 86 (1983), *reprinted in* 1983 U.S. CODE CONG. & ADMIN. NEWS 1484, 1569; 129 CONG. REC. H3812, 3815 (daily ed. June 9, 1983); *id.*, S12706, 12709, 12713-14, 12718, 12720 (daily ed. Sept. 22, 1983).

⁶⁹ National Endowment for Democracy Act, Pub. L. No. 98-164, title V, §502, 97 Stat. 1039 (1983) (codified at 22 U.S.C. §4411(b)(4) and (6) (Supp. IV 1986)).

⁷⁰ Secretary of State George P. Shultz, in testimony on Feb. 23, 1983, supporting establishment of a program such as the endowment, stated: "[T]his is a legitimate and important activity that can and should be done openly. There is democracy today in Spain and Portugal in large part because of the substantial support provided democratic parties in these two countries by their West European counterparts." DEP'T ST. BULL., No. 2073, April 1983, at 47, 48.

⁷¹ *See, e.g.*, 130 CONG. REC. S8624 (Sen. Kennedy), 8641 (Sen. Hawkins) (daily ed. June 28, 1984); G. TREVERTON, *supra* note 11, at 207-12; Goodman, *Reforming U.S. Intelligence*, FOREIGN POL'Y, No. 67, Summer 1987, at 121, 131.

⁷² *See, e.g.*, Shultz, *supra* note 70, at 49.

⁷³ 130 CONG. REC. S8635 (daily ed. June 28, 1984) (Sen. Durenberger). Senator Durenberger's statement was made on the assumption that the NED would not directly fund electoral campaigns, although it would assist political parties in various ways. *See id.* and note 76 *infra*.

⁷⁴ NATIONAL ENDOWMENT FOR DEMOCRACY, STATEMENT OF PRINCIPLES AND OBJECTIVES 1 (1984).

⁷⁵ The issue was debated in connection with a controversy over a \$20,000 grant from an NED affiliate that was used for the benefit of a candidate in a close election in Panama. *See generally* 130 CONG. REC. H5017-28 (daily ed. May 31, 1984). A report by the Inter-American

expended, either by the Endowment or by any of its grantees, to finance the campaigns of candidates for public office."⁷⁶ The application of this provision has raised a number of complex issues of law and policy, stemming from the difficulty of disentangling the financing of political campaigns from other NED-sponsored projects. A current example is the award of hundreds of thousands of dollars to groups working to educate and organize voters to oppose the military government's candidate in the 1988 Chilean plebiscite.⁷⁷ In a variety of other instances, the NED has continued to award funds to certain foreign political parties, albeit for purposes other than support for a particular election campaign (such as workshops in party-building techniques and civic education).⁷⁸ Furthermore, NED grants in support of such beneficiaries as opposition newspapers, broadcast outlets and election observers can have a marked impact on an election campaign even if the funds are not directed to a specific candidate. Thus, the distinction between campaign funding and other types of projects has proven to be an elusive one in practice. In any event, the NED's record to date indicates

Dialogue (a group of Western Hemisphere leaders) urged "that the Endowment avoid interfering, or even appearing to interfere, in sensitive political affairs in any country," and suggested that the NED should not support partisan activities. *See id.* at S8635, 8638-39 (daily ed. June 28, 1984).

⁷⁶ 22 U.S.C. §4414(a)(1) (Supp. IV 1986), as added by Pub. L. No. 99-93, title II, §210(a), 99 Stat. 431 (1985). The NED board of directors had adopted a resolution to this effect on June 8, 1984. *See* 130 CONG. REC. S8635, 8639 (daily ed. June 28, 1984).

⁷⁷ *See Group Is Channeling U.S. Funds to Parties Opposing Pinochet*, N.Y. Times, June 15, 1988, at A1, col. 6; *How U.S. Political Pros Get Out the Vote in Chile*, N.Y. Times, Nov. 13, 1988, at B6, col. 1. The grants are part of a total of \$1 million earmarked by Congress for distribution in Chile. They do not implicate the statutory prohibition on financing "campaigns of candidates." The terms of the plebiscite did not permit opposition candidates but merely a yes or no vote on the military's chosen candidate. The statutory prohibition was apparently not intended to prevent the sorts of activities funded by the NED in Chile—voter registration, education, independent polling, election observation, and so on—even though these activities clearly aided the opposition in its anti-Pinochet efforts.

⁷⁸ Grants to the Social Democratic and Labor Party of Northern Ireland have been controversial because that party is a member of the Socialist International. *See Democracy's Missionaries: U.S. Pays for Pluralism*, N.Y. Times, June 1, 1986, at A1, col. 5. Other party beneficiaries of NED funds have included the New Korea Democratic Party, the Conservative Party of Colombia, the Grenada New National Party, and the foundations of the Uruguayan Blanco and Colorado parties. *See* NED, 1986 ANNUAL REPORT 15, 20, 38 and 44; 1985 *id.* at 10 and 20; 1984 *id.* at 34. NED programs in Nicaragua, totaling \$807,782 in the last year, have included grants to the opposition paper *La Prensa* and to the Democratic Coordinator, which is the principal group coordinating anti-Sandinista political parties and other opposition groups. *See* N.Y. Times, Sept. 25, 1988, at A15, col. 1.

The Polish Solidarity movement has also been a recipient of NED grants. *U.S. Helping Polish Underground With Money and Communications*, N.Y. Times, July 10, 1988, at A14, col. 5. An amount of \$1 million for Solidarity, to be disbursed through the NED, was earmarked by Congress in its appropriations for fiscal year 1988. *See* Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Pub. L. No. 100-204, §1207, 101 Stat. 1331, 1412 (1987); *see also* 1987 CONG. Q. ALMANAC 156, 404, 660; H. CONF. REP. NO. 475, 100th Cong., 1st Sess. 112 (1987), *reprinted in* 1987 U.S. CODE CONG. & ADMIN. NEWS 2370, 2373. Although Solidarity is a labor union rather than a political party, NED grants in support of Solidarity could certainly have a significant impact on Poland's internal political situation.

that the United States intends to reserve the option of exerting overt influence on foreign political developments, and maintains that this option is fully consistent with international law.

C. Domestic Legislation on Foreign Campaign Contributions

Campaign finance laws provide a formal, public opportunity for the people of a state through their lawmaking organs to decide whether foreign participation in their elections should be permitted or prohibited. This section will examine selected models of national legislation on foreign financial participation in political campaigns, for two rather different purposes. First, legislative acts can constitute relevant state practice and may reflect the legislating states' beliefs about what international law permits or requires.⁷⁹ As the discussion below will show, some target states have adopted laws prohibiting such participation in the aftermath of controversial disclosures of attempted foreign influence, and in some such cases the legislative reaction might be seen as an attempt to prevent foreign conduct that the target believes to be in violation of international law. But the patterns of domestic legislation are far from showing unanimity in this regard, since national laws differ in their approaches to foreign funding, along a spectrum from its absolute prohibition to its explicit or implicit toleration.

Second, and perhaps more important than their potential relevance as evidence of the existence *vel non* of an international norm, certain laws excluding foreign assistance to political campaigns have been used by incumbent regimes—such as the Government of South Africa—as part of comprehensive strategies to prevent domestic opposition forces from organizing and acquiring power. Domestic campaign finance laws of this type are a phenomenon of considerable interest for the emerging law of international human rights. In part IV, I will argue that although the nonintervention norm generally requires states to respect each other's domestic laws concerning foreign campaign funding, they need not accord such respect to laws that form part of a program to deny the internationally protected political rights of the target's citizens.

United States legislation. U.S. laws banning foreign contributions to political campaigns are of relatively recent vintage. Prior to 1966, there was no such prohibition,⁸⁰ but a series of disclosures in the early 1960s of campaign

⁷⁹ The attitudes of target states are reflected in many other forms of practice, including diplomatic protests against actions of influencing states, attempts to mobilize international public opinion against the activity in international or regional organizations, expulsion of diplomats who engage in political activities, and so on. The actions and attitudes of opposition political factions may sometimes carry as much weight as formal governmental actions, especially where the opposition enjoys more popular support than the incumbent regime (examples are given in the discussion of responses to economic leverage at notes 141–42 *infra*). The emphasis on legislative activity for the two purposes indicated in the text is not meant to exclude the relevance of other forms of practice.

⁸⁰ One statute, 18 U.S.C. §610, in effect since 1907, had long prohibited corporate campaign contributions. For discussion of the law currently governing contributions by corporations controlled by foreign principals, see text at notes 93–97 *infra*.

contributions made on behalf of various foreign principals led to calls for reform. Hearings chaired by Senator J. William Fulbright vividly document the efforts of certain foreign interests to ensure the reelection of sympathetic legislators by channeling campaign contributions through lawyers or other agents in Washington.⁸¹ Foreign principals identified in the hearings as having made such contributions included ones with vital economic interests in the allocation of U.S. sugar import quotas,⁸² and others.⁸³ Although some of the activities covered by the hearings involved foreign businesses rather than governments, a key issue was the extent to which foreign governments had attempted to influence U.S. policy through techniques outside normal diplomatic channels.⁸⁴

A major concern of the Fulbright hearings was the fact that under U.S. legislation then in force it was not illegal to make or receive campaign contributions on behalf of foreign principals. Under Secretary of State George W. Ball and then Deputy Attorney General Katzenbach both testified that existing law did not deal adequately with this point and that they favored banning such contributions.⁸⁵ Witnesses who testified as to contributions that they had made while serving as foreign agents were of the view that their activities were perfectly permissible under the law as it then stood.⁸⁶ As a result of the hearings, Senator Fulbright introduced a bill to prohibit campaign contributions for or on behalf of a foreign principal in

⁸¹ *Activities of Nondiplomatic Representatives of Foreign Principals in the United States: Hearings Before the Senate Comm. on Foreign Relations, 88th Cong., 1st Sess. (1963)* [hereinafter *Fulbright Hearings*]. Other aspects of U.S. concern over suspected activities of foreign governments to influence U.S. legislators are summarized in CHURCH COMM. REPORT, *supra* note 13, BK. 3, SUPPLEMENTARY DETAILED STAFF REPORTS ON INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS, at 313, 328-30, 340 and 345-46.

⁸² See *Fulbright Hearings, supra* note 81, at 195-212 (testimony of John A. O'Donnell, registered agent for the Philippine Sugar Association). O'Donnell identified contributions that he had made to the campaigns of some 20 incumbent congressmen out of funds received from unnamed "members of the sugar industry in the Philippines." *Id.* at 201. Although the ultimate source of the funds was never fully clarified, the witness testified that he had consulted with the Philippine ambassador concerning the disposition of the funds. *Id.* at 212, 227, 236, 239-47 and 251-53.

⁸³ One witness, who had served as a registered agent for Nicaragua, Ecuador, Indonesia and Israel, testified about campaign contributions made with funds that had apparently been received from President Somoza of Nicaragua, but the facts remained ambiguous as to whether the contributions were made on behalf of Nicaragua or in the witness's personal capacity. *Id.* at 1524, 1572-75, 1584-85 and 1627-31 (testimony of I. Irving Davidson).

⁸⁴ See, e.g., *id.* at 2-3 (opening statement of Sen. Fulbright).

⁸⁵ *Id.* at 31-32, 38 and 41 (Ball testimony); *id.* at 149-52 (Katzenbach testimony). Ball noted, *id.* at 31, that contributions on behalf of foreign corporations would presumably be prohibited under then existing law (cited in note 80 *supra*). Katzenbach considered that contributions on behalf of a foreign principal ought to be disclosed as expenditures in an agent's report under the Foreign Agents Registration Act (22 U.S.C. §§611-621), *Fulbright Hearings, supra* note 81, at 149. He further commented that the U.S. Government could require the recall of an ambassador who violated the "general understanding . . . that a foreign government does not interfere with the internal affairs of another." *Id.* at 150.

⁸⁶ *Fulbright Hearings, supra* note 81, at 204, 383 and 432.

connection with any election to public office.⁸⁷ As enacted in 1966, this measure prohibited making, promising, soliciting, accepting or receiving any such contribution and made the offense a felony.⁸⁸

The next spate of interest in foreign campaign contributions came during the Watergate period, with disclosures that the 1972 Nixon campaign had exploited a loophole in the 1966 legislation to solicit and receive foreign contributions.⁸⁹ The loophole consisted of an ambiguity in the statutory term "agent of a foreign principal," which left open the possibility of foreign contributions made directly from overseas rather than through a U.S.-based agent.⁹⁰ Thus, in 1974 Congress amended the law to prohibit contributions from any foreign national.⁹¹ As Senator Lloyd Bentsen, the sponsor of the 1974 legislation, put it: "I do not think foreign nationals have any business in our political campaigns. They cannot vote in our elections so why should we allow them to finance our elections? Their loyalties lie elsewhere; they lie with their own countries and their own governments."⁹²

Despite the congressional attempts to tighten the prohibition, a loophole remains. Foreign money, including foreign governmental funds, may still enter U.S. campaign treasuries through U.S. subsidiaries of foreign corporations. In general, U.S. law prohibits direct contributions from corporations to federal political campaigns,⁹³ but U.S. corporations may establish

⁸⁷ For background on the bill, see H.R. REP. NO. 1470, 89th Cong., 2d Sess. (1966), *reprinted in* 1966 U.S. CODE CONG. & ADMIN. NEWS 2397, 2399, 2410-11.

⁸⁸ Pub. L. No. 89-486, §8, 80 Stat. 244, 249 (1966) (codified at 18 U.S.C. §613 (1970) (repealed 1976; current prohibition discussed at note 91 *infra*). The term "agent of a foreign principal" was defined by reference to the Foreign Agents Registration Act, 22 U.S.C. §611(b) and (c); "foreign principals" included foreign governments and foreign political parties as well as other foreign persons and entities. For a compilation of relevant legislative history, see CONG. RESEARCH SERVICE, AMERICAN LAW DIVISION, 95TH CONG., 1ST SESS., THE FOREIGN AGENTS REGISTRATION ACT (Comm. Print 1977).

⁸⁹ For references to some of the countries allegedly involved, see note 48 *supra*. For the point of view of the head of the Nixon campaign's finance committee, see M. STANS, THE TERRORS OF JUSTICE 182-84, 371-72 (1978).

⁹⁰ See 120 CONG. REC. 8782 (1974) (letter from General Accounting Office paraphrasing interpretation of Department of Justice that "foreign principal" does not have same meaning as "foreign national"). See also SENATE SELECT COMM. ON PRESIDENTIAL CAMPAIGN ACTIVITIES, FINAL REPORT, S. REP. NO. 981, 93d Cong., 2d Sess. 573-75 (1974).

⁹¹ Pub. L. No. 93-443, §101, 88 Stat. 1267 (1974). In 1976 the prohibition was incorporated into the Federal Election Campaign Act. Pub. L. No. 94-283, §112(2), 90 Stat. 493 (1976) (codified at 2 U.S.C. §441e (1982)). The term "foreign national" is defined to exclude U.S. citizens and permanent residents. 2 U.S.C. §441e(b)(2). The prohibition applies not only to campaigns for federal office but also to state and local elections and primary campaigns. See 11 C.F.R. §110.4(a).

⁹² 120 CONG. REC. 8783 (1974). Senator Bentsen noted that the Senate Watergate Committee was then investigating contributions by foreign nationals and that President Nixon had recently called for a ban on such contributions.

⁹³ 2 U.S.C. §441b(a) (1982) (applicable to federal elections). The loophole may be larger in the case of campaigns for state and local office in that they do not have a comparable prohibition on corporate contributions. For discussion of corporate contributions to campaigns for state office, see M. TOLCHIN & S. TOLCHIN, BUYING INTO AMERICA 17-18, 20, 111-15 (1988).

political action committees (PACs), which have the right to make limited campaign contributions. Thus, a U.S.-incorporated, foreign-owned company's PAC could serve as a conduit for foreign funds to U.S. electoral campaigns. The Federal Election Commission has ruled by divided vote that U.S. subsidiaries of foreign corporations may establish PACs, provided that they adhere to safeguards aimed at ensuring that foreign nationals do not contribute to the PACs or participate in any way in their political decisions.⁹⁴ The dissenting commissioners have contended that under this rationale, "any foreign government could make contributions to federal candidates through the device of purchasing a domestic corporation with a political action committee."⁹⁵ Following press accounts that PACs of foreign-owned companies have contributed millions of dollars to recent U.S. campaigns,⁹⁶ legislation has been proposed that would close this loophole as well.⁹⁷

Foreign governments may also be able to influence electoral campaigns by persuading U.S. citizens to support (or oppose) candidates on the basis of their perceived attitudes toward issues of concern to the foreign state. It has been asserted, for example, that pro-Israeli constituencies in the United States are able to mobilize sympathetic U.S. voters to channel PAC contributions to candidates who will promote Israel's interests.⁹⁸ There are two kinds of pro-Israeli political groups, which fall under quite different legal regimes. The best-known is the American Israel Public Affairs Committee (AIPAC), which despite the implication of its acronym is not a political action committee under U.S. election laws. AIPAC is a registered lobbying organization that seeks to promote the passage of legislation favorable to

⁹⁴ For relevant commission opinions, including discussion of efforts to ensure that PACs established by U.S. subsidiaries of foreign companies remain immune from policy direction by their foreign parents, see Federal Election Commission Advisory Opinion Nos. 1978-21, 1980-100, 1982-10, 1982-34, 1983-19, 1983-31 and 1985-3, *reprinted in* 1 Fed. Election Camp. Fin. Guide (CCH) ¶15327 (July 17, 1978), 5548 (Sept. 19, 1980), 5651 (Mar. 29, 1982), 5678 (June 9, 1982), 5722 (Aug. 19, 1983), 5735 (Nov. 10, 1983) and 5809 (Mar. 4, 1985). Concerning PACs formed by trade associations with foreign members, see Advisory Opinion Nos. 1977-53, 1980-111 and 1981-36, *reprinted in id.* ¶15294 (Jan. 12, 1978), 5560 (Oct. 16, 1980) and 5632 (Dec. 9, 1981).

⁹⁵ Advisory Opinion No. 1978-21, *reprinted in id.* ¶15327 (July 17, 1978).

⁹⁶ See generally *Foreign Money, U.S. Fears*, N.Y. Times, Dec. 13, 1987, §6 (Magazine), at 63; *U.S. Elections Got More Foreign Cash—PAC's of Overseas Companies Gave \$2.3 Million in 1986 Congress Campaigns*, N.Y. Times, May 24, 1987, at A21, col. 1; *Foreign Role in U.S. Politics Questioned*, N.Y. Times, Jan. 8, 1986, at B7, col. 1; *Foreigners' Political Roles in U.S. Grow by Investing*, N.Y. Times, Dec. 30, 1985, at A1, col. 2; M. TOLCHIN & S. TOLCHIN, *supra* note 93, at 16-21, 263, 279-80.

⁹⁷ The FEC's legislative recommendations and responsive bills are discussed in T. DURBIN, *FOREIGN PARTICIPATION IN FEDERAL ELECTIONS: A LEGAL ANALYSIS* (Cong. Research Serv. Rep. No. 87-554A, 1987).

⁹⁸ See generally P. FINDLAY, *THEY DARE TO SPEAK OUT* 41-47, 287 (1985) (former member of Congress claims his and other reelection campaigns were adversely affected by activities of pro-Israel groups, including PACs). See also E. TIVNAN, *THE LOBBY* (1987). There is no official list of pro-Israel PACs, but a recent survey identified some 60 PACs identified with pro-Israel causes, which contributed \$3.8 million to candidates in 1985-1986. See *Pro-Israel Group Exerts Quiet Might As It Rallies Supporters in Congress*, N.Y. Times, July 7, 1987, at A8, col. 1.

Israel. Under the lobbying laws, it is not permitted to make campaign contributions. It has maintained its position as a *domestic* organization rather than an agent of Israel (and therefore is not required to register as a foreign agent).⁹⁹ In a different legal position from AIPAC are the various PACs that support campaigns of candidates who are sympathetic to Israel. Under the Federal Election Campaign Act, PACs (including those that favor the positions of a particular foreign government) are permitted to make campaign contributions within the ceilings set by statute, as long as all funds for such contributions are derived from U.S. sources.¹⁰⁰ As a practical matter, no law can prevent U.S. citizens from directing their PAC contributions or other campaign-related expenditures in accordance with the interests and preferences of foreign states with which they sympathize, and presumably there would be no constitutional means to prevent them from doing so.¹⁰¹

Foreign legislation. Other states have also adopted legislative provisions that ban foreign electoral involvement.¹⁰² France recently enacted a law prohibiting candidates for election to Parliament from receiving "contributions or material assistance from a foreign state or from a natural or juridical person of foreign nationality."¹⁰³ A sweeping provision is found in the Philippine Election Code of 1978, which provides:

Intervention of foreigners

It shall be unlawful for any foreigner, whether juridical or natural person, to aid any candidate or political party, group or aggrupation [*sic*] directly or indirectly, or to take part in or influence in any manner any election, or to contribute or make any expenditure in connection with any election campaign or partisan political activity.¹⁰⁴

⁹⁹ See generally I. KENAN, ISRAEL'S DEFENSE LINES: HER FRIENDS AND FOES IN WASHINGTON 68-69 (1981); *Fulbright Hearings*, *supra* note 81, at 1779-80 (Kenan testimony); *The Lobby with a Lock on Congress*, NEWSWEEK, Oct. 19, 1987, at 46; *Lobbying and the Middle East*, 39 CONG. Q. WEEKLY REP. 1523 (1981).

¹⁰⁰ 2 U.S.C. §441e (1982); see also FEC advisory opinions cited in note 94 *supra*.

¹⁰¹ As to whether foreign governments themselves have any constitutional rights, see generally Damrosch, *Foreign States and the Constitution*, 73 VA. L. REV. 483, 527-28 n.180 (1987) (while foreign governments do not themselves enjoy constitutional protections, U.S. persons may be able to achieve the objectives of foreign states by enforcing their own constitutional rights); cf. *Fulbright Hearings*, *supra* note 81, at 3.

¹⁰² These provisions illustrate the election laws of countries with diverse political traditions. Relevant legislation may be found in more general provisions, e.g., in Brazil, which makes it a criminal offense for a foreigner to intervene in its internal affairs. See *Brazil Accuses Scholar of Aiding Indian Protest*, N.Y. Times, Aug. 14, 1988, at A14, col. 5. Brazil forbids foreigners from engaging in any kind of political activity in Brazil. See CÓDIGO PENAL, *Estrangeiro*, Art. 107 (1984); see also Law No. 7.170, Dec. 14, 1983, Art. 9, *reprinted in id.* at 3.

On Canadian provincial laws forbidding foreign campaign donations, see Paltiel, *supra* note 53, at 161.

¹⁰³ Loi organique no. 88-226 relative à la transparence financière de la vie politique, Mar. 11, 1988, Journal Officiel de la République Française 3288, Art. 8 (Mar. 12, 1988) (adding Art. L.O. 163-4 to electoral code).

¹⁰⁴ Pres. Decree No. 1296, §36, *cited in* R. MARTIN, ADMINISTRATIVE LAW, LAW OF PUBLIC OFFICERS AND ELECTION LAW 382 (1983). Section 65 of the same decree provides: "No contribution shall be made directly or indirectly by any of the following: . . . (g) Foreigners and foreign corporations."

The election law of Taiwan (Republic of China) provides: "Candidates shall not accept campaign contributions from the following sources: (1) Foreign groups, juridical persons or individuals."¹⁰⁵ The Chilean Constitution provides that political parties may not have income of foreign origin.¹⁰⁶

An example of a mixed approach is Israel, which prohibits direct or indirect contributions to political parties by "a body corporate, whether in Israel or abroad,"¹⁰⁷ but does not restrict contributions by individuals even if they are not of Israeli nationality. Candidates for office in Israel have been known to take out advertisements in the U.S. media to solicit campaign contributions.¹⁰⁸

South Africa provides a noteworthy example of restrictive legislation that has been applied in a repressive fashion. Under South African legislation, executive officials have the authority to prohibit the solicitation or receipt of money from abroad by organizations that have been found to be engaged in politics "under the influence of an organization or person abroad."¹⁰⁹ The Government has invoked this authority against the United Democratic Front, the country's largest antiapartheid movement, cutting off foreign financing that may have accounted for half its budget.¹¹⁰ Recently, the Government announced even more stringent measures "to restrict the flow of funds from abroad to be used for undermining the state and promoting extraparliamentary politics."¹¹¹ Legislation introduced in 1988 provides that "[n]o political party . . . may directly or indirectly receive any money from outside the Republic."¹¹² The bill would also prohibit receipt of foreign funds by any other organization or person "to further, propagate, pursue or oppose any political aim or object"¹¹³ and would give the Minister of Justice authority to require the transfer to him of any foreign money received by organizations or persons declared to be "restricted" under the legislation.¹¹⁴

¹⁰⁵ Public Officials Election and Recall Law, May 14, 1980, amended July 7, 1983, Art. 45-2(1). See generally ASIA WATCH, HUMAN RIGHTS IN TAIWAN 1986-87, at 197-239 (1987).

¹⁰⁶ CHILE CONST. ART. 19(15), in 3 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (A. Blaustein & G. Flanz eds.). See Ley orgánica constitucional de los partidos políticos, Law No. 18,603, Mar. 23, 1987, Art. 33.

¹⁰⁷ Political Parties (Financing) Law, 5733-1973, §8, 27 LAWS OF THE STATE OF ISRAEL 48, 50 (1972-73), as amended by Political Parties (Financing) (Amendment No. 5) Law, 5742-1982, §§3-4, 36 *id.* at 81, 82 (1981-82). The 1982 amendment extended the prohibition on corporate contributions to foreign corporations.

¹⁰⁸ See, e.g., advertisement seeking funds for Meir Kahane's party, N.Y. Times, Feb. 2, 1988, at A18, col. 1.

¹⁰⁹ Affected Organizations Act No. 31, 1974, §2; see also Fund-raising Act No. 107, 1978. See 1974 Stat. Rep. S. Afr., No. 4222; 1978 *id.*, No. 6099. These laws would be amended or superseded by the new legislation referred to in notes 111-14 *infra*.

¹¹⁰ See N.Y. Times, Oct. 22, 1986, at A1, col. 3; see also N.Y. Times, Oct. 6, 1988, at A17, col. 1 (on litigation resulting from the cutoff).

¹¹¹ See N.Y. Times, Aug. 14, 1987, at A3, col. 5.

¹¹² Promotion of Orderly Internal Politics Bill, §2, discussed in 4 S. AFR. J. HUM. RTS. 139, 148-50, 261 (1988).

¹¹³ Promotion of Orderly Internal Politics Bill, §2.

¹¹⁴ *Id.* §5. See also Pretoria May Ban Foreign Funds for Rights Groups, N.Y. Times, Mar. 2, 1988, at A9, col. 1. The Department of State has criticized the measure as "unwarranted." See South Africa's Proposal to Ban Foreign Funds, DEP'T ST. BULL., No. 2134, May 1988, at 23.

At the other end of the spectrum are states that permit—or at least do not prohibit—foreign contributions to their electoral campaigns. Some states fall into the permissive category by default, either because they have no campaign finance legislation or because such legislation as they have does not deal with foreign funding.¹¹⁵ While inattention or inertia (or possibly corruption) can plausibly explain a state's implicit toleration of foreign electoral funding, target states may have good reasons for deliberately preferring a permissive system. Some may encourage inflows of foreign funds merely for balance-of-payments purposes, but they may also perceive advantages for their political systems in allowing political parties or candidates to maintain links with outside benefactors. The constructive purposes of such links from the point of view of the recipient state could include: (1) assisting that state in consolidating its democratic political institutions, especially where it is in transition from an authoritarian system;¹¹⁶ (2) forging transborder ties between political parties with sympathetic ideologies;¹¹⁷ and, conceivably, (3) fostering the conditions for long-term regional integration by promoting the development of similar political structures in neighboring states.¹¹⁸

A target state's government might try to turn outside interest in its politics to its own advantage, especially where it craves international approval to confirm its legitimacy. As part of a public relations effort to portray its political system as more open than its critics have charged, Nicaragua announced through its ambassador to the United States that it did not oppose international assistance to opposition political parties, adding that "according to law, during our 1984 elections political parties and candidates were able to accept financing for their campaigns from foreign sources."¹¹⁹

This survey of selected types of domestic campaign finance legislation is not intended to be exhaustive, but merely illustrative of models and trends

¹¹⁵ Until 1966, when the United States first restricted foreign campaign contributions, U.S. law belonged on the permissive end of the spectrum. France maintained a *laissez-faire* approach to campaign financing until 1988 and apparently did not exclude foreign money until several recent controversies eventually prompted reform of the electoral code. See generally *France Moves to Curb Campaign Funds*, N.Y. Times, Jan. 4, 1988, at A3, col. 4; see also Lewis, *supra* note 45. The new French law restricting foreign contributions is cited in note 103 *supra*.

¹¹⁶ It is the assumption of programs like those sponsored by the U.S. National Endowment for Democracy and the West German political party foundations that such programs serve the mutual interests of influencing and influenced states. See text at notes 68–78 *supra*.

¹¹⁷ Some of the programs sponsored by the institutions mentioned in the preceding note aim at promoting this objective, as do transnational associations of likeminded political parties (such as the Socialist International).

¹¹⁸ Arguably, this process is under way in Western Europe, where the extent of homogeneity of party structures and similar political institutions might have some bearing on the long-term prospects for the European Parliament. See generally A. PELINKA, *supra* note 51, at 7, 115–18; G. PRIDHAM & P. PRIDHAM, *supra* note 51.

¹¹⁹ Letter to the editor from Carlos Tunnermann, N.Y. Times, Aug. 19, 1987, at A22, col. 6. The relevant Nicaraguan law has subsequently been changed to prohibit donations from foreign countries. See *Nicaragua Bars Opposition from Getting U.S. Aid*, N.Y. Times, Nov. 7, 1988, at A11, col. 1 (noting that in Nicaragua, "as elsewhere in Central America, many parties receive regular help from like-minded parties in Europe and elsewhere"; that the Sandinista party itself had received foreign help in the 1984 election; and that the new law could significantly affect political life and possibly result in a switch from overt to covert aid).

that may be relevant to the content of the nonintervention norm. In view of the diversity of the models described, it would be easier to contend that there is no shared view of whether foreign campaign assistance is permissible than to argue for a general belief in illegality; but the fact that a variety of countries have recently adopted or strengthened measures against foreign funding is at least some evidence of a trend toward delegitimizing this activity. Nonetheless, it is not a foregone conclusion that all domestic laws purporting to exclude foreign campaign funds should be given dispositive effect. For the reasons to be developed in part IV, such laws must be evaluated in the light of normative aspects of the international legal order, especially the norms safeguarding human rights. Before doing so, we will consider a different form of influence: economic leverage affecting foreign political developments.

III. ECONOMIC LEVERAGE

In addition to the forms of election campaign assistance discussed in the preceding part, various techniques of economic leverage are available to influencing states in their efforts to strengthen or weaken political factions and trends in another state. These techniques fall roughly into two categories: (1) affirmative tools of leverage, which include the award of economic and financial benefits such as government-to-government aid, trade preferences and loan facilities;¹²⁰ and (2) negative techniques, often called economic sanctions, which involve suspending or terminating such benefits (or threatening to do so).¹²¹ In general, legal regulation of the application of economic leverage is the subject of a large literature going well beyond the scope of this article;¹²² for present purposes, the relevant question is the extent to which state practice and elements of principle legitimize or delegitimize the use of economic techniques to affect internal political developments in another state.

A. *Affirmative Techniques: Government-to-Government Aid*

Affirmative techniques of economic leverage constitute the "carrots" that influencing states offer to target states to encourage political developments congenial to the interests of the influencing state. In contrast to the campaign-funding techniques discussed in the previous part, the economic and financial benefits of concern here are offered not to a particular party or candidate, but rather for general public purposes such as development or defense. Government-to-government aid is a good example of this kind of affirmative influence and thus will be the focus of the discussion in this

¹²⁰ See generally D. BALDWIN, *ECONOMIC STATECRAFT* (1985).

¹²¹ See generally G. HUFBAUER & J. SCHOTT, *ECONOMIC SANCTIONS IN SUPPORT OF FOREIGN POLICY GOALS* (1983); *ECONOMIC SANCTIONS RECONSIDERED* (1985).

¹²² See, e.g., *ECONOMIC COERCION AND THE NEW INTERNATIONAL ECONOMIC ORDER* (R. Lillich ed. 1976); D. BALDWIN, *supra* note 120, at 336-59; Bowett, *Economic Coercion and Reprisals by States*, 13 VA. J. INT'L L. 1 (1972). In a separate work in progress, I am considering broader issues concerning economic leverage in international law and practice.

section, with the understanding that a similar analysis could apply to other benefits such as preferential trade relations and loan arrangements on concessional terms.

Whether a government that grants such benefits is an "influencing state" may be a matter for debate in particular circumstances: I do not exclude the possibility that the donor could be indifferent to the effect that its beneficence might have on the domestic political situation in the target state. But whatever the donor's motivation, the effect of foreign aid is often to strengthen the political control of the regime in the target state, and thus to increase the likelihood that it will be reelected or otherwise remain in power. To the extent that the aid improves standards of living in the recipient state or otherwise fosters conditions of stability, the incumbent government is likely to reap political gains even though the donor state might have acted out of disinterested generosity. The incumbent may also be able to turn government-to-government aid to its own advantage in cruder ways, just as President Marcos of the Philippines was able to exploit general governmental assistance from the United States to consolidate his own political power; massive U.S. aid created the perception that the United States was backing continuation of the political status quo in the Philippines,¹²³ and it also enabled Marcos to dispense untold amounts of patronage to his cronies and ensure their support for his reelection.¹²⁴

Interestingly, government-to-government forms of financial aid may have more impact on election results than campaign aid. The U.S. involvement in Philippine politics can illustrate the relative effectiveness of government-to-government aid in this regard. Although the United States provided financial aid to various candidates in presidential and legislative elections,¹²⁵ the impact of this electoral assistance as such seems almost trivial next to that of the government-to-government aid. There is little reason to believe that the comparatively small electoral transfers affected the outcomes of the Philippine campaigns in question,¹²⁶ while government-to-government aid may well have been a significant factor in helping to keep Marcos in power. One reason for the disparity in effectiveness is that the amounts differ by several orders of magnitude. In comparison to the relatively inconsequential

¹²³ This perception was bolstered by indications of intangible support. For example, when President Nixon visited Manila in July 1969, shortly before a Philippine election, the U.S. Embassy reported a political windfall for Marcos: "President Nixon's mere presence in Manila will convey to the average voter a U.S. endorsement and protect Marcos from opposition charges that he is not a good friend of the U.S." R. BONNER, *supra* note 48, at 65.

¹²⁴ See generally *id.* at 51-53, 265. The extent to which Marcos may have diverted U.S. aid funds for personal purposes has been a focus of recent investigations in both the Philippines and the United States.

¹²⁵ See *id.* at 38-44, 142-43, 203-23.

¹²⁶ The CIA is believed to have given amounts aggregating about \$200,000 to a slate of six senatorial candidates in the 1959 elections, but all the CIA-backed candidates lost. *Id.* at 42-44, 142-43. Ferdinand Marcos, the top vote getter in that senatorial campaign, was not on the U.S. slate. In the 1965 presidential election, the CIA apparently bet on both the competitors—Ferdinand Marcos and Diosdado Macapagal—presumably with the objective of enhancing postelectoral influence with whichever was the winner. *Id.* at 42-44.

amounts of electoral aid—apparently not in excess of a million dollars in any of the Philippine campaigns in question¹²⁷—U.S. financial aid to the Philippines for military, economic and other purposes added up to hundreds upon hundreds of millions of dollars during the Marcos period. The U.S. experience with other target countries has been similar.¹²⁸

As for the reactions of states affected by affirmative forms of economic influence, they quite naturally tolerate and usually even welcome external aid conveyed through government-to-government channels, even if that aid has the purpose or effect of influencing domestic political developments. Government-to-government aid and similar economic benefits are usually a matter of public record in either the influencing state or the influenced state or both (for example, in their published budgets); and influencing states often attempt to wield this form of influence through projects of high visibility such as massive public works and defense assistance. But precisely because government-to-government aid can be so effective in entrenching the political position of the receiving government, such aid might under some circumstances impair the free political choice of the people, especially if that government exploited the aid to augment its own political strength without conferring compensatory public benefits.¹²⁹ Fortunately, the public benefits of this kind of aid are usually manifest, but if the influencing state allows such funds to be diverted for the private benefit of incumbent officials, the transaction should not be considered strictly as a government-to-government one but rather as a form of financial aid to a faction that happens to be incumbent.

The convergence of a common practice by influencing states with general acceptance by targets tends to suggest that affirmative economic leverage to influence political developments is legitimate. This inference from state practice draws support from the fact that even when opposition factions or third parties call upon influencing states to suspend economic benefits to a target,¹³⁰ they do not generally claim that their continuation would violate the nonintervention norm; the typical assumption is that a favorable economic relationship is the normal state of affairs. Nor is the claim made that otherwise legal government-to-government aid becomes illegal because of

¹²⁷ *Id.* at 38–44.

¹²⁸ In the case of Chile, there was an equally dramatic disparity between the relatively minimal sums contributed to the 1964 campaign of Eduardo Frei—about \$3 million—and the nearly \$1 billion in foreign assistance to Chile during the Frei administration. See H. KISSINGER, *THE WHITE HOUSE YEARS 659–77* (1979). In Kissinger's view, the amounts the United States offered to oppose Salvador Allende in the 1970 elections were exasperatingly small. As to results, electoral aid produced mixed success in Chile: in the congressional elections of 1965 and 1968, 22 candidates received CIA funding, of whom 9 were elected. In 1970, of course, U.S. aid to Allende's opponents failed to produce the desired result. See 7 *Church Comm. Hearings*, *supra* note 43, at 166–73.

¹²⁹ Schachter has made a related point in the context of armed interventions: "It cannot be assumed that governments will, as a rule, invite foreign interventions that leave the people entirely free to make their own political determinations, though on occasion this may be the case." *The Right of States*, *supra* note 5, at 1645.

¹³⁰ For examples, see text at notes 141–42 *infra*.

the political motivation of the donor.¹³¹ Any rule that would make the legality of such aid turn on the subjective motivations of donor governments would certainly be unworkable and probably counterproductive to the interests of recipient states in obtaining assistance for valid public purposes. Indeed, the possibility of cementing political affiliations between donors and recipient states provides a major incentive for increasing aid flows, with consequent benefits not only for specific recipient states but also for North-South relations generally.

B. Negative Techniques: Withdrawal of Benefits

The negative version of economic leverage is far more controversial than its affirmative counterpart and much more likely to draw challenge in legal terms. Yet influencing states have not shied away from using economic pressure—everything from withdrawal of favorable treatment to total trade embargoes—to prod a target state into changing its government or form of government. A recent study catalogs 18 cases in which economic sanctions have been used to “destabilize” a government,¹³² including such well-known examples as the measures taken by the United States against Cuba, Chile, the Dominican Republic, Libya and Nicaragua; by the United Kingdom and others against Iran, Rhodesia and Uganda; and by the Soviet Union against Yugoslavia, Finland and Albania. But even though 18 cases are far from a trivial number, it significantly understates the instances relevant to the present article. The authors acknowledge that they did not attempt to include many episodes involving smaller powers or those documented in non-English sources; nor did they count as “destabilization” cases those in which the sanctioning state’s primary motivation was to impair an adversary’s military power or achieve another major foreign policy goal.¹³³ Furthermore, they limited their list to cases in which the influencing state actually severed aid or trade relations with a transparent (even if unannounced) “destabilization” objective.¹³⁴ This methodology excludes, for example, threats to withdraw an economic benefit if the threat achieved its purpose before being implemented, as well as instances in which states have exerted influence short of “destabilization” through such methods as insisting that the target state meet political conditions as a prerequisite for receiving further aid. If we broadened the inquiry to include cases where

¹³¹ In the *Nicaragua* case, the World Court approved the notion that intervention is “allowable at the request of the government of a State.” 1986 ICJ REP. at 126. The context of the Court’s remarks was military assistance offered by one government to another; a fortiori, nonmilitary economic assistance should be considered lawful.

¹³² G. HUFBAUER & J. SCHOTT, *supra* note 121, at 6–7, 43–45, 51, 70.

¹³³ *Id.* at 3–4, 32. Thus, for example, United Nations sanctions against South Africa are categorized as attempting to achieve “major changes in target country policies” rather than to undermine the Government. *Id.* at 54. Sanctions for human rights purposes (such as by the United States against various countries during the Carter administration) are categorized as efforts toward “modest changes in target country policies.” *Id.* at 31, 49–50. I would consider both of these kinds of sanctions as attempts to influence political developments in the target state.

¹³⁴ *Id.* at 2, 31–32.

influencing states have used economic leverage to press the target to hold elections or otherwise to alter preexisting domestic political processes, then the number would be much larger.¹³⁵

Target state responses to negative economic leverage frequently invoke various norms of international law, including the norm against nonintervention in internal affairs. Often these responses have been part of broader claims made in the context of the North-South dialogue—for example, that developed states have a legal duty to maintain aid flows without the imposition of any political conditions, or even that economic “coercion” to achieve political objectives constitutes a use of “force” barred by the UN Charter.¹³⁶ These broad claims have been rejected by developed countries and thus cannot be said to have produced any new normative consensus. Nor does there seem to be any disposition on the part of influencing states to accept more narrowly formulated claims that they are legally bound by the nonintervention norm to refrain from resorting to economic pressure to affect political developments in another state.

Indeed, it is even possible that the use and visibility of such pressure is increasing, as is evidenced not only by an acceleration of instances in U.S. practice,¹³⁷ but also by foreign states’ actions and some multilateral consideration of collective economic pressure for political purposes.¹³⁸ There has been more receptivity in the last few years to the possibility of imposing mandatory UN Security Council sanctions against South Africa to effect political change there.¹³⁹ Even multilateral financial institutions, which gen-

¹³⁵ The United States has attached such political conditions to foreign aid in a variety of cases. Recent examples may be found in 22 U.S.C.A. §§2271–2276 (West Supp. 1988) (establishing policies for U.S. aid to Central American countries, including “opening the political process to all members of society”); and in *id.* §2370 note (requiring as a condition of U.S. aid to El Salvador in fiscal years 1982 and 1983 that the President certify, *inter alia*, that the Government of El Salvador “is committed to the holding of free elections at an early date”). For discussion of the application of U.S. pressure (including the design of aid policies) to influence an election, see Meyer, *The Limits of Intervention in the Political Process: The Role of the United States in El Salvador*, 7 ASILS INT’L L.J. 89 (1983).

¹³⁶ For a discussion of an unsuccessful effort by certain developing countries at the Vienna Conference on the Law of Treaties to define “force” as including “economic or political pressures,” see Kearney & Dalton, *The Treaty on Treaties*, 64 AJIL 495, 533–35 (1970).

¹³⁷ In 1987–1988 alone, the United States escalated economic pressure against South Africa, Haiti, Chile and Panama, with the overt motivation of achieving political change in those countries. See Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, 100 Stat. 1086 (South Africa); N.Y. Times, Nov. 30, 1987, at A1, col. 5 (Haiti); 52 Fed. Reg. 49,129 (1987) (Chile); DEP’T ST. BULL., No. 2134, May 1988, at 69–73; and *id.*, No. 2136, July 1988, at 75 (Panama).

¹³⁸ West European governments, Japan and the United States have all recently curtailed economic relations with Burma pending political change there. See *Thailand Seeks to Increase Links to Burma’s Military Government*, N.Y. Times, Nov. 9, 1988, at A12, col. 1; *Burma’s Opposition Appears to Falter*, N.Y. Times, Oct. 9, 1988, §1, at 3, col. 1.

For noneconomic examples of multilateral pressure, see text at notes 170–74 *infra*.

¹³⁹ In February 1987, the negative votes of two permanent members (the United Kingdom and the United States) blocked passage of a Security Council resolution aimed at imposing such sanctions. The resolution otherwise enjoyed broad support. See UN Doc. S/PV.2738, at 67 (1987).

erally have excluded political criteria from their decisions on loans, may be on the way toward becoming forums for the exercise of political leverage.¹⁴⁰

In weighing the legal significance of the objections of target state governments to politically motivated economic sanctions, it may be appropriate to discount the self-interested protests of ruling elites whose attitudes do not fairly reflect those of the target state as a polity, and to give at least some weight to the positions of opposition political leaders who enjoy substantial local support. In several recent cases, opposition factions within the target state have virtually pleaded with the outside world to impose, maintain or strengthen economic sanctions against a repressive regime: South Africa and Panama are two salient examples.¹⁴¹ Such appeals may be controversial because the interruption of economic relations could have disastrous effects on the local economy—indeed, on the same constituencies that seek their fair share of political power.¹⁴² When opposition factions are willing to risk such dire consequences, that very fact can testify that the incumbent regime does not speak for the people and is merely hiding behind the nonintervention norm to protect its own political position.

Another relevant factor in evaluating the legal significance of target governments' objections to negative economic leverage is the response of third states—those that were not the initiators of the economic sanctions but are called upon to react to them in some fashion. To the extent that the target government elicits support for its view of the nonintervention principle from the broader international community, that support would constitute some evidence as to the content of the norm; conversely, if the influencing state can persuade other states to join in its sanctions or at least not to undercut or condemn them, those attitudes could suggest some support for its legal position. Recent episodes show considerable ambivalence in the international community about the use of economic sanctions to affect domestic political trends. For example, in March of 1988, delegates from 22 Latin American states expressed their solidarity with the de facto Government of Panama against U.S. economic pressure aimed at bringing down General Manuel Antonio Noriega, and even indicated that their countries

¹⁴⁰ Italy and the Scandinavian countries recently opposed a World Bank loan to Chile, while France, Belgium, Spain, the Netherlands and the United States abstained. The votes were viewed as a signal to Chile of international concern over its political situation. See *250m Loan Approved for Chile: Critics Say World Bank Funds Will Help Boost Pinochet Rule*, Boston Globe, Dec. 16, 1987, at 3, col. 3; cf. N.Y. Times, Aug. 12, 1987, at A22, col. 4.

¹⁴¹ See *Noriega Foes are Wary of U.S. Deal: Lifting Sanctions Could Bolster the General*, N.Y. Times, Apr. 30, 1988, at A4, col. 4 ("Opposition leaders have repeatedly insisted that only continued American sanctions will guarantee that General Noriega steps down"). The Congress of South African Trade Unions and many black groups have called for sanctions; other opposition groups argue against them. See *Sanctions Squeeze South Africa*, N.Y. Times, Nov. 13, 1988, §3, at 1, col. 3; N.Y. Times, Oct. 22, 1986, at A1, col. 3.

¹⁴² Thus, the Chilean opposition has had difficulty reaching a unified position on whether to call on the outside world to sever financial ties with Chile as an inducement to political liberalization, in view of the likely economic hardship that would result. See *Chile's Leader Takes to Task Foreign Foes*, N.Y. Times, Dec. 11, 1987, at A11, col. 1.

might offer financial assistance to Panama to counteract U.S. economic "intervention",¹⁴³ but other states have followed the U.S. lead at least informally, by declining to do business as usual with the Noriega regime. In short, evidence can be adduced from the behavior of third states to support the legal positions of both influencing states and target governments.

Interestingly, even in a judgment that accepted Nicaragua's arguments on almost all other points, the International Court of Justice declined to hold that U.S. economic sanctions against Nicaragua violated the principle of nonintervention. Referring to the cessation of economic aid, the reduction of Nicaragua's sugar import quota and the imposition of a trade embargo, the Court stated that it had "merely to say that it is unable to regard such action on the economic plane as is here complained of as a breach of the customary-law principle of non-intervention."¹⁴⁴ The Court gave no reasons for this conclusion, but possibly it was mindful that a contrary holding would in effect have obligated donor states or trading partners to continue preexisting aid or trade relations even with a state whose government had taken an unfriendly turn.

This review of state practice concerning economic leverage to affect internal political developments suggests that practice alone cannot resolve key questions about the legality of such conduct, especially as regards economic sanctions or "coercion." Legal evaluation of ambiguous practice requires investigation of its relationship to principles underlying the international legal order, and it is to that analysis that we now turn.

IV. FUNDAMENTAL PRINCIPLES: HUMAN RIGHTS AND STATE SYSTEM VALUES

Both influencing and influenced states appeal to fundamental principles in defense of their respective positions on what the nonintervention norm permits and prohibits. At the risk of oversimplification, I will suggest two general clusters of principles that the two sides invoke. In the first cluster are values relating to the rights of individual human beings to participate in self-government. The second cluster consists of the principles inherent in the international system of separate, sovereign states, including the principles of non-use of force, political independence of states and sovereign equality. For convenience I will refer to these two clusters as "human rights values" and "state system values." Each cluster has firm roots in the United Nations Charter,¹⁴⁵ and each has been reaffirmed and strengthened subsequently, including in the Universal Declaration of Human Rights for the

¹⁴³ See *U.S. Effort to Remove Noriega Begins to Irritate Latins*, N.Y. Times, Apr. 6, 1988, at A6, col. 3; see also *Caribbean Officials Criticize Outside Pressure on Panama*, N.Y. Times, May 23, 1988, at A3, col. 3.

¹⁴⁴ 1986 ICJ REP. at 126.

¹⁴⁵ As to human rights values, see, inter alia, UN CHARTER, Preamble, Art. 1(3) and Arts. 55-56. As to state system values, see, inter alia, *id.*, Preamble, Art. 1(2) and Art. 2(1), (4) and (7).

human rights cluster¹⁴⁶ and the Friendly Relations Declaration for the state system cluster.¹⁴⁷

The cluster of human rights values includes each person's "right to take part in the government of his country, directly or through freely chosen representatives,"¹⁴⁸ and also protects the liberties of conscience and expression that are essential to the fulfillment of this political right.¹⁴⁹ Furthermore, human rights instruments provide that the "will of the people . . . shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."¹⁵⁰ From the point of view of influencing states, these concepts help to justify transnational political activity that is aimed at aiding a disenfranchised group or inducing a repressive regime to submit to fair elections. Even covert activity can sometimes be defended on human rights grounds; for example, aid to a banned political party or to a suppressed or censored media outlet. On the other hand, target states also invoke human rights values, by emphasizing that the political process contemplated by international human rights law is supposed to reflect the "will of the people," not the preferences of an outside power. In some cases, the human rights claims of either the influencing or the influenced state are obviously disingenuous; but harder cases raise serious questions of how to accommodate human rights values that are apparently in conflict, or how to reconcile those values with other principles of the international legal order, including the postulates of the state system.

State system values presuppose the organization of the international community into territorially separate, politically independent states. From that premise, the international legal system has derived a series of concepts

¹⁴⁶ GA Res. 217A (III), UN Doc. A/810, at 71 (1948) [hereinafter Univ. Dec.]. Several treaties also elaborate the political human rights that are of interest here. They include (non-exclusively) the International Covenant on Civil and Political Rights, GA Res. 2200, 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966) [hereinafter Int'l Cov.]; the European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 UNTS 221, and its several protocols [hereinafter Eur. Conv.]; the American Convention on Human Rights, Nov. 22, 1969, reprinted in ORGANIZATION OF AMERICAN STATES, HANDBOOK OF EXISTING RULES PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, OAE/Ser.L/V/II.65, doc. 6, at 103 (1985) [hereinafter Am. Conv.]; and the African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3/Rev.5 (1981), reprinted in 21 ILM 58 (1982) [hereinafter Afr. Ch.].

¹⁴⁷ See note 25 *supra*. The Friendly Relations Declaration also embodies human rights values, especially in its "principle of equal rights and self-determination of peoples."

¹⁴⁸ Univ. Dec., Art. 21(1); see also Int'l Cov., Art. 25(a); Am. Conv., Art. 23(1)(a); Afr. Ch., Art. 13 (all *supra* note 146). The inter-American system recognizes "representative democracy" as the form of government for the American states in, inter alia, the OAS CHARTER, *supra* note 18, Art. 3(d), and the Am. Conv., *supra*, Art. 29(c).

¹⁴⁹ On freedom of thought, expression, assembly and related rights, see Univ. Dec., Arts. 18-20; Int'l Cov., Arts. 18-22; Eur. Conv., Arts. 9-11; Am. Conv., Arts. 12-16; Afr. Ch., Arts. 8-11 (all *supra* note 146).

¹⁵⁰ Univ. Dec., Art. 21(3); see also Int'l Cov., Art. 25(b); Am. Conv., Art. 23(1)(b) (all *supra* note 146); Eur. Conv., Protocol No. 1, 213 UNTS 262, Art. 3.

aimed at preventing interstate conflict and promoting friendly relations. Among these are the principle prohibiting the use or threat of force against the territorial integrity or political independence of any state,¹⁵¹ the principle of equal rights and self-determination of peoples¹⁵² and the principle of sovereign equality of states.¹⁵³ (I deliberately omit the principle of nonintervention in matters within a state's domestic jurisdiction, which is usually considered a principle of equal authority with the others mentioned,¹⁵⁴ because the content of that principle is the very issue under discussion in the present inquiry.)

The principle of the political independence of states is expressed in various international legal instruments along the lines that each state "has the right freely to choose and develop its political, social, economic and cultural systems."¹⁵⁵ This notion of the state as a politically separate entity, whose political personality all other states must respect, is critical to the state system cluster. Under this conception, a state's political system is quintessentially a matter of exclusive internal concern. In section A below, I argue that the state system value of political independence is closely linked to the human rights value of citizen participation in governance. Because of this linkage, a political system that denies basic political rights is in my view no longer a strictly internal affair.

The state system cluster and the human rights cluster have different historical roots and jurisprudential underpinnings. The state system cluster reflects the traditional conception of international law as a body of rules made by and for sovereign states to govern their mutual relations, and finds its contemporary functional justification in the need for agreed standards of international conduct to minimize tensions that could lead to transboundary conflict.¹⁵⁶ According to this conception, it is vital to have generally acknowledged "rules of the road" to define the acceptable limits of state

¹⁵¹ UN CHARTER Art. 2(4); Friendly Relations Declaration, *supra* note 25, principle (a).

¹⁵² UN CHARTER Art. 1(2); Friendly Relations Declaration, *supra* note 25, principle (e). The principle of self-determination is also embodied in international human rights law, e.g., Int'l Cov., *supra* note 146, Art. 1.

¹⁵³ UN CHARTER Art. 2(1); Friendly Relations Declaration, *supra* note 25, principle (f).

¹⁵⁴ For example, it is given equal status in the Friendly Relations Declaration as principle (c). The "General Part" of the Friendly Relations Declaration declares that "the above principles are interrelated and each principle should be construed in the context of the other principles."

On the other hand, the argument could be made that the nonintervention norm is a weaker norm than the ones referred to in the previous three notes, all of which are explicit treaty obligations of states under the UN Charter. As noted in the text at notes 22-23 *supra*, the Charter does not explicitly impose a duty on *states* not to intervene in domestic matters, although Article 2(7) does impose such a duty on the UN Organization.

¹⁵⁵ The quoted phrase is from the formulation of the principle of sovereign equality of states in the Friendly Relations Declaration, *supra* note 25. Similar formulations are found in *id.*, the principle concerning the duty not to intervene in matters within domestic jurisdiction (quoted in the text at note 28 *supra*); in the Charter of Economic Rights and Duties of States, *supra* note 25, ch. II, Art. 1; in the Helsinki Accord, *supra* note 19; and in the OAS CHARTER, *supra* note 18, Art. 13; among other international instruments.

¹⁵⁶ See generally T. NARDIN, *supra* note 2.

behavior; those rules must include limits marking off the sphere of “domestic jurisdiction” into which other states may not intrude. The human rights cluster, in contrast, reflects more recent trends (which have accelerated since the Second World War) toward giving the individual a right to invoke international legal norms against states, including even his or her own state. Although the human rights values of the international legal system are often elaborated in terms of natural law or morality, they share with the state system cluster the objective of avoiding international conflict, since human rights violations have been known to lead to breaches of the peace.

No formulation of the nonintervention norm can be complete or satisfactory without taking account of both state system values and human rights values. Surely in our increasingly dangerous world, there are compelling reasons for respecting the existence of separate states and honoring both their territorial integrity and their political independence.¹⁵⁷ But the nonintervention norm must not become a vehicle for exalting the abstract entity of the state over the protection of individual rights and fundamental freedoms.

A. *The “Political Independence” of States and Political Rights*

As a first step toward reformulating the nonintervention norm in light of both state system and human rights values, I will contend that the concept of the “political independence” of states should be understood against the backdrop of the political rights of their inhabitants. A state’s political independence surely entails freedom from foreign domination—a foreign puppet is not truly “politically independent”—but it also means something more than that. Let us first take the extreme case of people who have been completely prevented from exercising political freedoms. When these subjugated people look outside the boundaries of the state for nonforcible assistance in asserting their *own* political independence, their rulers’ objection to outside influence would be tantamount to a claim that the rulers, rather than the state itself or its people, are the parties who enjoy the protection of the nonintervention norm. It is the *state* that has a right to political independence, not a particular regime and certainly not a regime that denies to the state’s people the opportunity to make political choices.

The suggestion of linking the concepts of the political independence of states and the political rights of citizens is no doubt controversial, at least for the many countries of the world that infringe political rights to a significant degree. Although my approach to political independence differs from the traditional one, the argument is not as radical as it might appear. Most

¹⁵⁷ I am not persuaded by the position that the value of maximizing human dignity is the *raison d’être* of the international legal order and should take precedence over all other competing claims. See, e.g., Reisman, *supra* note 9. Reisman goes so far as to elevate human dignity values above the value of conflict avoidance; hence, in his view, even forcible intervention in aid of the human rights of the target state’s inhabitants is legitimate. I endorse Schachter’s critique of this position. See Schachter, *supra* note 9.

important, I intend no attack on the prohibition under the UN Charter of the use of force against either territorial integrity or political independence, and I wholeheartedly endorse the application of this prohibition to attempts by any foreign power to change a state's political system by *force*.¹⁵⁸ My position concerning the legitimacy of certain kinds of political influence is limited to the use of *nonforcible* techniques, which are not directly regulated by Article 2(4) of the Charter. For reasons to be developed in section B below, increasing acceptance of nonforcible political influence may have a constructive effect in mitigating the factors that all too often have led to transboundary uses of force. If so, my argument would promote, rather than undermine, the purposes of Article 2(4).

Undoubtedly, governments with poor human rights records will resist a view of the nonintervention norm that opens them up to nonforcible political challenges from abroad, even though forcible interventions would still be barred. But to the extent that the legal argument in their favor relies on state system values to shield them from nonforcible external influence, I believe it is misplaced. Certain state system values, such as territorial integrity and sovereign equality, can be applied without reference to the relationship of a state to its people, but the concept of political independence cannot. A state "freely" chooses its political system only when its people are free to choose. The necessity of linking political independence to political rights is especially clear in the stark cases previously mentioned, where the influencing state responds to the plea of people subjugated by a terror-wielding tyrant; in such cases, the external aid enhances, rather than undercuts, the political independence that international law ensures to the state, by strengthening the political rights of the state's people as against the self-interest of the regime.

In more typical cases, the incumbent government is not so blatantly (or bloodily) repressive as to be beyond the pale, and the citizenry enjoys some, albeit limited, opportunity for the exercise of political rights. To understand how the nonintervention norm should apply to such cases, it will be useful to explore some of the threshold issues pertaining to the status of rights of political participation under international human rights law. Then I will offer some concrete applications of my position, using the issues of campaign financing and economic sanctions as examples.

Do states have *legal* duties to hold periodic and genuine elections, to afford rights of free political expression, to allow their citizens to organize into political parties and otherwise to admit the full exercise of political freedoms? Surely, the states that have entered into human rights treaties have accepted legally binding obligations to the extent provided in the treaties in question. As mentioned above, the International Covenant on Civil and Political Rights and regional human rights treaties all embody

¹⁵⁸ I associate myself with the positions concerning the illegitimacy of forcible intervention set forth in L. HENKIN, *supra* note 5, and Schachter, *supra* notes 5 and 9. Impermissible forcible intervention should include not only outright invasions but also proxy wars, military support for guerrillas, state-supported terrorism and similar techniques of transboundary violence.

guarantees of political participation, with some variations in content.¹⁵⁹ The International Court of Justice correctly recognized in the *Nicaragua* case that there is no reason in principle that a state could not make internationally binding commitments with respect to its domestic politics.¹⁶⁰ (The Court found that, on the facts of that case, Nicaragua had not so limited its sovereignty as to justify the U.S. provision of forcible support to a counter-revolutionary group;¹⁶¹ but it attached special importance to the fact that forcible intervention was involved.¹⁶²) Where states are in breach of such commitments, nonforcible political influence is a permissible means of enforcing compliance, at least by the other parties to the treaty.¹⁶³

Even where no treaty between influencing and influenced states directly establishes obligations concerning political rights, it is nonetheless legitimate for influencing states to attempt through nonforcible means to induce tar-

¹⁵⁹ See note 146 *supra* and accompanying text. The African Charter does not explicitly recognize a citizen's right to vote or a country's obligation to hold periodic elections, but its Article 13 does embody more general rights of political participation. See Gittleman, *The African Charter on Human and Peoples' Rights: A Legal Analysis*, 22 VA. J. INT'L L. 667, 699 (1982). The other regional treaties do contain specific provisions on voting and elections, as does the International Covenant. See Int'l Cov., *supra* note 146, Art. 25(b); Eur. Conv., Protocol No. 1, *supra* note 150, Art. 3; Am. Conv., *supra* note 146, Art. 23(1)(b). Under the American Convention, no derogation is permitted from the right to participate in government. *Id.*, Art. 27.

¹⁶⁰ 1986 ICJ REP. at 131; see also *id.* at 382-85 (Schwebel, J., dissenting); H. KELSEN, *supra* note 23, at 776, 779-80 n.5, 785 n.9 (there are no matters which by their nature are "solely" or even "essentially" within a state's domestic jurisdiction, since even a state's form of government may be the object of an international agreement; the United Nations has treated existence of certain governments as an international, rather than a domestic, matter).

¹⁶¹ 1986 ICJ REP. at 131-35. The Court examined Article 3(d) of the OAS Charter, which provides for "the effective exercise of representative democracy," but concluded that this article provided no warrant for the United States to intervene on behalf of the contras. Judge Schwebel's dissenting opinion took the position that the Nicaraguan Government had made binding commitments concerning its internal policies and had deliberately violated them. *Id.* at 259, 274, 382-86, 395-402; see also *id.* at 283, 526-27 (Central American peace process assumes that certain political processes are matters of international concern).

¹⁶² *Id.* at 134-35.

¹⁶³ The World Court was unsympathetic to the position that the United States could act as an enforcer of human rights norms against Nicaragua. In addition to its disapproval of modes of enforcement that were at least partly forcible, the Court took note of the fact that while Nicaragua had ratified the American Convention (*see id.* at 134), the United States had not. The Court noted that the OAS mechanisms for enforcing the Convention were functioning; and it stated, in an overly restrictive dictum, that "where human rights are protected by international conventions, that protection takes the form of such arrangements for monitoring or ensuring respect for human rights as are provided for in the conventions themselves." *Id.* In my view, remedies for enforcement of human rights standards should be cumulative, and the specification of certain protective mechanisms in a treaty should not preclude resort to other nonforcible measures. Cf. Am. Conv., *supra* note 146, Art. 29 (Convention not to be interpreted as restricting other sources of rights); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES §703 Reporters' Note 1 (1987) [hereinafter RESTATEMENT (THIRD)].

For criticism of this aspect of the Court's judgment, see F. TESÓN, *supra* note 7, at 218-20; see also Tesón, *Le Peuple, c'est moi! The World Court and Human Rights*, 81 AJIL 173 (1987).

get states to honor the rights of political participation contained in other instruments, such as the Universal Declaration and the Helsinki Accord. Despite their lesser legal status, these documents are not devoid of legal effect.¹⁶⁴ At a minimum, target states that have endorsed them are precluded from claiming that the matters at issue fall solely within their domestic jurisdiction, and influencing states are justified in treating these matters as ones of international concern.¹⁶⁵ States that have pledged at the international level to accord rights of political participation to their citizens are in a poor position to claim that nonforcible actions aimed at inducing compliance with that pledge constitute intervention in "internal" affairs.

A substantial argument can be made in favor of the existence of a customary law obligation to accord citizens the right to participate in political governance, although the specific contours of the obligation are debatable.¹⁶⁶ The *opinio juris* component of a customary law obligation to permit at least some measure of political participation finds expression in the international human rights instruments that have previously been cited, as well as in others.¹⁶⁷ The element of state practice is more problematic because of the wide range of approaches that states take toward political participation. Western-style pluralist democracy is only one of a variety of models that states may employ to give their citizens a voice in government, and I do not argue that states need to follow this or any other particular model.¹⁶⁸ Indeed, even a one-party state may be able in some circumstances to satisfy an

¹⁶⁴ See Schachter, *The Twilight Existence of Nonbinding International Agreements*, 71 AJIL 296 (1977). There is a strongly held view that aspects of the Universal Declaration have become legally binding as customary international law or as an authoritative interpretation of the UN Charter. See L. HENKIN, R. PUGH, O. SCHACHTER & H. SMIT, *INTERNATIONAL LAW: CASES AND MATERIALS* 987-88 and references cited therein (2d ed. 1987). For comment on the Helsinki Accord as a "non-binding" instrument, see Russell, *The Helsinki Declaration: Broddingnag or Lilliput?*, 70 AJIL 242 (1976); and RESTATEMENT (THIRD), *supra* note 163, Intro. Note to pt. VII, at 150 n.6.

¹⁶⁵ See Schachter, *supra* note 164, at 304; Henkin, *Human Rights and "Domestic Jurisdiction,"* in *HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD* 21, 29 (T. Buergenthal ed. 1977) (although the Helsinki Accord is not a binding treaty, it involves undertakings that preclude the suggestion that the matters dealt with are within the exclusive domestic jurisdiction of the signatory states).

¹⁶⁶ Cf. Steiner, *Political Participation as a Human Right*, 1 HARV. HUM. RTS. Y.B. 77, 134 (1988) (discussing diverse conceptions of rights of political participation and arguing that the right is programmatic in the sense that "it could never be fully realized"); see also *The Right to Participate in Government: Toward an Operational Definition*, 82 ASIL PROC. (1988, forthcoming) (discussion of whether the holding of elections is either a necessary or a sufficient condition for compliance with international human rights obligations of political participation; consideration of relationship to other political rights, including free expression and association).

¹⁶⁷ See note 159 *supra*. For other instruments, see, e.g., International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 UNTS 195, Art. 5(c), which calls for equal enjoyment of political rights, "in particular the rights to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage."

¹⁶⁸ A proposal that would have defined "genuine" elections as involving a choice between at least two parties and the right to organize a political opposition was not adopted in the International Covenant. See UN Doc. A/C.3/SR.298, para. 26 (1950), cited in INTERNATIONAL HUMAN RIGHTS LAW GROUP, *GUIDELINES FOR INTERNATIONAL ELECTION OBSERVING* (1984) [hereinafter *LAW GROUP GUIDELINES*]; see also Steiner, *supra* note 166, at

emerging international standard of political participation.¹⁶⁹ What is important is that citizens have a voice in political affairs and some means of approving or disapproving of their government and effecting political change.

In assessing the existence and content of a customary law obligation concerning political participation, several contemporary trends merit empirical investigation. Although it is beyond the scope of this article to develop the facts in detail, a few comments will suffice to indicate that a customary law norm to this effect may be taking shape. The countries exercising influence to bring about political liberalization and free elections are growing more numerous, and it is now unsurprising for observers from around the world (representing states as well as international and nongovernmental organizations) to converge on a target state to lend their support to demands for political reform or their assistance in assuring the fairness of an election.¹⁷⁰ In addition to bilateral means of leverage such as imposing conditions on the availability of foreign aid or trade benefits,¹⁷¹ states sometimes exert multilateral pressure for political change in countries that have denied rights of political participation.¹⁷² Although incumbent regimes do not always accept and, indeed, may strenuously resist these efforts,¹⁷³ a variety of states have accepted not only external scrutiny but also outside assistance in setting up

85-96 (summary of debates leading to adoption of texts that would allow states to implement their own structures for rights of political participation and electoral systems).

¹⁶⁹ See Steiner, *supra* note 166, at 129 n.175; and LAW GROUP GUIDELINES, *supra* note 168, Commentary to Guideline V.C (citing INTERNATIONAL COMMISSION OF JURISTS, HUMAN RIGHTS IN A ONE-PARTY STATE (1978)). The *Restatement (Third)* notes that states differ as to whether elections in a one-party state can be considered "genuine" within the meaning of international human rights instruments. RESTATEMENT (THIRD), *supra* note 163, §702 Reporters' Note 10.

¹⁷⁰ See generally LAW GROUP GUIDELINES, *supra* note 168. International attention has recently focused on elections in El Salvador, Nicaragua, the Philippines, Haiti, South Korea and Chile. For evidence of the trend toward involvement by foreigners from many parts of the world, see, e.g., *Foreigners to Observe the Plebiscite in Chile*, N.Y. Times, Sept. 18, 1988, §1, at 6, col. 1 (former Spanish prime minister heading delegation of "several dozen former chiefs of state or government from Europe and Latin America").

¹⁷¹ See discussion in part III *supra*.

¹⁷² Following an on-site study by the Inter-American Commission on Human Rights of human rights violations in Nicaragua, the OAS adopted a resolution calling for the "immediate and definitive replacement of the Somoza regime." See Res. II, June 23, 1979, adopted at the 17th Meeting of Consultation of Ministers of Foreign Affairs, OEA/Ser.F/II, doc. 40/79, rev.2, discussed in Weston, Lukes & Hnatt, *Regional Human Rights Regimes: A Comparison and Appraisal*, 20 VAND. J. TRANSNAT'L L. 585, 619 n.186 (1987). The resolution is cited and discussed by the World Court in the *Nicaragua* case, 1986 ICJ REP. at 89-92, 131-32; and in Judge Schwebel's dissenting opinion in the same case, *id.* at 259, 273-74, 382-86, 395-402.

¹⁷³ In South Korea the Government declined to permit the same degree of intensive election monitoring by outsiders as had taken place in the Philippines in 1986, characterizing such activities as "meddling in domestic affairs." See *U.S. Keeping Clear of Seoul Election*, N.Y. Times, Dec. 7, 1987, at A7, col. 1. In other cases, incumbent regimes have maintained that foreign pressure for any deviation from domestic election law is impermissible interference. Chile, Haiti and South Africa are among the states whose ruling regimes have recently raised such objections. See *Botha Says Foreign Envoys Undermine Pretoria's Rule*, N.Y. Times, Aug. 14, 1987, at A3, col. 5; *Chile's Leader Takes to Task Foreign Foes*, N.Y. Times, Dec. 11, 1987, at A11, col. 1;

and monitoring systems for free and fair elections.¹⁷⁴ Even states that do not follow a Western pluralist model frequently go to great lengths to demonstrate formal compliance with norms of political participation. Thus, the practice generative of a customary law duty continues to build.

Nonetheless, my position with respect to interpreting the nonintervention norm in light of the political rights of citizens does not depend on demonstrating that the duty to accord rights of political participation has ripened into an obligation under customary international law. Such a demonstration would be necessary only if I were arguing for the legality of nonforcible political influence on a theory of countermeasures or reprisals for breach of another international legal obligation.¹⁷⁵ But this is a misleading approach to the issue in question, because it presupposes that political influence is illegal unless justified by a prior breach. In my opinion, the question is not whether otherwise illegal influence can be justified because the target has violated "hard law" human rights obligations; rather, the appropriate question is which modes of influence are legal in the first place. Modern state practice does not support the notion that all forms of political influence must be *prima facie* illegal unless justified by some exceptional circumstance. Instead, much such behavior now seems to be not only widespread, but even accepted and acceptable. The purposes of the present normative discussion are, first, to identify some of the contemporary values that explain why the behavior is now considered acceptable and, second, to suggest a framework for determining the limits of acceptability. Influence to encourage compliance with political human rights is acceptable whether or not those standards have ripened into "hard law," because it is consistent with values recognized by the international community and does not intrude upon solely "domestic" matters. While the concept of the political independence of states can be a limiting factor on the acceptability of influence, it is a proper limit only to the extent that the target state's people can exercise that independence through rights of participation in governance.

We now may attempt to determine the consequences of the linkage between the political rights of individuals and the political independence of states for some of the difficult problems we have encountered. Those problems typically involve an incumbent government's efforts to interpose the nonintervention norm as a barrier to foreign activities that aim at assisting

Haitian General Disavows Killings, N.Y. Times, Dec. 16, 1987, at A8, col. 1 (Haitian leader charged that "foreign countries" had "financed the disorder" that disrupted Haitian presidential elections).

¹⁷⁴ See letters to the editor, N.Y. REV. BOOKS, June 26, 1986, at 42, col. 1 (concerning recent Salvadoran and Nicaraguan elections).

¹⁷⁵ The World Court applied a countermeasures analysis in its discussion of the nonintervention norm and concluded that the United States had not established the conditions for the legitimate application of countermeasures. 1986 ICJ REP. at 130-35. Clearly, a major factor in the Court's consideration was the impermissibility of measures involving the use of force in purported enforcement of human rights norms. *Id.* at 134-35.

For the view that the Court erred in condemning forcible measures to enforce human rights, see F. TESÓN, *supra* note 7, at 201-44. My own position, of course, is limited to the application of nonforcible measures. See text at note 158 *supra*.

repressed political groups. In addressing these problems, it is appropriate to use the cluster of human rights values as the interpretive backdrop for the nonintervention norm and to define the norm in a way that permits, rather than precludes, activities directed at enhancing internationally protected rights. The next two subsections apply this approach to two concrete problems of current interest, namely, external financing of political campaigns and economic sanctions designed to effect political change.

Campaign funding. The area of campaign finance presents a special category of problems, because the existing body of international human rights law does not deal with the issue explicitly. At most, a right for parties and candidates to raise funds or to spend money to get their message across might be inferred from the guarantees in international human rights law of rights to associate freely¹⁷⁶ and to "impart information and ideas through any media and regardless of frontiers."¹⁷⁷ But there are no internationally accepted standards on amounts or sources of campaign funds, or on amounts or recipients of campaign-related expenditures;¹⁷⁸ and (as part II.C has shown) there are diverse approaches in national legislation to the critical issue of control over *foreign* sources of funding. International human rights law thus provides no support for a general right of access to *foreign* funds for campaign purposes. As long as a target state respects the internationally recognized rights of political participation, including freedoms of association and expression, it has no obligation to allow domestic political forces to obtain financial support from outside the polity.

With regard to states that do respect internationally guaranteed rights of political participation, both the human rights cluster and the state system cluster support an interpretation of the nonintervention norm that would allow those states to decide through their own domestic legal processes whether to tolerate foreign involvement in election campaigns. International human rights law makes a clear distinction between the political rights of *citizens* and those of noncitizens.¹⁷⁹ In addition to the high degree of parallelism among municipal laws reserving to the citizenry the rights to

¹⁷⁶ Univ. Dec., Art. 20; Int'l Cov., Art. 22(1); Eur. Conv., Art. 11; Am. Conv., Art. 16(1); Afr. Ch., Art. 10 (all *supra* note 146).

¹⁷⁷ Univ. Dec., Art. 19; Int'l Cov., Art. 19(2); Eur. Conv., Art. 10(1); Am. Conv., Art. 13(1) (Art. 13(3) prohibits indirect restrictions on this right as well); *cf.* Afr. Ch., Art. 9 (individuals have right to receive information and express opinions, but no mention in article of transfrontier activities) (all instruments cited in note 146 *supra*).

¹⁷⁸ One nongovernmental human rights organization has taken a first step toward recognizing the importance of the campaign finance issue in evaluating the climate for an election, but it has not yet suggested that there are any international standards governing campaign finance as such. In its *Guidelines for an In-Depth Analysis of an Electoral Process*, reprinted as App. IV to LAW GROUP GUIDELINES, *supra* note 168, at 53, the International Human Rights Law Group encourages election observers to examine all aspects of a country's electoral law, including whether there are provisions pertaining to campaign financing. *See also id.* at 73, 76, 80 (participants in conference sponsored by Law Group note that the "quality of the campaign climate" includes "sources of party financing").

¹⁷⁹ *See* Int'l Cov., Art. 25(b), which provides that every *citizen* shall have the right to vote, to be elected to office and to have equal access to public service. (Most other provisions of the Covenant concern the rights of "human beings," "everyone" or "all persons.") *See also* Eur. Conv., Art. 16; Am. Conv., Art. 23 (which also provides that the law may regulate the exercise

vote and to hold elective office, numerous treaties explicitly acknowledge that states may exclude noncitizens from electoral participation.¹⁸⁰ Indeed, under some circumstances foreign involvement could risk undermining the political rights of the citizenry. Human rights values could be in jeopardy if foreign participation were of such an extent or effectiveness as to distort what would otherwise be the free choice of the polity. The possibility is especially acute in the case of big-power attempts to influence the politics of small states; but it is not limited to that case, as small states may occasionally be able to achieve such distortion through covert or corrupt payments. Thus, target states that choose to bar foreign involvement in their elections, provided that they simultaneously ensure rights of political participation by the citizenry, can justifiably insist that other states honor that choice. Observance of these principles may also serve the state system value of preventing tension between influenced and influencing states that might otherwise develop into interstate conflict.

On the other hand, if restrictive campaign finance legislation supplements other repressive measures aimed at preventing the political opposition from organizing and consolidating its strength—that is, if it reinforces a pervasive scheme for denying internationally guaranteed political rights—then outside powers may properly rely on the human rights cluster of international norms to justify disregarding the domestic restrictions.¹⁸¹ Let me make clear that my intention is to describe a rather narrow set of circumstances in which domestic campaign finance legislation could be disregarded, because I would not like to see human rights issues become a pretext for subverting the ordinary workings of domestic political processes. Consequently, it would not be enough for the influencing state to claim that it could ignore domestic laws of the target simply because there was a bona fide disagreement between them over the specific modalities of political participation.

of these rights of political participation only on the basis of “age, nationality, residence, language, education, civil and mental capacity, or sentencing . . . in criminal proceedings”) (emphasis added).

International law may prevent states from resorting to involuntary denationalization as a technique for limiting civil and political rights. See, e.g., Univ. Dec., Art. 15(2) (“No one shall be arbitrarily deprived of his nationality”); Am. Conv., Art. 20(3) (all instruments cited in note 146 *supra*).

¹⁸⁰ In addition to the treaties discussed in the preceding note, bilateral treaties of friendship, commerce and navigation typically contain a provision to the effect that the treaty “does not accord any rights to engage in political activities.” See, e.g., Treaty of Amity, Economic Relations, and Consular Rights, Aug. 15, 1955, U.S.-Iran, Art. XX(2), 8 UST 899, TIAS No. 3853.

¹⁸¹ Thus, influencing states need not honor South Africa’s restrictive legislation (cited in notes 109–14 *supra*) that is aimed at preventing opposition political groups from receiving funds and other support from abroad. The Chilean laws cited in note 106 and similar laws elsewhere would be suspect if they could be shown to be part of an overall scheme for denying citizens the right to organize in opposition to the government.

Similarly, U.S. support (recently undertaken through the National Endowment for Democracy) of the outlawed Solidarity movement in Poland does not violate the nonintervention norm. See note 78 *supra*.

Such disagreements could concern many issues of philosophy and practice—for example, single-member districts versus at-large election, runoffs, proportional representation of minority parties—without necessarily reflecting the kind of pervasive violation of basic political rights that would warrant allowing the influencing state to disregard the target's campaign finance legislation. Only where the legislation contributes to a serious pattern of violation of political human rights would there be grounds for the influencing state to override the target's domestic restrictions.¹⁸²

What of the states that have not explicitly stated in their domestic law whether they will prohibit or permit foreign electoral involvement? Assuming that they are in compliance with international human rights standards, does the nonintervention norm operate of its own force to prohibit foreign states from attempting to influence their elections through such means as campaign contributions? The question is a difficult one because the practices and the attitudes of influencing and influenced states seem to be in a state of flux, and the currents of the flux are not all in the same direction. On the one hand, in some ways influencing states are becoming more activist, even openly so, about efforts to project political influence into other states' domestic systems. The overt programs described in part II.B above are instances of this phenomenon. On the other hand, it may be that more target states are dealing with the issue explicitly in domestic legislation; hence, there will be less ambiguity about what they are willing to tolerate. If other states follow the pattern of legislative prohibitions on foreign campaign contributions described in part II.C, this current may be flowing in the direction of a progressive tightening of target states' restrictions, as domestic constituencies come to learn about controversial or concealed activities. For the reasons previously given, if such restrictions represent the free choice of the target state's polity rather than a technique in aid of political repression, the nonintervention norm requires states to honor them.

Economic sanctions. Human rights values and state system values are likewise relevant to assessing the legitimacy of economic leverage as a tool of political influence. For present purposes, I will concentrate on the more controversial negative techniques discussed in part III.B—that is, economic sanctions—rather than affirmative grants of economic benefits. As previously discussed, the practice of both influencing and influenced states suggests agreement that a state does not violate the nonintervention norm by conferring economic advantages on another state, even if one of its

¹⁸² Numerous issues could arise in implementing the approach that I have suggested, such as the status of campaign finance legislation adopted by the target at a time when its human rights performance was substantially better (or worse) than at the time of the influencing activity, or legislation that is facially neutral or adopted through seemingly democratic processes but has a deleterious impact on the political rights of some societal group. Space limitations do not permit addressing these points of detail. Suffice it to say that, in my view, the emphasis should be not so much on the process by which the legislation was adopted, but rather on whether it contributes to a current pattern of serious political repression in violation of the minimum rights embodied in generally accepted human rights instruments.

purposes is to strengthen political trends in its favor. In contrast, there is no such convergence of practice or attitudes as regards negative techniques. A normative analysis is therefore appropriate to evaluate their legality.

With respect to human rights values, there is an increasing trend not only toward the use of economic sanctions to promote human rights objectives, but also toward acceptance of the legitimacy of such sanctions when employed for that purpose. Thus, the *Restatement (Third) of Foreign Relations Law of the United States* indicates that a state does not violate international law when it shapes its trade, aid or other national policies to influence a state to abide by recognized human rights standards.¹⁸³ In my view, this concept should be applicable whether or not the standard in question has risen to the level of a rule that all states acknowledge to be obligatory. For the reasons previously discussed, a state may properly exert influence both to enforce "hard" law and to encourage a target to abide by human rights principles that may not yet have attained that status.¹⁸⁴ In practice, while some human rights-related economic sanctions seek to enforce generally accepted customary law rules such as those prohibiting torture and genocide,¹⁸⁵ others are addressed to more controversial human rights standards such as free emigration and workers' rights.¹⁸⁶ By application of this approach, a state does not violate the nonintervention norm (or any other international law rule) when it uses economic sanctions to induce a target state to hold free and fair elections or otherwise to enhance compliance with human rights principles of political participation.

What about a state that seeks to wield its economic might for a political purpose other than one related to human rights? Suppose, for example, that the target's people do enjoy rights of political participation (at a level no worse than in other countries), but the influencing state simply disapproves of the way that they have exercised their political choice. May it suspend aid or interrupt trade for that reason alone? In the real world of tight budgets

¹⁸³ RESTATEMENT (THIRD), *supra* note 163, §703 comment *f*. Although the *Restatement's* usage in the same comment of the terms "violating state" and "violations" might seem to imply that breach of a customary law obligation would be a prerequisite to the application of economic sanctions, the better view is that economic sanctions may be employed to induce observance of any human rights standard "recognized" by the Universal Declaration and other international instruments. See *id.* §702 comment *m*.

¹⁸⁴ The exercise of such influence may indeed contribute to the process by which human rights principles evolve from aspirational objectives to customary law obligations.

¹⁸⁵ For a catalog of U.S. measures of an economic character aimed at "gross" human rights violations, see RESTATEMENT (THIRD), *supra* note 163, §702 Reporters' Note 10.

¹⁸⁶ For example, the Jackson-Vanik Amendment to the U.S. Trade Act denies most-favored-nation trade status to non-market economy countries that do not provide adequate assurances of freedom of emigration; and the Trade Act also provides for withdrawal of trade preferences for developing countries that do not afford "internationally recognized worker rights." See 19 U.S.C. §§2432, 2462 (Supp. IV 1986). Although rights of emigration and worker protection are embodied in many human rights instruments, the *Restatement (Third)* does not include them on the "short list" of rights that are generally considered to have attained customary law status (§702), unless the violations are part of a "consistent pattern of gross violations."

and shifting alignments of states, such motivation would usually be combined with other reasons that are legitimate regardless of the nonintervention norm. Thus, a state that has finite resources for foreign aid may decide to divert them from a state that has historically received aid when a less friendly government comes to power there; its purpose would not necessarily be to punish the former recipient or to exert coercion regarding its domestic politics, but rather to cultivate more promising relationships elsewhere. Changes in U.S. aid policies following a leftward shift in recipient countries were doubtless inspired by multiple motivations, including (in addition to a political component) a disinclination to subsidize economies whose management is moving in a direction that the donor state finds objectionable. The World Court correctly found that the United States had not intervened in Nicaragua's internal affairs by suspending favorable economic relations after the Nicaraguan Government took a pro-Soviet turn,¹⁸⁷ for even if one purpose of the sanctions was to weaken a hostile government, there would be no basis for forcing the United States to remain in an unwanted economic liaison with an ideological adversary.

Yet despite professions of human rights concern or rationales apart from the target's domestic politics, some economic sanctions programs might in fact prevent the people of the target from exercising free political choice. An example would be the case of sanctions so crippling as to undermine the economic foundations for the exercise of political freedoms. It is one thing for the influencing state simply to distance itself economically from a regime it dislikes and quite another for it to inflict gratuitous economic harm. In such a case, both human rights values and state system values would be disserved and the sanctions should not be considered legitimate.

B. Nonintervention and Conflict Avoidance

Under the traditional view of the nonintervention norm, a strict rule precluding states from involvement in each other's internal politics serves to keep them out of each other's way and thus minimizes the possibility that unwanted political intrusions might breed violence. Undoubtedly, the elaboration of the norm through such means as the Friendly Relations Declaration has discouraged states from resorting to some of the cruder varieties of influence, especially those involving force. At the same time, nonforcible political influence may well be on the increase. This is not necessarily a harmful trend. Indeed, under at least some circumstances, transnational political influence can perform beneficial functions with the potential for promoting values embodied not only in the human rights cluster, but in the state system cluster as well. At first glance, it may not be obvious how foreign political influence could enhance state system values, since those values seem to exclude *prima facie* any efforts by outside powers to shape political developments within a state. But by probing beneath the surface of

¹⁸⁷ See text at note 144 *supra*.

the state system cluster, I hope to show that the interpenetration of states' political systems need not impair, and may even enhance, the values at the heart of that cluster.

The value of conflict avoidance is basic to the state system cluster and, indeed, to the entire international legal order. The terrible destructive capability of 20th-century weaponry, not just in total war or nuclear confrontation but even in what today is euphemistically called "low intensity conflict," only underscores the urgency of preventing breaches of the peace. The highest mission and greatest challenge of international law is to strive in every possible way to prevent or at least mitigate outbreaks of violence. Clearly, the prohibition on the use or threat of force in international relations is the primary legal expression of the value of conflict avoidance. The other state system values of the territorial integrity and political independence of states, sovereign equality, self-determination, and so on, serve to complement the prohibition on the use of force by establishing the ground rules for coexistence and making it less likely that states will intrude upon each other's sensitivities in ways that might escalate into interstate conflict. The elements of the state system cluster, apart from the value of conflict avoidance itself, must be elaborated in ways that will serve, rather than disserve, that most critical value. "Sovereignty" is not an end in itself.

Yet the state system in historical and geopolitical context is laden with features that breed conflict. Of the new states that have emerged from the decolonization movement of the postwar period, many have inherited artificial boundaries from their colonial masters. The boundaries of other states have little rationale apart from the outcomes of bitter wars of the past. Many states, including some that attained independence in the last century as well as some newly decolonized ones, are constricted within an area too small for viable economic or political units in the 20th century. Conditions such as these produce instability and, potentially, interstate conflict. Change must come, but it is of paramount importance that change come about through peaceful, rather than violent, means.

The legal constructs that make up the state system cluster thus stand in uneasy tension with the realities of the contemporary patchwork of nation-states. Rigid insistence that essentially artificial state boundaries be impervious to *nonforcible* political influence may well be counterproductive to conflict avoidance. If this concern is well-founded, the legal structure of state system values must be formulated in such a way as to give effect to their primary functional justification, namely, conflict avoidance.

Nonforcible transnational political influence can serve to promote peaceful change with healthy domestic and international consequences, as long as the influencing state respects the "political independence" of the target, as previously defined to mean respect for the political freedoms of the target state's people. If this is the case, reformulation of the nonintervention norm to permit such influence would be consistent with the ultimate state system value of conflict avoidance. Since influencing and target states are likely to have areas of overlapping interest—economic, social, cultural, ethnic or linguistic, as well as political—it may be preferable to accept transnational

political activities that reflect common concerns on both sides of the boundary than to insist upon artificial political barriers. It is not unrealistic to think that, in the long run, interaction between political forces in different countries could enhance the prospects for peaceful and constructive change, and conceivably even for regional political and economic integration.

V. CONCLUSION

What are the concrete consequences of the reformulation of the nonintervention norm? In general, states would be allowed to encourage political trends in target states through nonforcible techniques not prohibited by the target's domestic laws,¹⁸⁸ unless the nature or scope of the technique in question were such as to infringe upon the ability of the target's people to exercise free political choice. Thus, in the absence of a valid domestic law to the contrary, influencing states could sponsor programs aimed at strengthening political institutions, assist candidates in obtaining media access, aid political parties through financial contributions or other forms of support, and otherwise exercise political influence not inconsistent with the internationally protected political rights of the target's citizens. The requirement that influencing states respect the right of the target's people to exercise free political choice would preclude the use of techniques of influence that, in effect, would impose the influenced state's preferences on people who would otherwise reject them.

Whether any particular technique would produce this effect under given circumstances is a matter for factual determination. Covert actions could well do so if they were on such a scale as to inflate the electoral strength of the beneficiary out of all proportion to genuine popular support; but they might be defensible if not out of line with the customs of the country or with the general level of external support for competing factions. Economic sanctions directed at inducing the target to allow its citizens the opportunity to participate in governance would be acceptable, but sanctions that undermined democratic institutions would not. In any case, the principal criterion for legality under the reformulated version of the nonintervention norm would be the consistency of the conduct with the common theme of the state system cluster and the human rights cluster of values: the principle that the people of each state shall have the opportunity to express political independence through the exercise of free political choice.

The proposed reformulation seeks to locate the nonintervention norm within a broader structure of values embodied by contemporary international law, as well as to bring it into line with current conceptions of acceptable behavior by states. The reformulation thus stresses the relationship of the norm to the principles that underlie the existing system of nation-states and to the evolving body of international human rights law. The norm

¹⁸⁸ For the reasons previously given, any such laws adopted as part of a systematic program of violation of the internationally protected political rights of the target's citizens would not have to be honored.

occupies an independent place in the structure of international law, drawing on both of these sources of values. As reformulated to take account of human rights values, the norm cannot be invoked in favor of the self-perpetuation of resented elites. Yet it is not merely instrumental in promoting international human rights, nor is it limited in its application to issues of human rights concern. Rather, the nonintervention norm should also serve as an essential force for the avoidance of international conflict, by reaffirming the autonomy of each state within its internal sphere and allowing the people of each state to choose freely the extent to which they will accept foreign influence in their political life.

By reformulating the nonintervention norm to legitimize certain widespread patterns of transnational political activity, we acknowledge that external influence is not a priori inconsistent with the values of the state system. To the contrary, transnational influence not only is inevitable, but also, within the limits of the reformulated norm, can be constructive. Provided always that states do not attempt to substitute their own preferences for the natural outcome of another state's internal political dynamic, their exercise of influence within legally defined limits might even be valuable. In the long run, in addition to the possibilities for enhancing human rights, the gathering together of the collective strengths of political forces across state borders might foster conditions for regional integration or otherwise help to overcome the limitations of artificial demarcations between nation-states. And transnational political activity may have a greater role to play in channeling political forces away from violence than has previously been appreciated. History will judge whether outside encouragement of peaceful political change can in some measure help to avoid bloody civil wars and interstate conflicts. If transnational support for a political movement can encourage it to pursue its objectives peaceably, with respect for human life and liberty, rather than forcibly, then there is ample reason to legitimize, rather than prohibit, such support.