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Post-Workshop Report

Towards a Common
Understanding of the Non-
Intervention Principle

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Post-Workshop Report: Towards a Common Understanding of the Non-Intervention Principle¹

Denitsa Raynova, October 2017

For the past two years the European Leadership Network (ELN) has encouraged debates on the differing interpretations of key concepts and norms in Russia-West relations to identify how they affect Euro-Atlantic security. To facilitate this work, ELN hosted two meetings tracing the crucial differences between western and Russian “competing narratives” to try to establish what common ground remains.

The first of these meetings took place in late 2015. It addressed a wide range of issues including respect for sovereignty and territorial integrity of states, the use of force and the principle of non-intervention and self-determination of peoples. The meeting concluded that policymakers should focus on devising the means and methods of managing the process of historical change currently underway in Europe.

To build on the insights and contributions of the first meeting, in June 2017 the ELN hosted a second workshop bringing together nearly 20 Russian and European policy analysts, scholars and OSCE officials for in-depth discussions on one of the key points of contention from the first meeting: the principle of non-intervention in the internal affairs of other states. The premise was to examine how the principle was codified and how it has evolved with participants tracing how this affects the current Russia-West relationship.

This report reflects the main points from that discussion with recommendations on how to clarify and strengthen the non-intervention principle in the 21st century.

Background and development of the principle

When approved, the 1975 Helsinki Final Act allowed for a reassessment of how norms and principles could be applied to established inter-state relations and offered standards by which socio-political rights should be upheld. Set within this framework were the diverging priorities of the two ideological camps, with the USSR emphasising the first six ‘old’ principles, among which was the non-intervention norm, and the West promoting the importance of ‘new’ norms, such as the respect for human rights.

Although the non-intervention principle was already part of international law and

¹ This report is based on deliberations at a private roundtable discussion experts in Vienna on 19 and 20 June 2017. The conclusions contained herein are the sole responsibility of the authors and does not reflect the position of an individual participant or the European Leadership Network.

practice in Europe,² it has since become a key element of customary international law transcending the non-binding provisions of the Final Act.

Defining the non-intervention principle

Central to understanding the principle of non-intervention are the discussions on the distinction between non-intervention and non-interference. Linked, but different in meaning and significance, the two terms are often interchangeably used without universal agreement on whether they carry the same prescriptive and prohibitive force.

Some experts have pointed to a different interpretation, that interference could also include lower intensity activities.³ However, the norm, as established by the Helsinki Decalogue, only refers to *non-intervention* affecting the following: state affairs which fall within their domestic jurisdiction; prohibition of armed intervention or threat of such; and abstention from military, political, economic or other coercion designed to subordinate and assistance to terrorist activities.⁴

The lack of clarity over the language has implications for how the norm is interpreted and applied. The Western perspective incorporated a view that intervention was prohibited, but interference was not. However, in the Russian language version of the Decalogue, the word 'НЕВМЕШАТЕЛЬСТВО' conveys a broader meaning encompassing both non-intervention and non-interference. It therefore carries greater prohibitive force and could also be interpreted to include non-coercive actions as well as threats that are not strictly military.

While the Helsinki Final Act set the conceptual framework, the UN Charter codifies the normative and legal principles of non-intervention and non-interference.

UN General Assembly resolution 2625 (XXV) of 1970 was adopted by consensus (thus declaratory of customary international law) and elaborated for the first time

2 A short elaboration of the non-intervention norm was originally codified by the UN in 1965: <http://www.un-documents.net/a20r2131.htm>. Accessed 21 September 2017.

3 Watts, Sean, Low-Intensity Cyber Operations and the Principle of Non-Intervention (May 5, 2014). Available at SSRN: <https://ssrn.com/abstract=2479609>. Accessed 21 September 2017.

4 The text of the principle reads as follows: '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. They will accordingly refrain from any form of armed intervention or threat of such intervention against another participating State. They will likewise in all circumstances refrain from any other act of military, or of political, economic or other coercion designed to subordinate to their own interest the exercise by another participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind. Accordingly, they will, inter alia, refrain from direct or indirect assistance to terrorist activities, or to subversive or other activities directed towards the violent overthrow of the regime of another participating State.', p. 6

the principle of non-intervention with Member States agreeing to: refrain from the threat or use of force against the territorial integrity or political independence of any State; resolve disputes by peaceful means; not intervene in the matters within domestic jurisdiction, cooperate with each other reaffirming sovereign equality and the right to self-determination.⁵ Further, UN General Assembly resolution A/RES/36/103 of 1981 provides clear instructions on actions considered in breach of non-intervention or non-interference. The framework which it sets out, while not declaratory of customary international law, is detailed and specific about the parameters of permissible state actions, with Member States agreeing to:

- Refrain from threaten or use force to disrupt the political, social or economic order of other States;
- Refrain from armed intervention, subversion, military occupation or any act of military, political or economic interference;
- Refrain from any action or attempt to destabilize the political system;
- refrain from the promotion, encouragement or support, direct or indirect, of any action which seeks to disrupt the unity or undermine or subvert the political order of other States;
- Abstain from any defamatory campaign, vilification or hostile propaganda;
- Abstain from multilateral or unilateral economic reprisal or blockade and to prevent the use of transnational and multinational as instruments of political pressure or coercion;
- Refrain from the exploitation and the distortion of human rights issues as a means of interference.⁶

These obligations are also binding for all members of the OSCE and they reinforce the commitments set out in the Helsinki Final Act.

The contradictory and challenged nature of non-intervention

The imprecision of the non-intervention principle as set out in the Decalogue reflects the nature of the document as it was consciously designed as a compromise between different concepts of *détente*. It incorporated both the Soviet wish for recognition of the political and territorial *status quo* in Europe as well as the Western desire to introduce new processes and mechanisms for achieving political change.

5 UN General Assembly resolution 2625 (XXV) of 1970. Declaration on the Principles of International Law concerning the Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement>. Accessed 27 September 2017.

6 UN General Assembly resolution A/RES/36/103 (1981), Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, <http://www.un.org/documents/ga/res/36/a36r103.htm>. Accessed 21 September 2017.

The loose phrasing required for the agreement to be adopted points to the symbolic rather than practical nature of the Helsinki commitments. More specifically, the non-intervention principle stood against the beliefs of the USSR and the US over their right to influence the affairs of other states in their respective spheres of interest. Nevertheless, by signing up to the Decalogue each side accepted the non-interference principle with the understanding that this could moderate their and others behaviour.

The changing interpretation of the non-intervention principle: making non-intervention compatible with the advancement of human rights

The success of the Helsinki Principles facilitated the Russia-West rapprochement at the end of the 1980s and the early 1990s. This period stands as an example that international norms and law are most effective when there is political willingness in finding common ground on their interpretation. In the spirit of working towards consensus, Russia and the West reached agreement on issues such as OSCE missions in the post-Soviet space (for instance the OSCE mission in Georgia which was established in 1992) while also trying to build support for their own peacekeeping initiatives.⁷ Both sides accepted a degree of interventionism in the affairs of the other. Mutual benefit provided a strong incentive for overcoming their political differences.

The need for OSCE participating States to balance their human rights commitments (the 'human dimension') with sovereignty and the non-intervention principle led to the adoption of the Vienna and the Moscow mechanisms. The Vienna mechanism established procedures for raising questions regarding the human dimension in other participating States. The Moscow mechanism provided further depth by allowing for *ad hoc* expert missions to be established to resolve potential problems. It was based on the agreement that "issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern".⁸

The human dimension framework became a part of a broader agenda of unprecedented intrusiveness into the internal affairs of others. Each aspect of the human dimension was declared 'matter of direct legitimate concern to all participating states',⁹ but

7 See Kropatcheva, E. , The Evolution of Russia's OSCE Policy: From the Promises of the Helsinki Final Act to the Ukrainian Crisis, *Journal of Contemporary European Studies*, 2015 Vol. 23, No. 1, 6–24, <http://dx.doi.org/10.1080/14782804.2014.1001823>. See also <https://ifsh.de/file-CORE/documents/yearbook/english/97/Welberts.pdf> and Hurlburt, Heather. 1995. "Russia, the OSCE and European Security Architecture." *Helsinki Monitor* 6 (2): 5–20.

8 The text of the Moscow mechanism is available here: <http://www.osce.org/odihr/20066?download=true>. Accessed 21 September 2017.

9 'Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE', Third Conference on the Human Dimension of the OSCE, Moscow, 10 September to 4 October 1991, http://www.osce.org/documents/odihr/1991/10/13995_en.pdf. Accessed 21 September 2017.

underpinned by the continued primacy of state-to-state discussions and negotiations in the CSCE/OSCE format.¹⁰ Thus, for all OSCE participating States, neither of the two mechanisms contradicted sovereign rights and only set intervention practices within state jurisdiction.

The point of divergence: qualifying sovereignty

New developments on the understanding of the universality and application of human rights further challenged the scope of permissible intervention in the internal affairs of others. Accountability and respect for human rights were understood to be part of the relationship between the state and an individual, or between a supranational organisation and an individual, and no longer controlled only by the state. Such a reformulation of how fundamental freedoms are to be observed challenged Russia's understanding of, and commitment to, the human dimension and its further application, with consequences for non-intervention.

Further pressure on the application of the non-intervention principle was created with the discourse over humanitarian interventions and the adoption of the Responsibility to Protect (R2P) commitment. It exposed opposing perspectives on fundamental approaches to interstate conflicts. While the West was often compelled to protect its vision of fundamental personal and social freedoms, Russia's position until 2008 prioritised stability, order, sovereignty and non-intervention. More recently, it is the West who places greater emphasis on stability, order, sovereignty and non-intervention (particularly in connection to the crises in Ukraine and Georgia).

The dividing lines between supporting stopping widespread human rights violations, self-determination and intervention in the internal affairs of others, with the ambiguity surrounding the normative frameworks, created dangerous levels of disagreements. More problematically, when intrastate violence occurred in the Russia-West shared neighbourhood, for example in Georgia and Ukraine, these competing views exacerbated the confrontation.

The present-day challenges to a common understanding of the non-intervention principle

An examination of the non-intervention principle shows the significance of political context and circumstances. Perceived challenges to state's interests, disruptions to power balances or challenges to the political *status quo* can become reasons to intervene in the internal affairs of other states despite the norm against it. Threatening stability or the misbalance of forces in one region have been argued to be "legitimate" reasons for breaching the non-intervention principle. When such

¹⁰ Such assumptions, however, did not take into account the normative power of institutions such as the Council of Europe and the European Court of Human Rights whose work eroded the traditional state-based approach to the socio-political rights.

situations occur, for example in Ukraine, they should not be seen as diverging interpretations of the norm, but rather as a subjugation of the law by realpolitik. Any action in that regard is not determined by an ideological platform. Instead it should be considered as an opportunistic behaviour exploiting current vulnerabilities and past interventionist rhetoric. Consequently, the following section will focus on other challenging developments identified by the Vienna workshop participants.

The debate on the norm today

The Helsinki principles still govern political relations between the OSCE participating States. They are not applicable to sub-state actors, nor do they regulate affairs that fall outside of a participating State's jurisdiction. This creates challenges with the application of the non-intervention norm in socio-political processes are affected by modern technologies, disruptive processes and unregulated flows of information.

Elections interference

A destabilising factor affecting relations between Russia and the West have been the accusations over suspected interference in elections, both the US elections last year and the Russian elections in 2011.¹¹ While the text of the non-intervention principle makes no explicit reference to elections, its remit covers direct and indirect activities that breach national and political independence, challenge political stability or change political systems.

Events of the past year and a half highlight the incomplete nature of these prohibitions. The conduct of political campaigns, their direct and indirect support by foreign nationals, external governments, and the funding of parties and lobby groups by foreign states highlight the weakness of the Helsinki sixth principle. In addition, the marketisation of politics including through sponsored political advertisements and private fundraising enterprises has circumvented the non-intervention restrictions. The outcome of an electoral process directly affects a state's political independence and stability, yet the modern-day conduct of elections is not adequately safeguarded against the involvement of foreign actors, and the international normative framework remains incomplete.

Economic sanctions

A further shortfall of the non-intervention principle relates to the use of economic sanctions. A strict interpretation of the language in the Helsinki Decalogue points to treating sanctions as a breach of the non-intervention norm because sanctions are designed to change the conduct of a state (even if implemented outside the state's territory). Coercion, categorically prohibited by the Helsinki Final Act, is at the heart of this punitive practice.

As sanctions can be used for the purpose of avoiding a military response, the

¹¹ The majority of problems reported in connection with suspected involvement of foreign governments have been considered as interferences, rather than interventions.

rationale for resorting to economic coercion could be defended. As sanctions become a more commonly used tool, their normative and legal status vis-à-vis non-intervention should be revisited.

Disinformation

Traditional approaches to the non-intervention norm are being challenged by the diverging narratives on contemporary events and the way these narratives are being shaped and disseminated. International legal obligations prohibit aggressive propaganda and defamatory campaigns abroad. Yet, neither the Helsinki principles, nor the UN legal framework have the capacity to regulate skewed or biased reporting by state-run news organisations that distort facts and realities.

An additional complexity is the media coverage and accounts surrounding interventions and interferences. Actions are justified with the very same principles that the human dimension commitments were meant to protect – a defence of universal human rights. This skews the interpretation of freedoms and responsibilities and has created a precedent for further disinformation campaigns.

Reaching a shared understanding between the West and Russia of what constitutes objective journalistic standards of reporting seems unrealistic. Combined with the variety of information sources across the internet and the difficulty of attributing responsibility for targeted disinformation campaigns, the non-intervention norm becomes even more ineffective.

Cyber threats

Cyberspace is a new domain for state and non-state interaction. The legal and normative frameworks for how cyber threats and interferences should be addressed are vastly underdeveloped. Given the increase in cyber interactions and the growing levels of suspicion and confrontation between the West and Russia, the non-intervention principle becomes a vital instrument to reducing the risks of escalation and further aggressive actions in cyberspace. Yet, beyond the basic agreement that this domain is not exempt from international law, there is little agreement on how specific norms should be operationalised.

The opacity of actions, combined with unclear and potentially deferred consequences of a cyber intrusion, complicates state-to-state discussions about threats. This results in disagreement over what constitutes red lines and non-intervention practices. That is not case however when the targets are critical infrastructure, defence installations and command and control systems. Any cyber breaches affecting the ability of the state to defend its citizens could be responded to legitimately as if they were kinetic attacks.

Currently there is no shared agreement over legitimate, effective non-provocative responses that could be used in the case of suspected cyber intervention or interference. As standalone threats they might not constitute an explicit provocation which would result in armed aggression. However their cumulative effect, coupled with actions in the “real world” and broader mistrust and misperception, could destabilise an already fragile Russia-West relationship.

Conclusions

The OSCE non-intervention norm, together with the other the Helsinki principles reflected the circumstances and political dynamics of their time. **Their greatest value was the political agreement that brought stability and transparency in relations between states in the Euro-Atlantic and Eurasian area.**

As legal and normative regimes developed and domestic policies evolved, this affected the ways in which the principle was interpreted and applied. The 1975 elaboration of the non-intervention norm did not allow for an easy adaptation of its interpretation that can match the transformation of state practices. Nor did it reflect modern social and technological developments. **Because the norm was devised to serve a political rather than a legal purpose, it was ambiguous enough to allow each side room for manoeuvre.** As such, the most important part of its application is political will and consensus on the red lines of permissible activities.

The situation has now deteriorated where the **constructive ambiguity of the past is now no longer sufficient.** It now allows for misinterpretation of the norms. This reinforces the competing narratives that each side uses to explain and justify their actions. The legitimate intrusiveness and the spirit of international scrutiny that were once seen as fully compatible with the non-intervention norm are now replaced with suspicion. Outside involvement is treated as aggressive interference.

Recommendations

The goal of this second analytical meeting was to undertake over one of the most contested Helsinki principles, the non-intervention norm, and shed further light over how its current present application can be better understood and perhaps universalised across the OSCE space. The exchanges during the meeting highlighted the main differences in interpretation of the norm. Yet, they also allowed for the identification of common ground for bridging the diverging perspectives.

One way of overcoming the current animosity and tension in the Russia-West relationship is to **reinforce the concept of state sovereignty.** Rearticulating that each state in the Euro-Atlantic space recognises this inherent right and acknowledges the equality with the rest could be useful to allay fears of constant outside intervention.

However, there is insufficient political capital for such a declaration and civic pressure for holding other countries accountable may impede such a move. More importantly, it would be seen as a reversal from the achievements of human dimension.

It was also suggested that a 'Paris Charter 2' meeting, or meetings, could be held to conduct **discussions on the application of the non-intervention norm alongside a revision of the divergent interpretations of all other Helsinki principles.** The aim would be to find a new consensus and address the current challenges and differences of interpretation, particularly over the use of modern technologies and trans-national flows of information and people. However, such initiatives are unlikely to affect the state practices. Nor are they fully able to address the implications of the

interconnectedness and fluidity of modern social and technological developments.

This new phenomena exposes common vulnerabilities of all states and as such offers an opportunity for future talks on stability and greater transparency. A final recommendation is to **focus on shared weaknesses which could be the initial necessary step for engaging in new negotiations**. The aim of such talks would be to address these challenges all OSCE participating States regardless of their political affiliations, for example cyber-terrorism, cyber-crime or interventions by non-state actors. Other examples are discussions on new or expanded risk reduction and confidence and security measures which could tackle common threats and help prevent miscommunication or unintended escalation of accidents and incidents. These could include the modernisation of the Vienna Document and the development of a status-neutral approach of the Open Skies Treaty (OST).¹² Finally, further clarity over the circumstances in which economic sanctions are considered legal could also be helpful in addressing the diverging narratives on non-intervention.

12 For further details, please see: Lukasz, K (2017), Making conventional arms control fit for the 21st century, European Leadership Network, Available here: http://www.europeanleadershipnetwork.org/making-conventional-arms-control-fit-for-the-21st-century_5136.html; Frear, T (2017) Open Skies: A Status Neutral Approach for Georgia and Russia, European Leadership Network, Available here: <http://www.europeanleadershipnetwork.org/open-skies-a-status-neutral-approach-for-georgia-and-russia-5034.html>. Accessed 29/09/2017

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