

## Information Operations and International Law

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States have relied on information operations as a way to advance their interests in lieu of more direct means such as armed conflict or economic pressure. An information operation is “the deployment of digital resources for cognitive purposes to change or reinforce attitudes or behaviors of the targeted audience in ways that align with the authors’ interests.”<sup>1</sup> Information operations can use deceptive or open means to influence the targeted audience to adopt the authors’ goals.<sup>2</sup> These information operations breach the international legal principles of non-intervention and sovereignty, and thus are illegal in nature. One example includes Russia’s invasion of Ukraine, dating back to 2014. The Russians extensively used information operations against Ukraine as a way to divide and confuse Ukrainians, and their western partners. This blog will examine how information operations can violate the international legal principles of non-intervention and sovereignty.

The principle of non-intervention reflects “[t]he notion that states are entitled to a domaine reserve, within which they are entitled to freedom of action unfettered by international law, is uncontroversial.”<sup>3</sup> In other words, “[non-intervention] forbids all states or groups of states to” use coercive behavior, “either directly or indirectly in internal or external affairs of other states.”<sup>4</sup> The principle of non-intervention is a widely recognized principle of international law, however, there is some difficulty in nailing down exactly what constitutes coercive behavior violating the principle of non-intervention. This blog will use the interpretation of coercion “that is (1) conduct-based and (2) focused on the employment of wrongful methods that may foreseeably place a state in a coerced position, compelling it to behave in unwanted ways.”<sup>5</sup>

One of the defining principles of international law is the principle of sovereignty. Sovereignty allows a state to have exclusive legislative, executive, and judicial control over its territory.<sup>6</sup> Some countries, such as Canada, see the principle of sovereignty as a rule of international law.<sup>7</sup> France, for example, sees “any effects produced on French territory by digital means by a State organ” as a violation of its sovereignty.<sup>8</sup> This is a broad application that construes nearly any digital action taken against France as a violation of the rule of sovereignty. Other countries, such as the United Kingdom, see sovereignty as a principle such that a breach of

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<sup>1</sup> Tsvetelina van Benthem, Talita Dias & Duncan B. Hollis, *Information Operations under International Law*, 55 VAND. J. Transnat’l L. 1217, 1217 (2022).

<sup>2</sup> See Herbert Lin & Jackie Kerr, *On Cyber-Enabled Information/Influence Warfare and Manipulation*, in THE OXFORD HANDBOOK ON CYBERSECURITY 251, 254 (Paul Cornish ed., 2021).

<sup>3</sup> Mohamed Helal, *On Coercion in International Law*, 52 N.Y.U. J. INT’L L. & POL’Y 1, 65 (2019).

<sup>4</sup> *Nicar. v. U.S.*, 1986 I.C.J. 1 202

<sup>5</sup> Tsvetelina, *supra* note 1, at 1259.

<sup>6</sup> Tsvetelina, *supra* note 1, at 1262.

<sup>7</sup> See *International Law Applicable in Cyberspace*, Government of Canada, <https://www.international.gc.ca/world-monde/issuesdevelopementenjeuxdeveloppement/peacesecurity-paixsecurite/cyberspacelawcyberespace-droit.aspx?lang-eng> (Apr. 22, 2022) [<https://perma.cc/968R-A95G>] (archived Aug. 24, 2022).

<sup>8</sup> French Position on International Law Applications to Cyberspace, *supra* note 212, at 3.

sovereignty is not necessarily a breach of international law.<sup>9</sup> The differences in these countries' interpretations highlight the international debate on sovereignty and its role in international law.

These two principles reflect how countries may threaten international order by conducting information operations. This paper will adopt the positions of the Canadian and French governments which see sovereignty as a rule of international law that can be breached by digital means, such as information operations. For example, information operations that spread misinformation about a pandemic which leads to an increase in the chance an individual becomes sick, could be a breach of the "territorial effect" element of the rule of sovereignty as adopted by the French. This example highlights how information operations can have a tangible impact on the people of a country and breach that state's sovereignty.

Information operations are a central part of Russia's invasion of Ukraine, dating back to 2014.<sup>10</sup> These operations are designed to divide Ukrainians, erode western support, and unite the Russian people against Ukraine. One of the core goals of the information operations was to cultivate anxiety and fear in Ukraine in the wake of the 2014 Euromaidan revolts and Russia's annexation of Donetsk, Luhansk, and Crimea.<sup>11</sup> Russia utilized information operations to make Ukrainians, particularly Russian speaking Ukrainians, "feel insecure about [their] future and to fear Ukraine's economic instability."<sup>12</sup> This operation sought to sow discord in Ukraine about the Ukrainian government, and influence the Ukrainian people to oppose efforts that strengthen ties between the European Union (EU) and Ukraine. Furthermore, early Russian information operations targeting Ukraine emphasized the idea that Ukrainians and Russians are "one nation united under the Russian world."<sup>13</sup> Russian propagandists referred to Ukrainians as "malorusi" (little Russians), which showcases Russia's "patronizing, 'paternal' attitude towards Ukraine."<sup>14</sup>

These two examples highlight how Russian information operations against Ukraine are violating principles of non-intervention and sovereignty. Information operations that attempt to manipulate Ukrainians about whether to align themselves with the Western world or with Russia, violate the principle of non-intervention. Russia is attempting to intervene in Ukraine's internal affairs by shaping the minds and opinions of Ukrainians. This conduct violates the definition of coercive behavior violating the principle of non-intervention. Russia employs wrongful methods to compel Ukraine to behave in ways it would not have without Russia's coercive behavior.

Furthermore, Russia's actions under the French definition of the rule of sovereignty would constitute a breach of said rule. Information operations that used social media or other digital means to coerce the Ukrainian people into opposing efforts to strengthen ties between the West and Ukraine, produced an effect. These operations fostered mistrust towards the government in Kyiv and "cultivate[d] fear specifically in the Russian-speaking part of East Ukraine."<sup>15</sup> This is clearly a breach of the rule of sovereignty set forth by the French. The mistrust and fear spread by

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<sup>9</sup> Tsvetelina, *supra* note 1, at 1263

<sup>10</sup> NATO STRATEGIC COMMUNICATIONS CENTRE OF EXCELLENCE, *Analysis of Russia's Information Campaign Against Ukraine* (2015), at 4.

<sup>11</sup> *Id.* at 17.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 18.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 17.

Russia in the Donbas was instrumental in Russia's 2014 annexation of Donetsk, Luhansk, and Crimea.<sup>16</sup>

Russia's use of information operations in the opening stages of Russia's war against Ukraine showcase the tangible impact that information operations can have on a country. The historical record shows that "[p]rior to taking aggressive action on the ground, the Russian government works intensively with the public information space to prepare public opinion for the steps to be taken."<sup>17</sup> This demonstrates how impactful information operations are and how they can shape a country. Russia uses these operations to divide and weaken a country, violating the principles of sovereignty and non-intervention. Russia is not alone in their propensity to use information operations against a rival country. It is important to ensure there are legal frameworks in place to hold a country accountable when they meddle in the internal affairs of another.

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<sup>16</sup> *See id.*

<sup>17</sup> *Id.* at 33.