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Response to Incitement: Call for Algeria Sanctions (International Legal Analysis)

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ABSTRACT

The consequences of the war in Ukraine have reached beyond Europe, significantly impacting regions such as the southern Mediterranean. Within this geopolitical context, Algeria—although maintaining a neutral stance in the conflict—is often perceived by Western actors as a longstanding ally of Russia. This perception has triggered political reactions in the United States, particularly among a minority group in Congress led by Representative McClain, who has suggested the possibility of imposing sanctions on Algeria. This article explores the legal nature and potential implications of such a proposal, questioning its validity and examining its alignment with international law. In doing so, we aim to assess whether the proposed measures fall within the permissible boundaries of unilateral coercive actions or constitute an overreach with no solid legal foundation. Moreover, this paper critically evaluates the broader impact of the report on regional stability, arguing that it may contribute to escalating tensions in an already fragile geopolitical landscape.

INTRODUCTION

The war in Ukraine has revealed some weaknesses and even some disorder in the joint American-European reaction. It is above all a question of the somewhat soft approach of the Franco-Italian German trio compared to its hard corollary from the USA, notably under the auspices of the former Biden administration, the United Kingdom and the rest of the EU, especialy the eastern bloc of Europe, such as Poland and the Baltic countries. About this war, its beginning was marked by condemnation of the act of aggression coming from Russia and altering the sovereignty of a UN member country (UN/GA/12407, 2 March 2022).[1] And subsequently, some authors tried to justify the American interference by looking for some legal arguments in this sense, such as the reference made to the rules of *jus ad bellum.*[2]

In addition, and still within the framework of international law, there was also the thesis of self-defense by Ukraine against Russian military intervention, advanced in the context of general interference from the West. However, the problem that remained here was that supplying arms to Ukraine would still be inconsistent with the principle of neutrality of States during an armed conflict, knowing full well that Ukraine is not part of NATO and therefore is not protected by this politico-military organisation.[3]

Beyond the American-European reaction and that of the members of NATO, it is perhaps better to return to the meeting of the general assembly of the UN aforementioned, where a lot of States abstained from the condemnation explicitly from Russia. Among these countries, there are global economic forces like China and India, and other fluctuating medium-sized regional powers like Iran and even Algeria in the southwest of the Mediterranean. To tell the truth, we are talking about countries with a non-Western culture. About Algeria, it started to be affected by the war in Ukraine through the energy crisis. Indeed, the Russian economic counterattack, consisting of blocking the gas lines (Nordstream 1 and 2) supplying the EU Member States, has pushed them towards other suppliers such as Algeria. It should be noted that this country is already linked to the EU and its Member States by the association agreement,[4] especially article 61 (energy and mining), putting the development of gas transit among the objectives of cooperation in the field of energy and mining. Thus, the word gas is cited 24 times as a product benefiting from the preferential rights granted by the Community to products originating in Algeria.

Following the aggravation of the energy crisis, the United States of America and through its ex-Secretary of State for Foreign Affairs Antony Blinken who visited Algeria, asked the authorities of this country to increase its exports gas to EU Member States.[5] For its part, Algeria, which is the third supplier of gas to the EU, has responded by these technological incapacities to double its production, although this country has reassured France and before it Italy to do its best to partially remedy the Russian part in the market of these two EU member states. Despite this, soon after Mr. Blinkin's return was accompanied by an official non-executive approach from a parliamentary minority arguing for the imposition of some sanctions to the detriment of Algeria, and

1 United Nations General Assembly. (2022). UN/GA/12407. Eleventh Emergency Special Session, General Assembly Overwhelmingly Adopts Resolution Demanding Russian Federation Immediately End Illegal Use of Force in Ukraine, Withdraw All Troops.

2 "...it is important for the United States to follow the rules of jus ad bellum–defined in Article 51 of the UN Charter as a State using force against another State with the consent of the State being invaded–when specifying the amount of force they will use against Russian opposition". Qiang, A. (2022). The Russian Invasion of Ukraine: Examining the Legality of US Interference. Columbia Undergraduate Law Review. Available at: <https://www.culawreview.org/journal/the-russian-invasion-of-ukraine-examining-the-legality-of-us-interference>.

3 For arguments trying to resolve this inconsistency, see: Heller, K.J., Trabucco, L. (2022). The Legality of Weapons Transfers to Ukraine Under International Law. Journal of International Humanitarian Legal Studies, Brill ed. p. 12. Available at: <https://brill.com/view/journals/ihls/aop/article-10.1163-18781527-bja10053/article-10.1163-18781527 bja10053.xml>.

4 Council of the European Union. (2002). Council Decision 6786/02 on the signing, on behalf of the European Community, of the Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part. Brussels.

5 Apart from the economic nature of Mr. Blinken's visit, this did not prevent the American Secretary of State for Foreign Affairs, who visited Algeria, from trying to convince the Algerian authorities to reduce their degree of cooperation with Russia and in the meantime to guarantee the supply of gas to Europeans.

which we will expose the content with more comment (I). Then, we will criticize through legal arguments this same report, tending to intensify the tensions that risk generalizing potential armed conflicts in the southwestern part of the Mediterranean Sea (II). Finally, we are looking for a few arguments along the lines of advocating for the protection of medium-sized countries. We specify that these are located at the gate of a great power or a military alliance (III).

1. ALGERIA SANCTIONS: MCCLAIN'S BIPARTISAN CALL AGAINST ALGERIA

As a reminder of the report calling for the imposition of economic sanctions against Algeria, we quote that on September 30, 2022, twenty-seven U.S. lawmakers led by Republican congresswoman Lisa McClain took this initiative; hence, we wonder about the legal nature of the said report and especially about its scope. At first glance, it is an internal non-binding text that does not reflect the majority of the votes of the American Congress, but more or less, it approaches the legal nature of a recommendation. Recommendations allow an institution or body to make their views known and to suggest a line of action without imposing any strict legal obligation on those to whom the recommendation is addressed, who may be high-ranking state officials, like the US Secretary of State for Foreign Affairs in our case, or other institutions or citizens. We will present this definition following an analogy made to a few articles of the Treaty on the Functioning of the European Union (TFEU).[6] It seems reasonable to us to make this analogy given that the United States of America is a federal state and that the EU, which tends more and more towards integration, is therefore approaching the model of a federation of states.

As for the content of this appeal, it emphasizes the American federal law called Countering America's Adversaries Through Sanctions Act (CAATSA),[7] and is intended for countries that are enemies of America, or even countries cooperating on a military level with anti-American countries or organizations. It should be noted that Algeria was not the first country cited in such a report because Iran, North Korea, and even states supposedly considered good allies were the subject of similar calls, and this is the case with Turkey and Egypt, which bought S-400 anti-missiles and Sukhoi-35 fighter planes, respectively, from Russia.

Russia was really the subject of sanctions since 2018, i.e. even before its military intervention in Ukraine, these sanctions came as a result of Russian cyber-activities. However, Russian cyber attacks are part of its armed operation in Ukraine even if they are criticized in terms of their inability or insufficiency from american and Western point of view,[8] and of which we do not always share the same opinion.

If we insist so far on Russia it is to understand what link maintains the impact of the operation carried out by this country in Ukraine with the elaboration by some members of the US Congress of the report which calls for sanctioning Algeria in reference to CAATSA and especially for see further if this is sufficiently justified legally, knowing well that we are within the framework of the internal American legal order and not necessarily with ref-

6 Art. 288 (ex Article 249 TEC): To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions. Recommendations and opinions shall have no binding force. See for more details and explanations on the recommendations the consolidated version of the TFEU, in particular Article 288, in Official Journal of the European Union (ex-EC), C 326/47, 26.10.2012.

7 On August 2, 2017, US President Donald Trump signed into law the "Countering America's Adversaries Through Sanctions Act" (Public Law 115-44) (CAATSA), which among other things, imposes new sanctions on Iran, Russia, and North Korea. On this law and its application against Russia, see generally: Galbraith, J. (2018). Executive Branch Imposes Limited Russia-Related Sanctions After Statutory Deadlines. American Journal of International Law , Vol. 112 , Iss. 2, pp. 296 – 303.

8 According to the American view, "Russia does not have a true cyber command. While the Presidential Administration and the Security Council coordinate cyber operations involving various agencies and non-state or quasi-state actors, they are not a cyber command in the US sense. There is no clear delineation of operational responsibility and no uniform system of reporting and accountability. Rather, Russia's cyber-active agencies and actors are governed through a largely informal system of relationships in which political expediency may trump operational efficiency". Soldatov, A., Borogan, I. (2022). Russian Cyberwarfare: Unpacking the Kremlin's Capabilities. Available at: <https://cepa.org/comprehensive-reports/russian-cyberwarfare-unpacking-the-kremlins-capabilities/>.

erence to and in accordance with international law.[9] It is therefore to CAATSA text that we must return to seek out and examine the American arguments which revolve around Algeria's military cooperation with Russia. This cooperation described as strategic and materialized by a bilateral international agreement but it goes back to a period preceding the Russian war in Ukraine, so it is a real Algerian-Russian partnership and/or association which has several facets, that is to say it covers several military aspect and other fields,[10] hence the question on the real causes of the advent or rather the elaboration of the said report.

We can say that American fears do not necessarily stem from Algerian-Russian military cooperation alone because Algeria is located in an area traditionally considered to be dependent on NATO's field of maneuver, and Algeria does not constitute a threat to this politico-military entity or its member states. On the other hand, the said report of the American Congress intervened to put pressure on Algeria and to prevent it from joining BRICS, in particular because this country has explicitly embarked on this path. For Algeria, this initiative is only a means of protecting itself against the excesses of the Arab spring which has overwhelmed a lot of countries belonging to the same region and consequently the Algerian ambitions to integrate the BRICS have no visible link with the Ukrainian crisis, nor with the attempt to weaken the US dollar, nor for that matter contribute to the new theory of the multipolar world. So to prevent any degradation in Algeria, such as that experienced in Libya, Syria, or in the rest of the countries, which have experienced instability due to the external conspiracy of the Arab Spring, Algeria is required to reflect on enhanced multi-faceted cooperation with the BRICS. A balanced association that departs from the Euro-Mediterranean model and takes into account the Algerian-Russian strategic partnership, which reflects a confirmed geostrategic agreement model. This, without neglecting, of course, the history, which preceded this partnership on the legal and political levels.

To clarify this situation, we talk about Algeria as a third country to BRICS, but also and above all a medium-sized regional player, which maintains good historical relations with the member states of this entity. We aim here first Russia, then China, South Africa, and India, without neglecting Brazil. Although we try to take advantage of bilateral Algerian-Russian relations in view of their visibility. Moreover, it seems reasonable to take the Algerian-Russian cooperation forward as a first step towards the association between Algeria and BRICS, without harming Western interests. In a legal context, access to a possible association agreement between Algeria, on the one hand, and BRICS and its member states, on the other hand, is justified by the current situation in this North African country. Indeed, Algeria is linked to the European Union and its member states by the Euro-Méditerranéen Association Agreement. It should be noted that the outcome of this international convention followed the weakening of Algeria during the black decade (from 1992 to 2002). This has weakened the Algerian position in negotiations with their European counterparts since the start of the Barcelona process, known as the 5 + 5 jargon. The result was the ratification of an agreement that did not serve Algerian interests well, knowing full well that it imposes only European values on the Algerian side and that in a single direction. This embarrassing international conventional situation which makes any Algerian attempt to get closer to Brics minimal is doubled by the degrading security situation in neighboring Libya, triggered by France, supported by NATO and aggravated by Turkish interference, also a member of the NATO. Coming to this serious stage of the attack on the principle of state sovereignty, Algerian security fears from certain countries have finally become legitimate. In this sense and to better express this situation, "The realities of international relations show that this practice was manifested in the inability of the U.N. Security Council to prevent NATO military intervention in Libya».[11] Consequently, a minimum of rapproche-

9 Ventouratou, A. (2022). Litigating Economic Sanctions. The Law & Practice of International Courts and Tribunals, Bill Nijhoff ed., p. 593.

10 Algerian Presidential decree N° 06-129 of April 3, 2006 ratifying the agreement between the Government of People's Democratic Republic of Algeria and the Government of Russian Federation on Trade, Economic and Financial and Debt Processing of the Algerian Republic Democratic and Popular towards the Russian Federation in respect of the previously granted, as well as the related protocol, signed in Algeria on 10 March 2006. Official Journal of the People's Democratic Republic of Algeria N° 21, April 5, 2006.

11 Asadov, B., Gavrilenko, V., Nemchenko, S. (2021). Brics in

ment of Algeria with BRICS seems essential, in particular that certain countries of this entity, such as Russia and China, had a joint reaction on any refusal of foreign interference whatsoever in the Algerian neighborhood. On the other hand, we present this idea of a common policy with the reservation because even within the member countries of this organization, the geostrategic external policies do not always aim at the subject of unanimity.[12]

For what has been said, can we consider the report made by a minority of the American parliamentarians in the future to have consequences similar to those of the Russian decrees by which the Russian Federation considered Donbass as part of its national territory on the eve of its annexation by military force?

2. LEGAL CRITICISM: NATO SOUTHWEST MEDITERRANEAN CONFLICT INCITEMENT

First on board, it is known that the organization of international society is carried out by supra-national legal texts, although in reality, there is no real authority that takes precedence over that of the States. This means that the international institutions are found in a juxtaposed and non-hierarchical pattern and that their creation is only the result of an agreement between States, which explains the existence of a kind of solidarity between these international institutions, despite of their vocation, whether universal or regional.[13] To tell the truth, the application of an international text issued by an organization is the consequence of a state's consent, which is reflected in the classic process of the signature, then the ratification of the same legal text. But what about a national text or judgement coming from an institution of a purely national nature and which pleads for the extra-territorial effect of a domestic law or decision?

This question on which we try to answer, concretizes the practical aspect of our article; in particular, that the writers of the report, coming from an American parliamentary minority guided by Mrs. Lisa McLaine, want to give it an extraterritorial effect. Specifically, they want to subtract international sanctioning authority by viewing it as part of a rather American national sphere. Before going any further with this analysis and watching over its consequences on the international scene, we prefer to pause before a few antecedents, whether it be a legislative or judicial act. On the history of this practice, it is important to examine some examples like the arrest warrant issued by a Belgian judicial court against a former senior official of the Democratic Republic of Congo, whose name is Yerodia.[14] The negative point in this case, which was decided by the International Court of Justice (ICJ), consists in the absence of any detail on the legality of the universal jurisdiction recognized by a Belgian national court. The reasoning of the ICJ was content to observe that this question was not contained in the final submissions of the Parties.

Even if the ICJ showed rigor when it attributed more importance to the primacy of the rules of international law to the detriment of their corrolaries of domestic law (Belgian legal rules relating to universal jurisdiction in criminal matters), some authors were a little skeptical and saw at the time in the position of the high international court a kind of hampering the development of international criminal law.[15]

International Legal Space: Humanitarian Imperatives of International Security. Brics Law Journal, Vol. VIII, Iss. 1, p. 17.

12 Asadov, B., Gavrilenko, V., Nemchenko, S., op. cit, p. 21.

13 Knudsen, T.B. (2019). Fundamental Institutions and International Organizations: Solidarist Architecture. International Organization in the Anarchical Society. The Institutional Structure of World Order, p. 175.

14 The Court found that the issue and international circulation by Belgium of the arrest warrant of 11 April 2000 against Abdulaye Yerodia Ndombasi failed to respect the immunity from criminal jurisdiction and the inviolability which the incumbent Minister for Foreign Affairs of the Congo enjoyed under international law; and that Belgium must cancel the arrest warrant. We recall that the International Court of Justice (ICJ), principal judicial organ of the United Nations, delivered its Judgment in the case concerning the arrest warrant of 11 April 2000. ICJ, Democratic Republic of the Congo v. Belgium, 14 February 2002. We recall that the DRC's request before the International Court essentially maintained that the Belgian mandate had been issued in flagrant contradiction to a decision of international law recognizing absolute immunity for the benefit of a Minister of Foreign Affairs as accepted by the jurisdiction of the Hague. Zuppi, A.L. (2003). Immunity v. Universal Jurisdiction: The Yerodia Ndombasi Decision of the International Court of Justice. in Louisiana Law Review, vol. 63, n° 2, p. 309.

15 Boister, N. (2002). The ICJ in the Belgian Arrest Warrant Case: Arresting the Development of International Criminal Law. Journal of Conflict and Security Law, Volume 7,

On this same idea of universal jurisdiction that Belgium was criticized for, this country was finally convinced to remove this notion from its national legislation, and this time after a diplomatic incident with Israel following a Belgian attempt to try Ariel Sharon for crimes under international criminal law in accordance with this universal jurisdiction.

If Belgium ended up admitting the primacy of international law by renouncing the rules of universal jurisdiction in its national legislation, is this the case for other countries, especially Russia and the United States of America?

The answer is of course negative and we argue our opinion by the elaboration of the report coming from a minority of the members of the American Congress and which is the subject of this study, knowing well that Algeria counted until a period recently a trustworthy ally for the United States in its quest to fight terrorism. Yes, in this sense, the United States, which once drew up an anti-terrorism law (Patriot Act),[16] has completely changed its position towards new adversaries and always by legal means, which are legislative texts and reports.

In a similar step, the Soviet Union, which defended the principle of the *proletariat* in Eastern Europe and Afghanistan, this time preceded its war in Ukraine by a new legislative legal step consisting of considering the Donbas sheltering a strong Russian community as a territory divided between two independent republics of Ukraine. Again, Russia and by presidential decree, annexed Donbass and two other regions of southern Ukraine.[17]

In response, the United States, which has been quick to provide military support to Ukraine, has spared no legislative effort to put pressure on Algeria, Russia's strategic ally located at the southwestern gate of the Mediterranean.

Have legislative texts become a means of instrumentalization and proliferation of wars?

Before answering this question, we will refer to two internal legal texts, one of which is American, the other is Russian.

Unfortunately, the condemnation of this practice, which results in the attack on the sovereignty of a member country of the United Nations by another more powerful one, and which is carried out through a presidential decree or by internal legislation, has not been criticized as strongly as towards Russia.

To clarify this observation, until now, the international society, which is very busy with the war in Ukraine and the gas crisis resulting from Russian countermeasures towards the EU, has considerably neglected the irresponsible practices of the Biden administration, which tolerates the steps aimed at sanctioning some countries. These are, of course, the countries that have traditionally counted in the pro-Russian camp, and this is the case of Algeria, which continues to be subjected to pressures of this type and of which the aforementioned report, directed by the congresswoman Lisa Mac Laine, is proof.

In this regard, if the tracing of the provisions and principles of international law has been done until now to the detriment of the Third World countries, from now on, the competition between the West and the new emerging Eurasian component will take the lead in changing this state of affairs. All that we have mentioned about the indifference of the leading states of the international community towards the UN Charter and those who prefer to take refuge in internal legislative or executive practices is only a maneuver to prolong conflicts

Iss. 2, p. 293.

16 "The Trump Administration also took unprecedented steps to exclude immigrants based on their (non-Christian) religious beliefs—whether those beliefs were sincerely held or merely imputed by DHS officials based upon the immigrants' race, ethnicity, or country of origin. This Section will discuss the two principal mechanisms used by the Trump Administration to bar nonChristians from entering the United States. First, it will address the so-called "Travel Bans". Then, it will describe the decimation of the United States' longstanding commitments to refugee resettlement". Elias, S.B. (2021). Law as a Tool of Terror. Iowa Law Review, Vol. 107, Iss. 1, p. 18.

17 Just after the start of the Russian military operation in Ukraine, the two professors of international law Oona Hathaway and Scott Shapiro abusively criticized Russian military activities in Ukraine, without any reference to the Minsk agreements, saying: "But while the invasion ordered by Russian President Vladamir Putin is in direct violation of the most fundamental principle of the international legal order—the prohibition on the use of force—it's too early to write the obituary of the post-war international system". Hathaway, O., Shapiro, S. (2022). On International Order. Law Faculty Offer Analysis of Russia's Invasion of Ukraine, Yale Law School. Available at: <https://law.yale.edu/yls-today/news/law-faculty-offer-analysis-russias-invasion-ukraine>.

in the world. In reality, the law has become a mere means of doing things for the great powers that are fighting in a world that is slowly transforming from monopolistic to multipolar.

Unfortunately, the legal follows the political, and thus the failure of certain legislative, executive, or even judicial bodies in a given country to respect the provisions of international law remains insufficient to justify the drafting of the report calling for sanctions against Algeria. It is thus a competition between the American theory of the intensification of conflicts traditionally supported by the old fox Kisenjer and that of a multipolar world defended by Dugin, who remains faithful to the return of the polar balance. We note that this theory has been strongly supported to explain the proliferation of conflicts in the world, but also been framed by other authors. Among these, we cite Avi Cober, who has attempted both to assess the crystallization of low-intensity theory and to consider how to bridge the gap between the importance of low-intensity conflict and hedging theory, if any.[18]

The explicit link between the report written on the initiative of Ms. Lisa McLaine in collaboration with other members of the American Congress, on the one hand, and the theory of low-intensity conflict, on the other, testifies to a practice that has become common and which is the politicization of the law. Unfortunately, the law has become a means that serves political ends, and we find this normal as long as the powerful States deviate more and more from the fundamental principles of international law, such as are enshrined in the Charter of the United Nations. As a result, we move from the internationalization of domestic law to the nationalization of international law through sanction by domestic texts, under the influence of a state policy within a powerful country.

To illustrate this situation which consists in the nationalization of international law, i.e. settle transnational, or even international, conflicts or disagreements between traditional entities of international law by the provisions of domestic law (legislation or parliamentary report as in our case), we insist on the qualification of the term "military activity" in some States, whose same operation is considered an act of war or even an actual invasion, violating the sovereignty of the invaded country.

The occupying or invading state most often pleads for military activity to the detriment of war,[19], which shocks people's minds. By way of illustration, the Americans adopted the jargon "military activity" in Afghanistan, Iraq, Syria, and for any armed operation carried out by this country. And yet, the legal trace is not completely ruled out. The conception of military activities stems from the lack of precision of the international standard. Therefore, once it fails international compromise, the obligation of precision unfortunately falls on states. And it is fulfilled on an intra-state level, through a national law, for example, the American law on *"Authorization for the Use of Military Force"*. Since 2001, the Americans have considered any Islamist military group located abroad as a threat that requires American military activity on the territory where this militia is located.[20] According to this purely state authorization, the legal margin is national through the anticipated control of legal conformity of the military intervention. Similarly, the Russian Parliament, after recognizing the self-proclamation of the two republics of Donetsk

18 Kober, A. (2002). Low-intensity Conflicts: Why the Gap Between Theory and Practise? Defense & Security Analysis, Vol. 18, Iss. 1, p. 15.

19 "Derived from the wording of Article 42 of the 1907 Hague Regulations, occupation may be defined as the effective control of a foreign territory by hostile armed forces. It is not always easy to determine when an invasion has become an occupation. This raises the question whether or not the law of occupation could already be applied during the invasion phase. In this regard, two main positions are usually put forward in legal literature. Generally it is held that the provisions of occupation law only apply once the elements underpinning the definition set out in Article 42 of the 1907 Hague Regulations are met. However, the so-called 'Pictet theory', as formulated by Jean S. Pictet in the ICRC's Commentary on the Geneva Conventions, proposes that no intermediate phase between invasion and occupation exists and that certain provisions of occupation law already apply during an invasion". Zwanenburg, M., Bothe, M., Sassoli, M. (2012). Is the law of occupation applicable to the invasion phase? International Review of the Red Cross, Vol. 94, Iss. 885, p. 29.

20 "Thus, an "associated force" is not any terrorist group in the world that merely embraces the al Qaeda ideolo-gy. More is required before we draw the legal conclusion that the group fits within the statutory authorization for the use of military force passed by the Congress in 2001". Johnson, J.C. (2012). National Security Law, Lawyers, and Lawyering in the Obama Administration. Yale Law and Policy Review, p. 146. Available at: <https://law.yale.edu/yls-today/news/qa-professor-hathaway-presidential-war-powers-and-war-terror>.

and Lugansk by confirming presidential decrees, decided to intervene on Ukrainian soil. A struggle that aims to isolate the Azov brigades of the Ukrainian far right, supported by mercenaries and Western military experts from NATO, according to the Russian version. However, the interpretation, or rather the control of this Russian national law, like its American predecessor, should not be exclusively national. The effects of the said intervention occur on a supranational level, where the interest of the international community is not necessarily preserved. And therefore, a strict minimum embodied in international judicial control seems essential. We are in the presence of the judicial assessment of the military act by an international body, such as the International Court of Justice.

Let's go back to Mrs. Mc Lain's report, it fits into the context of putting pressure on Algeria, which adopted a vision close to Russia and China and which implicitly sees in the Russian intervention in Ukraine a simple military activity, whereas it saw in the American operations carried out in Moslem countries an invasion violating the territorial integrity of these countries in reference to the UN Charter.

Beyond law and politics, it may be necessary to go back to the history of conflicts to understand the source of each vision. For the American and Western vision on the Russian military intervention in Ukraine, Mr. Timothy Snyder and although he recalled the various Russian attempts to annex Ukraine, strongly denied the saying that history repeats itself, because he wanted to give a new essence to human action to change the real datum of the invasion.[21] However, this does not prevent us from borrowing the same historical touch from Mr. Snyder to explain the elaboration of the American report wanting to condemn Algeria and subsequently impose economic sanctions against it, with reference to CAATSA. Unfortunately, this vision testifies to the continuity of the difficult and complex relations between the West and Algeria, with a few rare exceptions during short periods under the Kennedy (JFK), Clinton and Trump administrations and whose American tendency was based on the pacification of relations by preserving the American economic interest above all, unlike the Biden administration which opts for radical armed solutions.

Similarly, the Russian or even Eurasian vision sees in the European and Western intervention in the Arab world, including Algeria and North Africa, a real invasion destroying the religious values of these Muslim-leaning countries.

As a result, the US parliamentary report against Algeria conceals an ideological and historical conflict between the West, on the one hand, and Russia and its allies, on the other, although it intervened in legal form. Consequently, a possible American or North Atlantic military action against Algeria will be treated by the member states of NATO as a simple special operation for the democratization of this country. On the other hand, this same act will surely be qualified as an invasion violating the sovereignty of this country according to the legal reasoning of Russia, China, and the other allied states of these two countries. In short, in all these hypotheses, Algeria, like Ukraine and formerly Libya, Syria, Yemen, Afghanistan, Nicaragua, Vietnam, etc., needs stronger protection under international law. This need remains urgent, especially since these countries constitute border areas of conflict of interest between the East and the West.[22]

Still in the context of explaining the drafting of a report, the initiative of which dates back to an American parliamentary minority led by Ms. Lisa McLaine, it is important to insist on the fact that the political and historical visions materialize through the legal vision which in turn reflects the conflict between domestic law and international law. This concretization has been advanced in the context of post-Soviet countries, including Ukraine, through the means of conceptualizing troubles or troubled links to explore the relationship between international law and national law.[23] On the other hand,

21 "If history literally repeats itself, there would be no human agency. … It's the same as saying 'Things never change'". Gonzalez, S. (2022). War in context: Yale's Ukraine course reaches a global audience. Brief analysis of the historical vision of the balance of power between Ukraine and Russia as presented by the Yale historian Timothy Snyder. Available at: <https://news.yale.edu/2022/11/08/war-context-yales-ukraine-course-reaches-global-audience>.

22 Johnson, J.C. (2012). National Security Law, Lawyers, and Lawyering in the Obama Administration. Available at: <https://law.yale.edu/yls-today/news/qa-professor-hathaway-presidential-war-powers-and-war-terror>.

23 "We argue that the nexus approach can capture and navigate the complexity that is created by the confluence of various factors, rather than simplifying reality and ignoring the factors or contexts that may be difficult to address due to disciplinary rules, boundaries and/or methodological shortcomings. We assume that the interplay between

such an analysis is rare in the case of Arab countries, which previously suffered the same fate as Ukraine. We are content to say that the link between the internal order and the international order must be interpreted with reference to the principles of international law, in particular that of justice, equity, and good faith, without any historical influence. or political, but this requires an international compromise between the great powers.

Moreover, it is important to trigger the alert for the Algerian case even if the latter was not the first to be the subject of a report of a parliamentary nature referring to the sanctions included in the CAATSA. On the other hand, if Egypt and Turkey, which were subject to similar sanctions, did not incur enough risk in terms of the use of armed force against them, Algeria must be worried. Indeed, this country remains in the eyes of NATO and the West in general, the geostrategic ally of Russia in the southwestern region of the Mediterranean. This reality alone constitutes a possibility of creating, in the short or medium term, an armed conflict controlled by the United States of America, the aim of which is both to put pressure on Russia and to extend the sphere of influence of NATO further south in the Mediterranean, to the detriment of the new Eurasian alliance. For this, what protection for Algeria and States in a similar situation from the point of view of international law and international politics?

3. ADVOCATE FOR SAFEGUARDING MEDIUM STATES AT GREAT POWER BORDERS

Will the re-emergence of the bipolar world, the West and the Eurasian Alliance, push Algeria more and more towards Russia and its allies to protect itself from Western pressure which is becoming gradually accentuated, as it was the case for Ukraine, which has found refuge near the United States and the European Union against Russia? But first of all, is this comparison or similarity between Ukraine before the war or on the eve of the Russian military intervention, on the one hand, and Algeria, on the other hand, credible? Then, what are the means offered to Algeria to protect itself against a possible military intervention, knowing that apart from the non-binding nature of the report of the American Congress calling for the application of sanctions against Algeria, the threat of Western interference remains real in a tense international political climate?

The answer to these questions, which will be analyzed on the two legal and political levels, requires a precision that relates to the definition of the average or modest State being on the doorstep of a great power, or a military alliance. Thus, it will be necessary to resort to examples, through international practice and previous events. To do this, we wonder about the criteria to be used to know which countries are concerned by this possible protection.

The precision of the notion of "third State" is most often resolved by what is called the negative delimitation of the said concept. Consequently, any third State is considered to have this quality vis-à-vis an international agreement and therefore towards an organization created by this same agreement. In this sense, Article 2 of the Vienna Convention on the Law of Treaties states in its point 1-h) that "for the purposes of this Convention "third State" means a State not a party to the treaty".[24]

More positively now, the concretization of the aforementioned definition implies that Algeria is considered as a third State with regard to the Washington Treaty – or North Atlantic Treaty which is the base of the North Atlantic Treaty Organization (NATO) because this country is not a signatory member in the said agreement and even more, we can put forward two criteria to clarify the concept of the third State and which are the neighborhood, but above all the distinct or romantic interest be-

international law and domestic norms in each post-Soviet country is shaped by a unique set of conditions, including divergent levels of economic development, varied political regimes, and different foreign policy trajectories, among them policies of international law, and readiness to socialize into international law norms". Wittke, C. (2022). Troubled Nexuses Between International and Domestic Law in the Post-Soviet Space. Review of Central and East European Law, N° 47, p. 255.

24 For more details on this concept, see. Aust, A. (2007). Modern Treaty Law and Practice. Cambridge University Press, Cambridge, pp. 256-261. The author has devoted Chapter 14 of his book to explaining this notion of a third State.

tween these two parties (Algeria and NATO). It is this same remark that also applies to Ukraine vis-à-vis Russia, in particular that the first constitutes the geostrategic extension for the second as a powerful country and also for the Shanghai Cooperation Organisation (SCO),[25] especially in its two military and economic aspects. The purpose of this organization is to deepen partnerships, taking into account the strategic interaction between China and Russia, and to expand cooperation between this hard core and the countries of Eastern Europe, including Ukraine, in various fields. We note at this stage that Ukraine has opted for a rapprochement with the West to the detriment of its rather Slavic Eurasian space. The same for Algeria, which has a tendency towards the East justified by its history, while it is located at the southwest door of Europe and NATO.

On the history of these situations, Cuba has provided a good illustration of a country's revolt against an American attempt to impose or continue to impose liberal Western values in that country, which led to a political crisis and limited US military intervention in Cuban territory.[26] At that time, the Soviet Union did not hesitate to give its politico-military support to Cuba as the United States is doing today to Ukraine. The reproduction of this same scenario is not ruled out for good for Algeria, and to understand it legally, we will use some articles that appear in the Vienna Convention on the Law of Treaties. The essence of these texts is summarized in the reciprocal rights and obligations between the powerful State and/or the neighboring Organization to the third State, whose interest is not common. These are Articles 35 and 36 of the Vienna Convention on the Law of Treaties, referring respectively to the obligations and rights of the third State,[27], subject of our study. Who says obligation and right says that the protection of the third State is not absolute.

The reflection of obligations and rights between a great power and a neighboring third State practicing a policy that does not conform to the expectations of the great power is reflected on the political level by the interplay of the intensity of low-intensity conflicts and finding refuge in the country's adversary or enemy. To tell the truth, if Ukraine or even before Cuba sought to find refuge in article 36 of the Vienna Convention and to take advantage of American-European aid (for Ukraine) or formerly Soviet support (for Cuba), these same two countries of modest size have found refuge with one of the great powers with which they share the same values (Cuba/Soviet Union, on the one hand and Ukraine/United States, EU and other Western-leaning countries). And yet, this balance between rights and obligations of the medium-sized State, divided between legal and political arguments, and which does not offer sufficient protection to this State against the danger arising from any possible military penetration against it, Western threats unveiled against Algeria, has allowed customary law to intervene to have its say. It is a question here of Article 37 of the Vienna Convention, which takes up the sharing of obligations and rights between a powerful State and/or a powerful organization, on the one hand, and a third State, but with reference to custom-

25 "Regarding the impact of the war in Ukraine, Russia and China declared their willingness to "share the responsibility and readiness to play a leading role in bringing stability at the global level" and to "strongly support each other on issues concerning the key interests of each side". However, there were no declarations of increased Chinese support for the Russian Federation. However, President Vladimir Putin indicated that he had "given an answer to the questions and concerns arising from the Chinese side". Analysis of the 22nd Shanghai Cooperation Organization (SCO) Summit held in Samarkand on September 15-16, 2022, with the participation of leaders of its member states. Available at: <https://www.osw.waw.pl/en/publikacje/analyses/2022-09-20/against-backdrop-war-shanghai-cooperation-organisation-summit>.

26 Shalom, S.R. (1979). International Lawyers & Other Apologists: The Case of the Cuban Missile Crisis. Polity, Vol. 12, n° 1, p. 87.

27 Article 35 (Treaties providing for obligations for third States): "Treaties providing for obligations for third States An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing". Article 36 (Treaties providing for rights for third States): "1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides. 2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty".

ary law.[28] This article strengthens the protection of the third State by relying on the principles of international law, influenced in turn by the political context whose basis comes from force, hence the question of the relationship between law and power internationally.[29]

What is disappointing in terms of international law protection of medium-sized countries against visible pressure, for example a report calling for the application of economic sanctions, which gradually turns into military intervention from a large power or a military alliance, is that the "partial" assistance of international society remains after the act of aggression, or more or less after the attack on the sovereignty of the State subject to sanctions and/or ground of the armed operation in a following stage. This situation is common in international law, and it is the decision of the International Court of Justice that is authentic, in its judgment known as American military and paramilitary activities on the territory of Nicaragua and against it. The first legal obstacle in the face of such actions arises in terms of the legal qualification of the operation in question. In other words, are we in the presence of a simple military activity, alias special operation, or a real war? The disadvantage of a firm answer to this question in international law aggravates the situation within the State subject to intervention (Cuba, Nicaragua, Iraq, former Czechoslovakia, Hungary, and finally Ukraine).

Coming back to the Nicaragua case, the ICJ did not express explicit reservations on the use of the aforementioned term, although the international high court has repeatedly used synonyms going in the direction of war. This is the case, for example, of the use of "force"[30] against another State, as well as "attacks"[31] carried out on foreign territory. The most important thing in this case is that the ICJ avoided using the word war, which appears only three times as a reminder in reference to former armed conflicts, or by limiting itself to revealing acts contrary to the law of war.

For what has been said, the medium-sized state is obliged to seek its protection by developing a policy of self-defense.[32] The Turkish experience demonstrates a hitherto unprecedented success of this country, which is on the southwestern border of both Russia and the Eurasian alliance. This country, like Algeria, was the subject of a parliamentary report calling for sanctions against it following its attempt to acquire Russian S-400 missiles. These sanctions were subsequently abolished by the Trump Administration. Moreover, this country has successfully normalized its relations with its unstable geographical environment.

In short, Algeria is led to guarantee its self-defense by the balance of its external relations, without losing Eurasian support. Borrowing from a common view in private law, the medium-sized country that finds itself on the doorstep of a great power or military alliance has a status similar to the refugee who has the right to seek refuge in State X, but at the same time it is incumbent on him to respect the obligation not to harm the public order of State Y with which he maintains a relationship of original membership. Is such a comparison logical, and therefore, is it successful? The answer is not overwhelmingly positive, especially since the principle of sovereignty is very present in public international law, compared to that of the condition of foreigners. On the other hand, this same comparison can hold insofar as we contribute to it a functional task which intersects with the attempt to achieve protection by the State in question.

28 Article 37 (Revocation or modification of obligations or rights of third States): 1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed. 2. When a right has arisen for a third State in conformity with Article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State".

29 Steinberg, R.H., Zasloff, J.M. (2006). Power and International Law. American Journal of International Law, p. 64.

30 Dans l'arrêt du 27 juin 1986 imposant le Nicaragua contre les Etats Unis d'Amérique, la CIJ a évoqué l'utilisation américaine de la force sur le territoire nicaraguayen comme élément de violation du droit international coutumier : v. Affaire des activités militaires et paramilitaires au Nicaragua et contre celui-ci, (Nicaragua contre les Etats Unis d'Amérique) – in Fond, Résumé des arrêts, avis consultatifs et ordonnances de la Cour internationale de Justice, Arrêt du 27 juin 1986, sous paragraphe 4 et 6, p. 202. Available at: <icj-cij.org/public/files/case-related/70/6504.pdf>.

31 Ibid.

32 Green, J.A. (2009). The International Court of Justice and Self-Defence in International Law, Oxford, Hart, pp. 63-109.

CONCLUSION

In a destabilized international climate which is related to the security crisis in Europe caused by the Russian military intervention in Ukraine and its impact of economic unrest and disruption of gas energy supply, a report resulting from the initiative of a parliamentary minority American has just called for the application of sanctions against Algeria, in reference to an American law which goes in this direction and which is intended basically for countries that are enemies of the United States of America.

What was a little surprising is the very moment of the advent of this report, which intersects with the intensification of the conflict between the West and the new Eurasian alliance, through a hybrid war on Ukrainian soil.

Our vision centered on the fact that this report will be able to spread conflicts and reach the southwestern region of the Mediterranean, an area that has remained stable until now.

We began this work with a legal analysis of the said report, which is close in this respect to a recommendation, given that it is not necessarily mandatory. At the same time, we have shown that this report aims to put pressure on Algeria to prevent it from throwing itself freely into the arms of Russia and therefore to obstruct it in the face of any attempt to allow it to join the BRICS.

Then, we evaluated and at the same time criticized the content of the report text, in particular that it is unreasonable to apply sanctions against a Country with reference only to the provisions of domestic law. In this sense, several arguments have been presented to this effect, whether on the involvement of the ICJ when it rejected Belgium's responses based on universal jurisdiction (basically a judicial competence exercised by a Belgian national judge) to justify its issuance of an arrest warrant to the detriment of a senior Congolese official, or even when we mentioned the example of some American and Russian internal legal texts.

Faced with this situation, we have finally pleaded for the protection of medium-sized states, sometimes even modest ones, subjects of pressure or even economic or military intervention from a neighboring great power, or a neighboring military alliance. This protection remains unconvincing on the legal and political level, which pushes the State to intervene to practice a method of self-defense.

We have previously stressed that the self-defense referred to here is not necessarily limited to military reaction,[33] but it can consist in adherence to a few international conventions and in the normalization of bilateral or even multilateral relations, the purpose of which is to maintain a safe balance for the state subject to pressure or intervention.

33 Article 51 Charter of UN: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security".

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