

American Soft Approach in Niger and balance between sovereignty and interference principles

المقاربة الأمريكية الناعمة في نيجر والموازنة بين مبدأي السيادة وحق التدخل

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Abstract :

The war in Ukraine had a negative impact on international stability. One of the regions that has suffered the consequences of this war is the Sahel. More specifically, this is the case of Niger, whose territory has become a contested space for the great powers. This raises questions about the nature of the interference that has been observed in this country following the coup that it has experienced. The United States has opted for a soft approach that is generally consistent with international law, which prohibits the use of force. France, on the other hand, has called for a hard approach, including military intervention in Niger. In this debate, Algeria, which has traditionally supported alternative dispute resolution mechanisms, appears to be supporting the US soft approach. However, it still maintains its distinctive commitment to the principle of non-intervention.

Keywords: soft/hard approach; sovereignty; use of force; democracy; colonial power.

ملخص:

كان للحرب في أوكرانيا أثر سلبي على الاستقرار الدولي، حيث نجد أنّ من بين المناطق التي تأثرت سلباً من هذا النزاع منطقة الساحل، على وجه التحديد دولة نيجر. تحوّل إقليم هذه الأخيرة إلى بؤرة نزاع بين القوى الكبرى. على إثر ذلك نتساءل عن طبيعة التدخل والتي صارت واضحة في هذا البلد تبعاً للانقلاب الذي حدث هناك. من جانبها فضّلت الولايات المتحدة الأمريكية تبني مقاربة ناعمة، إذ تطابق هذا الموقف مع قواعد القانون الدولي التقليدي التي ترفض استعمال القوة. بالمقابل دعت فرنسا إلى استعمال القوة بما في ذلك التدخل العسكري في نيجر. بين هذا وذاك حافظت الجزائر التي لطالما ساندت الحلول الودية لحل النزاعات على موقفها الحيادي والثابت والذي يبدو أنّه يقترب ولو نسبياً من الموقف الأمريكي رغم التطورات الحاصلة في نيجر.

الكلمات المفتاحية: المقاربة الناعمة/التدخل؛ السيادة؛ استعمال القوة؛ الديمقراطية؛ سلطة الاحتلال.

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1. Introduction

Historically, the African continent was largely divided between British and French colonial rule. In this sense, African populations were often described as primitive, and this argument was sometimes invoked to justify keeping them under colonial tutelage from generation to generation.ⁱ The assertion was that it would take many centuries for African populations to modernize, just as it had taken Europe so long to transition from the Stone Age to the Iron Age. In this sens, and according to Mark Neocleous, the term "primitive accumulation" refers to the use of force and violence to separate people from their means of subsistence other than the wage.ⁱⁱ However, at the end of World War II, this colonial domination began to decline, especially for the United Kingdom, which lost many of its former territories to independence movements. While France may have appeared to follow the same path as the UK, its withdrawal from its former colonies often seemed to be more symbolic than real, as its political and economic influence remained strong in some of these French colonies. For example, countries in West Africa and the Sahel region share until now a unique national currency, the CFA franc, which symbolizes their close economic ties to France.ⁱⁱⁱ

Focusing on the case of Niger, it is important to note that, despite not being the only instance of French influence, the country experienced a coup on July 26, 2023.^{iv} This military coup was quickly interpreted as a continuation of the Cold War between the two great powers, the United States and Russia. The said military coup in question occurred at a critical moment, namely during the time when America and its allies were occupied by the war in Ukraine, and in light of the need to provide military weapons to the benefit of this Eastern European country situated on the border of NATO with Russia.^v

The unstable situation in Niger is the result of a national conflict with international consequences. The suspension of democracy in Niger has led to a legal debate on whether international intervention is necessary to preserve democracy and restore the constitutional regime presented by former President Mohamed Bazoum. This occasion renews the legal debate over the priority given to the classical principle of state sovereignty or to its competing counterpart, the principle of intervention. This principle is not always motivated by humanitarian reasons, but rather by the need to save democracy. Since legal qualification always comes after the appearance of a social or political phenomenon, as is the case here, it is necessary to consider the reaction of the main international actors to this at least illegal change at the top of power in Niger. The reaction of the United States and France will be the focus of this article, both politically and legally. We will also consider the reactions of Russia and Algeria, for reasons that we will briefly explain in this introduction and with more commentary throughout the body of this work. For Russia, the presence or even the call of the putschists to the Wagner armed militias constitutes a sequel and an undeniable effect of the aftermath of the war in Ukraine. And therefore, the analysis of the American soft approach must be analyzed, even as a secondary point of view, from this point of view of the Cold War between the West and the East. For its part, Algeria, considered until a recent period as an ally of the United States in the fight against terrorism but faithful in its policy and security vision to Russia, remains a neighboring country of Niger and skeptical of any military intervention in this country, even though it immediately announced its dissatisfaction with the violation of the constitutional regime in Niger. On the other hand, the Algerian position can also be interpreted positively and as a good sign towards the Americans, especially after the refusal of the membership of this country in BRICS.

Let's go back to our main idea on the American soft approach and its French hard counterpart. The goal is to measure the impact of the use of force on the balance between the right of intervention based on respect for democracy, an external aspect of internal constitutionalization, on the one hand, and alignment with the classic principles of public international law, of which respect for state sovereignty comes first^{vi} In other words, the soft political approach implicitly adopted by the United States tends towards the classic principle of sovereignty, while the hard French approach that explicitly pushes to encourage the ECOWAS group to intervene in Niger advocates for the use of force to establish democracy.

This analysis revisits the dichotomy between the United States' ostensibly 'soft' diplomatic approach and France's perceived 'hard' stance, particularly in the context of external intervention within sovereign states. **The central inquiry or dilemma (problematic) focuses on evaluating the legal tension arising from the invocation of a 'right to intervention' grounded in the promotion of democracy, a purported manifestation of external constitutionalization, against the foundational principles of public international law, most notably the principle of state sovereignty. To what degree do these disparate methodologies of external engagement, as exemplified by the aforementioned divergent approaches, either harmonize with or contravene the codified and customary norms of international law pertaining to the doctrines of intervention, sovereignty, and the advancement of democratic governance?**

Specifically, this study examines whether the United States' implicit reliance on diplomatic engagement, often characterized as a 'soft' approach, implicitly reinforces the traditional doctrine of sovereignty. Conversely, it scrutinizes whether France's explicit advocacy for the use of force, exemplified by its encouragement of ECOWAS intervention in Niger, constitutes a legally justifiable application of the 'responsibility to protect' or a permissible derogation from sovereignty for the purpose of democratic restoration, and if so, under what legal grounds. This analysis thereby seeks to determine the extent to which these divergent approaches reconcile, or conflict with, established norms of international law concerning intervention, sovereignty, and the promotion of democratic governance.

The same question was raised in a different context by Thomas M. Franck and Nigel S. Rodley during the Bangladesh War of Independence, when the Bengali people claimed their right to self-determination against the Pakistani government.^{vii} The question was raised again during the Arab Spring, when protesters in some Arab countries demanded democracy and human rights. However, this time, the call for the use of force to restore constitutional order in Niger came from France, not the United States.

2. US-Niger « ties » in Ukraine's shadow

We initially chose the concept of 'ties'^{viii} rather than the word 'position'^{ix} to describe the American presence in Niger. Despite this presence the relationship between the United States and Niger is relatively weak due to the significant difference in their levels of development. However, the security aspect remains present and is a testament to Africom's global policy. This led to the installation of a massive american drone base in Agadez, not far from the Algerian border.^x The relationship between the United States and Africa, including Niger, has been questioned from the outset. Some believe the United States seeks a neocolonial relationship, succeeding France, rather than a genuine partnership. This view has been expressed by JA Da Cruz and LK Stephens, who

have focused ultimately on the American mission of restoring peace in Africa, particularly in regions of armed conflict.^{xi}

First, we strongly condemn any 'traditional intervention' that is based on blatant partisanship and that ultimately leads to security deterioration or even civil war in the country that is the subject of military intervention. We are not content to simply point to the Iraqi example. We are calling for an end to these disastrous experiences, which have a serious impact on the daily lives and future of indigenous populations. Also, We remain skeptical even of limited operations, such as the American military and paramilitary activities in Nicaragua and against it.^{xii} Regarding Ukraine, we avoid discussing it due to the unsettling nature of the Russian term 'special mission' in the Donbass region.

Then we say that the said operation doesn't lose its objective or finality because the operation does not lose its finality, it is still worthwhile if it achieves its objective of defeating an enemy or protecting civilians. The debate escalates as the criteria used by intervening states and the international community, represented by the United Nations, continue to diverge. The UN Charter limits the use of force to self-defense, but intervening states often argue that their actions are justified by other criteria, such as humanitarian intervention or the protection of civilians and democracy. To clarify this idea, we support Mr. Dan Kuwali's view that the duty in a mission area is to protect people, not to contribute to the problem or to be part of the problem. From this reasoning, we can develop a theory of the « common good/interest » that balances sovereignty and humanitarian intervention. This theory is based on the natural right to protect human beings and their rights and this is what the international community must decide and do in Niger. The outlines of this theory were revealed by the sending of Ms. Victoria Nuland, the interim number two of American diplomacy. This was made concrete in the statement of Mr. Blinken, who expressed his willingness to resolve the problem through diplomacy. This diplomacy embodies the American Soft approach, but it does not spare the new military regime from economic sanctions. The United States administration took its time to consider the situation before deciding not to intervene militarily, as France had done. This decision may be seen as a reversal of the Obama administration's position on the Syrian regime, while the United Kingdom under Tony Blair had taken military action without hesitation.

We can say that the United States has opted this time for military control of the situation in Niger instead of direct military action, in order to limit the damage caused by the Russian invasion of Ukraine. Therefore, the classical theory of low-intensity conflict escalation in the Third world must be revised in light of the current situation.^{xiii} And yet, The United States has a history of practicing this theory in the Arab world and the Muslim world, as in the case of Afghanistan. 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. As a matter of fact, 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.^{xiv} 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 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 again. However, the interpretation or rather the control of this Russian national law, like its American predecessor, should not be exclusively national. In fact, 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. We want to show that the Biden Administration, accused of a war machine by Mr. Trump and his supporters, has backed down on this practice of force regarding the Coup problem in Niger. For once this theory of accentuating low intensity conflicts has lost its weight for once in Niger due to fears that the conflict emerging there will no longer be controllable.

From a legal standpoint, the “*Authorization for the Use of Military Force*” is not the only factor at play. Another law, the “*Coup Restrictions Act*”, also applies Section 7008 of that law conditions all U.S. financial aid on the recipient country's abstaining from actions or force that could endanger its existing constitutional order. In the case of Niger,^{xv} unlike in previous cases where the United States has used force, the Biden administration is instead seeking arguments to justify its non-use of force. In our opinion, the American abstention in the face of the Niger coup is easily explained from the standpoint of international law. This is especially true if we consider the principle of respect for state sovereignty, as well as the use of alternative dispute resolution mechanisms in public international law. However, could this reversal on the use of force be interpreted politically as a weakness?

Let's revisit the well-known idea that a law should come into effect after a social, economic, ... or even security-related phenomenon. In our analysis, it is pertinent to note that this new American stance expressed in Niger is a consequence of a new policy aimed at curbing the escalation of the conflict in Ukraine and blocking Russian and Eurasian expansion in general. The pacification of solutions in Niger is also justified by the need to limit the damage. Indeed, the emergence of recent conflicts, such as the one in Niger and military conflicts in the West African region, as well as the ongoing one in the Middle East between Hamas and Israel, highlights the rise of new actors who employ the same age-old American practice of low-intensity conflict. Consequently, for the Americans, these recent conflicts lack two key elements: control and low intensity. Therefore, it is preferable to choose for conflict resolution through pacification, while adopting a softer approach. With the exception of a very few conflicts that were still ongoing, the author, like us, finds it difficult to understand how the United States has lost control over Niger and the Sahel region in general, especially in Mali and Burkina Faso. To support our question, we rely on the opinion of Mr. Dr. Lewis B. Ware, who had illustrated well before the situations of inevitable conflicts in two examples, which are the Arab-Israeli crisis and the Iran-Iraq war, constituting violent confrontations in the Middle East.^{xvi} But We need to consider a contrasting phenomenon that indicates that, today, it is America that is becoming more entangled in low-intensity conflicts around the world, often involving Russia and its allies. In this regard, we bring up the idea of Sindy, who once defended American interests when the Soviet Union declared the illegitimacy of American actions and their

allies, claiming that they were propagating controlled conflicts. Currently, there is a growing tendency to critique this theory, which aims to increase low-intensity controlled conflicts.^{xvii} Simultaneously, this soft political approach was preceded by a legal preparation that was reflected in the text of August 2, 2017, concerning sanctions against Russia, Iran, and North Korea, particularly in order to combat cyberattacks.^{xviii}

However, this critique is coming from the United States itself, rather than necessarily from its allies. France, on the other hand, adheres to its interests in line with this same theory, aligning with a hard military intervention approach.

If we delve deeper into the causes behind the new American stance, characterized by a more lenient approach towards Nigerian coup leaders in the face of economic sanctions, we may conclude that the USA is concerned about Niger potentially becoming the 'Ukraine of the Sahel'.^{xix}

Additionally, it is noteworthy that this coup occurred during the same timeframe as the Russian-African Summit, amidst a changing landscape in the Sahel and East African region due to a series of regime changes among countries that were until recently aligned with France, which, in turn, had close ties with the United States.

In the backdrop of what is commonly known as the African Spring, the citizens of Niger, along with their counterparts in neighboring countries like Mali and Burkina Faso, vocalized their frustration with the regime born out of the democratic transition, supported by France. This regime came up short in its pursuit of development and security^{xx} prompting us to recognize a recurring challenge faced by democratic governments in comparable nations, whether in Africa or even in European countries beyond the Union, such as Ukraine. This challenge stems from an underdeveloped adherence to fundamental Western principles and the widespread prevalence of corruption.

3. French colonialism's legacy in Niger and Africa

To understand the French stance towards Niger, characterized by a tough approach, military solutions, and eradication strategies, distinct from that of the United States^{xxi} we must initially delve into the differences in the legal frameworks of these two nations. French law, indeed, draws significant influence from Roman law, in contrast to the American legal system, deeply rooted in the Anglo-Saxon tradition. When we explore Roman law, it is historically distinguished by the *jus civile* and the *jus gentium*.^{xxii} In summary, *jus civile* was the specific legal system for Roman citizens,^{xxiii} while *jus gentium* was a broader concept of laws and principles that applied to interactions between various peoples, including Roman citizens and foreigners. *Jus gentium*, in a way, laid the foundation for modern international law, as it dealt with matters of universal concern and fairness in the Roman world.

Before exploring the concept of modern international law, a pivotal step directly relevant to our study is the colonial law that governed the relationships of major powers, including France, with the dominated nations, notably Niger, during that era.

This era was characterized by the presence of a feudal system, given that legal personality was not recognized for everyone. Consequently, a certain level of discrimination marked this period, which was reflected in the *jus gentium*, partly evolving into colonial law that continued to favor the colonizers over the indigenous populations. Consequently, the latter already held a negative perception of this legal system, and by extension, of the colonizers and French colonial authorities. This brief historical discussion about the connection between *jus gentium* and colonial law

illustrates the hostility of the citizens of Niger, as well as that of the new governors, toward the French presence in their country. However, this sentiment does not necessarily extend to the Americans, who are more liberal and rather more pragmatic. We can go further by comparing France's presence in Niger and the Sahel in general to the presence of the Soviet Union in the Eastern Bloc of Europe, particularly in Ukraine. This may explain the Americans' passive reaction to the military junta that came to power in Niger and previously in other neighboring countries.

We mean by this that France lost points to the United States right from the start. And that's just the beginning, because at the same time the United States sought to strengthen its presence in Africa, as did Russia, the EU was increasingly retreating and found itself in the same situation as France. This was reflected in the statement of its foreign affairs representative, Mr. Jacques Borel, who likened Africa to a jungle that threatens the EU and its civilization.^{xxiv}

This negative interpretation, which is sometimes motivated by malicious intent, is based on a purely state-centric interpretation that is focused on internal national interests. It ignores both international norms and jurisdictions, which exist in a parallel, rather than hierarchical, relationship.

Therefore, we note that the French reaction advocating for military action in Niger is the same as that of the EU and its member states. This is justified on a legal level by the dualistic influence of Roman law (*jus civile/jus gentium*) on both French law and European law. It is important to note that French law is characterized by two branches, civil law and colonial law. The same is true for European law, which regulates intra-European and extra-European relations with differentiation.

From this perspective, Niger, which was formerly colonized by France under the tutelage system, which was based on a relationship between two parties, one of which was considered civilized while the other was considered primitive, has transformed into a relationship that still maintains its imbalance between a democratic EU member state and a third country that was trying to follow the European approach to the two concepts of democracy and human rights.

This harmful French legal precedent in Niger had a reflection in the shocking practice of economic exploitation of uranium. From a private legal point of view, this exploitation resembles the constraint that one contractor (A) imposes on another contractor (B), or what is known in economic jargon as "economic violence". All of this is damaging the image and credibility of France in Niger and the Sahel in general. This is because French politics and practices in Africa have been far from satisfactory and have often been seen in a negative light. As a result, The military coup in Niger was a more or less expected reaction, although we do not support it. The most important thing is that the French reaction was also expected. France maintains its position of maintaining its interests in Niger, even if this requires a military intervention. This may bother the American administration and even neighboring countries like Algeria. After seeing its request to rejoin BRICS rejected, Algeria has found some interactions with the Americans. Perhaps this is a sign that Algeria is looking to distance itself from its strategic Russian ally.^{xxv}

Before examining this point, we will focus on the economic analysis of French and American interests in Niger, which are linked to the hard and soft power approaches adopted by each country. While these two countries are considered strategic allies within the North Atlantic military alliance and share common Western values, they have also experienced disagreements, such as the diplomatic incident stemming from Australia's decision to cancel its purchase of French military ships in favor of more advanced American nuclear-powered submarines.

We are in the presence of The AUKUS Agreement, a trilateral security pact between Australia, the United Kingdom, and the United States, was announced on September 15, 2021. It aims to strengthen cooperation between the three countries in the Indo-Pacific region.

One key element of the agreement is Australia's decision to cancel its contract with France to purchase conventional submarines in favor of nuclear-powered submarines from the United States. This decision caused a major diplomatic rift between France and its allies.^{xxvi}

According to a senior official, the United States had expected Australia to handle the cancellation of the French deal, and the United States has since taken steps to repair its relationship with France.^{xxvii}

This incident, which partially damaged Franco-American relations, will have subsequent repercussions on the positions each party takes in the future. This became even more apparent during the coup in Niger, where France strongly advocated for military intervention, while the U.S. administration preferred to exercise patience and explore alternative dispute resolution methods, all while considering their respective interests. This interest has indeed revived the debate on each party's ability to preserve its nuclear energy resources, including uranium. The interpretation of the reaction of some powers to the unconstitutional actions of the coup leaders in Niamey was quickly revealed by some commentators.^{xxviii} In this sense, we can see that the difference between the American and French approaches to this issue, based on their respective nuclear energy interests, was behind the taking of different positions.

The French hard line is justified by its fears of losing its position as the leading, and possibly only, uranium explorer in Niger to its already established company, Areva. The new military junta in Niamey has expressed explicit discontent with France's exploitation of the country's resources, especially uranium. In addition, other international actors, including Russia and China, have expressed their intention to compete with France in the exploitation of this radioactive material in the Niger market. France may have revised its hardline stance and aligned itself with the United States to avoid losing everything, in accordance with the theory of minimal gain. This doctrine can be used to explain why France might cooperate with the United States, even when they have conflicting interests with the new member states of the Eurasian Alliance.^{xxix} We add here that it is easy to justify the use of this theory on the basis of legal arguments, especially since law and international law are descriptive rather than creative, following Kelsen's reasoning and the intervention of law after political or economic phenomena.^{xxx}

Does the search for legal justifications for armed or political actions in Niger threaten international justice and the international legal order, especially since the case of this country is not the first test of the stability of international law?

I believe this question has already been asked. This means that it is asked every time the intervening state seeks arguments to justify its intervention, especially when it is accompanied by the use of force, or more or less by resorting to coercive measures. However, there are some ambiguities surrounding the case of Niger. Our intuition leads us to question the criterion by which the international community justified American soft or French hard intervention in Niger, at the expense of preventing any interference.

We argue that the answer to this question depends on the nature of the values defended within the territory of the intervening country, specifically Niger in our study. From the French perspective, the use of force is intended to prevent any actions that might jeopardize the

democratization process in Niger and to combat radicalization. From the American perspective, the implementation of punitive measures serves the same purpose.

In the past, France intervened militarily in Mali, a neighboring country of Niger, under the framework of Operation Barkhane.^{xxxi} This intervention was made possible by Algeria, which allowed French troops to cross its territory. The goal of this intervention was to combat terrorism and radical groups. However, Algeria later refused to allow a similar operation in Niger.

On the economic level, this type of operation represents a significant cost to the intervening state, in terms of military spending, human losses, and material damage. 'France's counter-terrorism efforts in West Africa remain unpopular in Paris, especially because of the monetary cost; Operation Barkhane is the longest and most costly French military operation since World War II. Even as early as June of 2021, there were serious doubts among the French population concerning Barkhane'.^{xxxii}

While this argument supports and reinforces the American soft approach towards Niger, it does not address the lack of arguments advocating for the criticism of any possible interference in Niger, regardless of its nature. But, why has the international community not used the *jus ad bellum* to preserve Niger's territorial integrity, as it did with Ukraine?^{xxxiii}

The answer to this question, which refers to the previous subheading, requires careful attention. The facts are not the same in both cases. In the case of Ukraine, there is a clear and obvious external aggression by Russia. In the case of Niger, the aggression of the power is internal. Even so, in all cases, an internal conflict that leads to instability should not be used to justify external intervention by force, in accordance with the traditional principles of international law. In the opposite case, the use of force could be interpreted as a contribution to the disorder of the international order, which is already accused of being very liberal and Western-oriented.^{xxxiv} This is due to the political climate that reigns on the international scene, which has imposed this reality of opting for a soft approach by the Americans, in contrast to their French allies.

We have finally criticized and rejected the French hard-line approach to Niger, as it is still based on the doctrine of colonialism. We therefore opt for the American soft-power approach, which does not in any way aim to destabilize the current international order, which is essentially linked to liberalism, according to the idea expressed more clearly by R. Kapur. Rather^{xxxv}, we aim to adapt it to the new situation marked by competition from the East, represented by the new Eurasian alliance.

4. Algerian's Sahel strategy and U.S. interaction

Kissinger famously said, "No friendship is permanent and no hostility is permanent." In light of this quote, we will analyze the interaction between the Algerian Sahel and the United States. Our goal is not simply to evaluate this interaction in isolation, but to examine its potential consequences for Niger. From this perspective, we use this quotation to justify a variety of American foreign policy decisions, even though some of these decisions are contradictory^{xxxvi} and characterized by American self-interest maintain. In brief, this interest-based view will guide our analysis and remind us that the world of international relations is complex and ever-changing.

This comment will focus on the security and economic aspects, which are closely linked. On the economic front, the focus will be on the return of the international gas energy crisis. Niger, which is geographically located between Algeria and Nigeria, is geostrategically important in the competition between the West and the new Eurasian alliance. Consequently, Niger is not only a guarantor of French and European energy security, as it is the leading supplier of uranium to Paris

and therefore to the EU. However, it is also a disruptive and/or stabilizing factor in the international gas energy market. It is up to Algeria to choose which side to favor, or try to balance the opposing interests of the two blocs. To do this, we will focus on the points of interaction between the United States and Algeria in Niger, by highlighting their common interests and minimizing their differences. This initiative is not just theoretical. Algeria's position on Niger is similar to that of the current U.S. administration. The rejection of Algeria's candidacy to the BRICS and its decision to use English instead of French, the colonial language, are signs of a possible rapprochement between Algiers and Washington. This comes after a period of cold relations, marked by calls for sanctions against Algeria from a small group of American politicians led by Congresswoman Lisa McClain.^{xxxvii}

By emphasizing the economic aspect, Europe's reliance on Russian gas has made it vulnerable to the ongoing war in Ukraine. The sanctions imposed on Russia have led to a shortage of gas, which has caused major problems for European economies. Additionally, Algerian gas, which was insufficient to meet Europe's energy needs^{xxxviii}, should be supplemented by other sources, especially from Nigeria. However, this is complicated by the instability of Niger, which lies between the two countries. This task falls to the United States, but also to Algeria, which should maintain peace and guarantee stability in Niger in order to prevent Russia from exacerbating the global gas energy crisis. To achieve this, a soft approach that emphasizes diplomacy and cooperation is essential.

However, it is important to avoid disrupting Algeria's interests, which remain centered on its partnership with Russia as a weapons supplier^{xxxix}, hence Algeria is unlikely to change its relationship with Russia unless the United States offers security guarantees. In this sequence, Washington must first make a positive gesture towards Algeria by reducing the pressure it has been applying on its former ally in the fight against terrorism. This gesture would be the bare minimum that the Biden administration could offer. All of this demonstrates that the preservation of peace, the key to any economic initiative, must pass through the principle of good faith.

On the interaction of American-Algerian interests in Niger, we wonder about the possible transformation of the Algerian position. In fact, could this North African country adopt a position similar to that of Turkey, or more or less that of Egypt, towards the United States?

The answer to this question depends on Algeria's vision of Niger, a vision that has been formed over several decades. Algeria's first point of interaction with the United States is reflected through the Joint Operational Military Committee (CEMOC), which is based in Tamanrasset, Algeria. The CEMOC is tasked with fighting terrorism in cooperation with its Sahel member states, including Niger.^{xl} Algerians see Niger as reliable but fragile partner, which reinforces the Algerian trend in line with the American soft approach towards this country.^{xli}

To answer the question asked above, it is difficult to compare Algeria to Turkey. Turkey is a significant member of NATO and is heavily influenced by the use of force, especially its military interventions in its southern neighbors (Iraq and Syria). Algeria, on the other hand, is following more closely Egyptian policy, which minimizes the use of force.

Therefore, the Algeria's doctrine in Niger and the Sahel region generally perceives "the absence of a justice war" as justifying military intervention in the territory of its fragile southern neighbor, even though Niger did not pose a potential threat to Algeria. Thus, any possible french invocation of Article 2(4) of the UN Charter does not achieve a balance between the intervention itself and its

intended outcome, because any military intervention will have serious consequences for the stability of the region.

As a result, The Algerian soft approach, which appears to be following the American model, shares a common objective but differs in its underlying principles. Algeria aims to perpetuate instability in the Sahel region, while the United States seeks to contain and mitigate the expansion of conflicts in the same region to prevent other competing Eurasian actors from capitalizing on it. Nonetheless, even the United States stands to benefit from its closer ties with Algeria, which has recently opted for English over French and is progressively distancing itself from France, the former master and colonizer of the region.

As illustrations, some authors who advocate for the use of self-defense within the framework of *jus ad bellum* have argued against the prevailing doctrinal view that rejects this argument. For example, Monika Hakimi, inspired by Hendrick Hartog, has argued that the use of force is indispensable, even if it is "abusive," as long as it is necessary to preserve human life. However, Hakimi's analogy to a New York law allowing the hunting of pigs is flawed^{xlii}. In the case of the Franco-American-British intervention in Syria, the "hunting" in question was not simply the pursuit of human life, but also the killing of many civilians. Furthermore, interventions in A modest-sized or medium-sized country already weakened by internal conflict encourage indigenous peoples to support the Eurasian countries' claim to reform international law and remove its liberal bias. On this last point and to understand why we choose the hard or soft approach, it is important to return to the functional legal explanation. This pragmatic explanation may have harmful effects, especially with regard to the protection of the interests of the indigenous people on the territory subject to intervention.

This explanation deserves some clarification. Its application means that law plays a descriptive role and must therefore be aligned with a predetermined purpose. This legal pragmatism can be found in all branches of law, including public international law. However, while this pragmatism, which obscures the functional aspect of law, is more justifiable in private international law, it is not always the case in public international law. To put it more simply, in private international law, when a conflict of laws arises, the pragmatism that is used to resolve the conflict is based on the laws of the countries involved. In contrast, in humanitarian operations, pragmatism is used to protect the interests of an entire people, such as the right to life. As a result, it is necessary to carefully consider the use of force in accordance with the *Ad bellum* rule. Therefore, it is preferable to seek peaceful solutions in Niger through alternative dispute resolution methods and to continue to adopt a soft approach as long as there is no clear violation of Western values in this country.

5. Conclusion

The war in Ukraine had a major impact on the legitimacy of using force under international law. The war has had echoes in many parts of the world, including East Africa, West Africa, and the Sahel region. In the Sahel, the coup in Niger, despite its unconstitutional nature, has reignited the debate about the right of the international community to intervene to restore democratic constitutional order in this country. The main question raised was the one about the divide between the American approach, which was this time described as soft, and its French counterpart, which was described as radical and therefore hard.

We opted for the soft approach, which emphasized the traditional rules of conflict resolution, such as diplomatic solutions based on alternative dispute resolution. This American approach was justified politically by the need to avoid exacerbating armed conflicts and further destabilizing international security and peace, which were already shaken by the war in Ukraine. To achieve this, the American administration this time chose to abandon the theory of the intensification of conflicts in Niger, fearing that the conflict would become uncontrollable. In parallel, we have shown that the French hard approach, argued by continuity of colonial law, was not longer tenable, following the emergence of other Eurasian actors.

By returning to a soft approach, the United States does not seem to be alone in this direction, as Algeria, a regional actor, has quickly demonstrated its alignment with this same approach, and their interests have coincidentally converged with American interests in the Sahel region.

The final conclusion showed that there was a return to the traditional principles of international law, with a significant decline in the principle of humanitarian intervention.

However, this decline, which is consistent with the adoption of the soft approach, which excludes the use of force in Niger, was justified by a functional legal approach that is more focused on function than substance. This has raised questions about the purpose of law, that is, the question of the essence of law, which has been renewed following the distinction between the descriptive role of law and the objective role, which is the protection of rights by upholding justice.

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ⁱ ‘for a long time an image has been conveyed of Black Africa before colonization as a collection of primitive tribes living under anarchy or under the arbitrary rule of a chief, perpetually at war with each other, yet, the existence of sophisticated forms of government in precolonial Africa is now beyond doubt.’

James T. Gathii, 'Africa and the History of International Law' (2011-2012) 48, *Oxford Handbook of the History of International Law* (forthcoming), Albany Law School, Legal Studies Research Paper, 13.

ⁱⁱ Mark Neocleous, 'International Law as Primitive Accumulation; Or, the Secret of Systematic Colonization' (2012) 23 *The European Journal of International Law* 4, 943.

ⁱⁱⁱ The CFA franc is a common currency used by fourteen African countries: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea-Bissau, Mali, Niger, Senegal, and Togo. It is managed by two central banks: the Central Bank of West African States (BCEAO) and the Bank of Central African States (BEAC), which are responsible for issuing CFA franc banknotes and coins and setting monetary policy for the CFA franc zone.

^{iv} Howard W. French, 'Niger's Coup Is a Turning Point for Africans: The crisis has created a truly geopolitical moment for intra-African politics' (2023) *Foreign policy*, Analysis, Niger, on Aug. 3. Available on link: https://foreignpolicy.com/2023/08/08/niger-coup-ecowas-nigeria-tinubu-regional-cooperation-multilateralism-statebuilding/#cookie_message_anchor

^v James A. Green, 'The provision of weapons and logistical support to Ukraine and the *jus ad bellum*' (2023) 10 *Journal on the use of force and international law* 1, 3-16, 11; Kevin Jon Heller and Lena Trabucco, 'The Legality of Weapons Transfers to Ukraine Under International Law' (2022) 13, *Journal of International Humanitarian Legal Studies*, 254.

^{vi} On the general question of Sovereignty and the Authority to Use Force, see: Christine Chinkin and Mary Kaldor, *International Law and new Wars* (Cambridge University Press, 2017) 37.

^{vii} ‘The question for lawyers is whether these principles have also been enshrined in law. Should the incident in Bangladesh be seen as creating a new common law, which gives priority to human rights and self-determination over other norms of international law, including legal restraints on the unilateral use of force?’ Thomas M. Franck and Nigel S. Rodley, 'After Bangladesh: The Law of Humanitarian Intervention by Military Force' (1973) 67 *The American Journal of International Law* 2, 275.

^{viii} The concept of "ties" in an amical context between two countries refers to the bonds that connect the two countries and their peoples.

^{ix} The word "position" can be used to describe a negative situation, such as a strong stance against immigration and the countries that are the source of this phenomenon.

^x Olayinka Ajala, 'US Drone Base in Agadez: A Security Threat to Niger?' (2018) 163 *The RUSI Journal* 5, 22.

^{xi} JA Da Cruz and LK Stephens, 'The US Africa command (AFRICOM): Building partnership or neo-colonialism of US-Africa relations?' (2010) 27, *Journal of Global South Studies* 2, 193.

^{xii} International Court of Justice, Reports of Judgments. Advisory Opinions and Orders Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), I.C.J. Reports 27 June 1986, p. 14. Available on the link : <https://www.icj-cij.org/public/files/case-related/70/070-19860627-JUD-01-00-EN.pdf>

^{xiii} Stephen Blank, Lawrence E. Grinter, Jerome W. Klingaman and others, *Low-Intensity Conflict in the Third World* (Air University Press, Maxwell Air Force Base, Alabama, Sixth Printing 2003) 105.

^{xiv} 'Thus, an "associated force" is not any terrorist group in the world that merely embraces the al Qaeda ideology. 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.' Jeh Charles Johnson, 'National Security Law, Lawyers, and Lawyering in the Obama Administration' (2012), *Yale Law and Policy Review*, 146. Article available on the link: <https://law.yale.edu/yls-today/news/qa-professor-hathaway-presidential-war-powers-and-war-terror>

^{xv} On Cautious About "Coups", see: Sarah Harrison, 'Impacts of Section 7008, the "Coups Restriction", on U.S. Policy in Niger', *Lawfare*, Wednesday, August 23, 2023. **Available at the link:** <https://www.lawfaremedia.org/article/impacts-of-section-7008-the-coups-restriction-on-u.s.-policy-in-niger>

^{xvi} See source cited at 14, p. 14.

^{xvii} During the Cold War, 'The Soviet Union and its proxies have come to the conclusion that the global system is vulnerable to low-intensity conflict. We can therefore expect more of it. Only when the United States has developed a flexible capacity to deal with its root causes around the world can we better secure our own interests and suppress Soviet efforts in this domain.' Idea expressed by Sidney J. Wise in the Forward of book intitle: *Low-Intensity Conflict in the Third World* aforementioned.

^{xviii} 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: Jean Galbraith, 'Executive Branch Imposes Limited Russia-Related Sanctions After Statutory Deadlines' (2018) 112 *American Journal of International Law* 2, 296 – 303.

^{xix} Ahmedou Wadia, 'Is Niger the "Ukraine of the Sahel"?' Aljazeera News (23 August 2023). Available at: <https://studies.aljazeera.net/en/analyses/niger-%E2%80%9Cukraine-sahel%E2%80%9D>

^{xx} *Ibid*

^{xxi} *Op. cit.*

^{xxii} In a positive light, *jus gentium* is considered the foundation of modern international law in its binding aspect. In this context, we emphasize the principles of international law that states are obligated to uphold. We specifically aim at the principle of sovereignty concerning equality among states: 'Interesting on this principle is the concept of V. Grabar, about the real equality of states. His equality is equal to the sovereignty of the states regardless of their power, that is, the equal right to rule in the territory of their state, and in the international arena, to determine the degree of participation in solving international issues plays material criteria.'

Svitlana Zadorozhna, 'Jus Gentium and the Primary Principles of International Law' (2019) 6, *European Journal of Law and Public Administration* 2, 163.

^{xxiii} Today, we can affirm that *Jus civile* exists and has been rejuvenated at the intra-European level, particularly in reference to the concept of 'European citizenship'. See art. 20 of the Treaty on the Functioning of the European Union (TFEU) – ex art. 17 of the Treaty on the European Community (TEC), *Official Journal Of European Union (OJEU)*, C 326, 26.10.2012, 47; and article 9 on the Treaty on European Union, *OJEU*, C 326, 26/10/2012, 13.

^{xxiv} 'Europe is a garden. We have built a garden ... The rest of the world ... is not exactly a garden. Most of the rest of the world is a jungle. The jungle could invade the garden. The gardeners should take care of it,' Borrell said on October 13, 2022, when speaking at the European Diplomatic Academy's inauguration ceremony in Bruges, Belgium.

^{xxv} See below for a discussion of the case's holding (the fourth subsection of this article: Algerian's Sahel Strategy and U.S. Interaction).

^{xxvi} 'Internationally, reactions to the announcement of the alliance (The AUKUS Agreement) were mixed. France reacted angrily to the announcement of the deal and to Australia's cancellation of its contract for French submarines. French Foreign Minister Jean-Yves Le Drian called the actions a "stab in the back" and claimed that "this unilateral, sudden and unforeseeable decision very much recalls what Mr. Trump would do.'" Kristen E. Eichensehr, 'Contemporary Practice of the United States relating to International Law' (2022) 116, *The American Journal of International Law* 1, 169.

For more details on this affair and the AUKUS Agreement, see: Daniel S. Hamilton, "The AUKUS Agreement and the Future of US-French Relations", *Yale Journal of International Affairs*, Vol. 43, No. 1 (2022), p. 1 ; Stephen J. Toope, "The AUKUS Agreement: A Breach of International Law?", *Harvard Law Review*, Vol. 135, No. 6 (2022), p. 2001 ; David A. Koplow, "The AUKUS Agreement and the Implications for US-Australia Relations", *Columbia Journal of Transnational Law*, Vol. 61, No. 2 (2022), p. 395 ; Michael J. Green, "The AUKUS Agreement and the Future of the Indo-Pacific", *Foreign Policy*, Vol. 202 (2022), p. 15.

^{xxvii} *Ibid*

^{xxviii} Ishaan Tharoor, 'The coup in Niger puts spotlight on nation's uranium', *The Washington Post*, August 1, 2023. This article is available on link: <https://www.washingtonpost.com/world/2023/08/01/uranium-niger-france-coup/>

^{xxix} In international relations, the political theory of minimal gain explains why states may sometimes accept unfavorable deals to avoid war or conflict. For example, a state may cede territory or give up economic concessions to avoid military defeat.

^{xxx} Kelssen's theory of law has been influential in the development of legal thought. It has been used to explain the nature of law, the relationship between law and the state, and the basis of the validity of law.

Kelsen's theory of law is a descriptive theory, meaning that it attempts to explain how law actually works, rather than how it should work. He believed that law is a coercive system, meaning that it is enforced by the state through the use of sanctions. For a more detailed discussion on Kelsen's pure theory of law, see: Edwin W. Patterson, 'Hans Kelsen and His Pure Theory of Law' (1952) 40 *California Law Review* 1, 8.

^{xxxi} Isabelle King, 'How France Failed Mali: the End of Operation Barkhane', *Harvard international review*, 30/01/2023. Available on the link: <https://hir.harvard.edu/how-france-failed-mali-the-end-of-operation-barkhane/>

^{xxxii} *Ibid*

^{xxxiii} *Ibid*

^{xxxiv} 'To understand knowledge frames by adopting a disordering sensibility is not to succumb to chaos and illiberalism. Rather, it is to accept the limitations of Western legal knowledge understood through the liberal tradition and to begin the more challenging task of imagining a world in which that knowledge is not paramount.' Michelle Staggs Kelsall, 'Disordering International Law' (2022) 33, *The European Journal of International Law* 3, 732.

^{xxxv} *Ibid*, p. 732-736.

^{xxxvi} Kissinger's quote has been used to justify a variety of American foreign policy decisions, both positive and negative. For example, it was used to support the normalization of relations with China in the 1970s, but it has also been used to criticize Kissinger's own support for authoritarian regimes in Latin America and the United States' recent passivity in the face of the authoritarian military regime in Niger recently settled in Niger.

^{xxxvii} A report calling for economic sanctions against Algeria was initiated by a minority of American congress members led by Mrs. McClaine. See: Lisa McClain (Congresswoman for Michigan), Rep. Lisa McClain Leads Colleagues in Demanding Sanctions on Algeria for Purchase of Russian Weapons, September 29, 2022. Available on the link: <https://mcclain.house.gov/press-releases?ID=86A55993-9A60-4129-ACDC-5D34154A07EA>

This type of report, in terms of security, prepares the way for the targeted state to be subjected to punitive texts such as the CATSAA. In this sense, 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: Jean Galbraith, 'Executive Branch Imposes Limited Russia-Related Sanctions After Statutory Deadlines' (2018) 112 *American Journal of International Law* 2, 296.

^{xxxviii} See Protocol No. 5, Annex 1, Community scheme for preferential rights granted by the Community to products originating in Algeria.

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 - Annexes - Protocols - Final Act - Declarations, Brussels, 12 April 2002. Available on the link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22005A1010%2801%29>

^{xxxix} 'Algiers and Moscow began to develop economic and security ties in the 1960s, when Russia became Algeria's primary weapons supplier as the newly independent nation sought to build up its military. The closeness of this defense relationship endures today. Since 2002, approximately 76 percent of Algeria's arms imports have come from Russia, and Algiers is consistently a top-five destination worldwide for Russian arms. In October 2022, Algeria hosted the Russian navy for joint maritime exercises, ...'

Sabina Henneberg, "Algeria-Russia Relations After the Ukraine Invasion", *Policy Analysis*, The Washington Institute for Near East Policy. Article available on link: <https://www.washingtoninstitute.org/policy-analysis/algeria-russia-relations-after-ukraine-invasion>

^{xl} Kal Ben Khalid, 'Evolving Approaches in Algerian Security Cooperation' (2015) 8 *Review of Combating Terrorism Center at West Point (CTC) Sentinel* 6, 16. Available on: <https://ctc.westpoint.edu/wp-content/uploads/2015/06/CTCSentinel-Vol8Issue69.pdf>

^{xli} *Ibid*, p. 17.

^{xlii} "Many international lawyers took issue with that claim, so I want to defend it—and use it to expose what I consider to be a fairly fundamental flaw in how the is usually analyzed. To do this, I'll take a detour through one of my all-time favorite law review articles: Hendrik Hartog's Pigs and Positivism."

Monika Hakimi, Pigs, Positivism, and the *Jus ad Bellum*, Blog of the *European Journal of International Law*, April 27, 2018. Commentary available in link: <https://www.ejiltalk.org/pigs-positivism-and-the-jus-ad-bellum/>

See also for the same author:

For a more in-depth analysis of *jus ad bellum*, see the article by the same author: “The Two Codes on the Use of Force”, *The European Journal of International Law*, Vol. 27 No. 2, p. 257.