



Air sovereignty of states in the face of drones, ' Case study: Downing of the Maliane drone by Algerian forces

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Abstract:

Unauthorized airspace intrusions by military and civilian drones present critical challenges to state sovereignty and international law. This study examines the legal framework governing the protection of aerial sovereignty against illicit drone usage, focusing on the Algerian army's downing of a Malian drone. Utilizing an analytical approach, the research assesses the legality of this interception under international law. It concludes that the Algerian action constitutes a legitimate exercise of self-defense under Article 51 of the UN Charter due to the unauthorized entry, highlighting the vital balance between preserving state sovereignty and adhering to international legal limits on the use of force.

Keywords: Air sovereignty ;Airspace ;Chicago Convention 1944 ; **Malian unmanned aircraft** ; Algerian Air Defense Forces .

Introduction :

The sovereignty of states over their airspace is one of the most important issues, and failure to respect it leads to the disruption of relations between states. International precedents have shown many cases in which aircraft have used the airspace of states without their permission, and there is no explanation for this other than to consider it a violation of the air sovereignty of states, in accordance with international norms and principles.

In contrast to this argument, some international precedents have shown that states have used force to protect their air sovereignty against aircraft that have violated their airspace without prior permission, which has sparked international controversy over the legality of the use of force and its appropriateness in relation to the violation, compared to the consequences of using force against these aircraft.



This is especially true in the case of civilian aircraft, as Article 3bis of the 1944 Chicago Convention prohibits the use of force against civilian aircraft, while affirming the sovereignty of states over their airspace.

The world has witnessed tremendous developments in the manufacture and use of unmanned aircraft, which have become one of the most important weapons of war, relied upon to decide battles through their use in reconnaissance, monitoring and engagement on the battlefield without the need for human deployment, in addition to their civilian uses such as aerial photography and transport, which sometimes makes them superior to conventional aircraft in terms of accuracy, speed and low cost.

This expansion in uses and the enormous reliance on this type of aircraft has greatly increased the problem of violations of states' air sovereignty, especially since it has become possible even for amateurs to acquire them, making it possible for hostile entities and organisations, terrorist networks or smugglers to use them across international borders, thereby increasing the possibility of airspace violations and expanding the threat to states, from security threats to the smuggling of prohibited materials, espionage and invasion of individuals' privacy.

The incident of the Malian drone being shot down by Algerian air defence forces has raised several questions about the legality of this action in light of international law, particularly the United Nations Charter and the 1944 Chicago Convention on International Civil Aviation.

The importance of this study is evident in its highlighting of the differences and contradictions between air sovereignty, as protected by the 1944 Chicago Convention and Article 51 of the United Nations Charter, which establishes the right to self-defence, on the one hand, and the principle of the prohibition of the use of force, on the other.

We therefore pose the following question: To what extent is the use of force against drones to protect air sovereignty legitimate? What is the legal classification of the Algerian forces' shooting down of Malian drones?

To answer this question, we will adopt an analytical approach by analysing the legal texts relevant to our research topic, such as Articles 03, 03 bis, 08, and other texts of the Chicago Convention, in addition to analysing some statements issued by the official authorities of the Algerian and Malian states, some press reports, and others.

In an attempt to cover the subject of the study, we will divide the topic into two sections, where we will address in the first section the nature of air sovereignty, while in the second section we will address the legality of the Algerian forces' use of force against the Malian drone.



The first topic : The nature of air sovereignty :

Among the most important rules of international law is the rule prohibiting the use of force in international relations and respecting state sovereignty. These rules have remained and continue to be upheld despite being traditional rules, as violating them is linked to undermining international peace and security. State sovereignty is embodied through political authority that extends its rules over the territory of that state and ensures the protection of its people and territory.¹ Air sovereignty is part of state sovereignty, which includes the airspace of the state. To understand the nature of air sovereignty, we will attempt to address the concept of air sovereignty in (the first **requirement**), then we will address its scope in (**requirement two**).

First requirement: The concept of air sovereignty:

To define the concept of air sovereignty, we will first attempt to outline its definition, and then determine its legal nature.

Firstly: Definition of Air Sovereignty:

Air sovereignty refers to the State's exclusive and supreme authority to regulate, control, and protect the airspace vertically above its land and maritime territory. This sovereign prerogative constitutes an inherent attribute of statehood and entails that no foreign aircraft—whether civil or military—may enter or operate within this airspace without the prior consent of the territorial State, in accordance with Article 1 of the 1944 Chicago Convention and established principles of international law.²

The concept of sovereignty has evolved historically, and many jurists have attempted to define it. Jean Bodin, for example, defined it as the supreme authority over citizens and subjects, which is not subject to any laws. Reuter, on the other hand, believes that sovereignty is a characteristic that manifests itself in not being subject to any other authority of the same nature. Dr Ibrahim Al-Anani considers it to be the supreme authority of the state over its territory and subjects and its independence from any foreign authority³.

It should be noted that despite the different definitions, they all converge on one meaning, which is the authority and monopoly of the state over its territory with its three elements and what these elements contain, without being subject to any other authority of the same nature. Considering that airspace is part of the territory of the state, the concept of sovereignty, as mentioned, extends to include this part of the territory (airspace)



Thus, the conventional concept of air sovereignty is defined as the supreme legal authority exercised by the state over the airspace extending above its land and water territory, within its internationally recognised borders. This authority entitles it to manage and regulate air traffic within its territorial scope and to exercise full control over the transit, entry or landing of aircraft on its territory, in accordance with national security requirements and political and economic considerations dictated by the interests and territorial sovereignty of the state..⁴

Air sovereignty is therefore part of a state's sovereignty over its territory as a whole, encompassing the airspace above both its land and water territory (including its internal elements such as rivers, lakes or inland bays) and its territorial sea, which includes the strip of water adjacent to the coast extending 12 nautical miles.⁵

This entitles the state to exercise supreme control and absolute jurisdiction over all air navigation activities within this area, as an integral part of its national territory. Sovereignty, in this sense, grants the state the right to monopolise the airspace above its land and water territory to exercise its powers within it, and authorises it to take the necessary measures to counter any threat to its security, such as prohibiting the use of this space without permission from its authorities. However, the concept of this monopoly has changed, with some believing it should be unrestricted and others believing it should be subject to restrictions, in line with developments in the field of aviation, which has led to the concept of air sovereignty evolving.

Secondly Historical development of the concept of sovereignty:

Although the concept of air sovereignty emerged in Roman times, as mentioned above,⁶ legislative attention to it coincided with the development of the international community's adoption of the Chicago Convention on International Civil Aviation in 1944, which laid down the rules establishing the air sovereignty that currently applies. However, this was not the first basis for the concept, so we will address the legislative beginnings of the concept of air sovereignty . followed by the enshrinement of this concept in national legislation.and finally the concept according to the 1944 Chicago Convention.

1- The legislative beginnings of the concept of air sovereignty:

The first roots of the concept of air sovereignty date back to the early stages of the discovery of aviation, when the need arose to determine the legal nature of the space above a state's territory and whether it was subject to its sovereignty, as were the land and territorial waters, or whether it was considered a common area for public use.⁷

A general principle of absolute sovereignty prevailed, as stipulated in Article 1 of the 1919 Paris Aviation Convention ‘⁸in which the contracting parties recognised that ‘every State has complete and absolute sovereignty over the



airspace above its territory,' which established in international law the definitive rule that airspace is not a common void, but rather a natural extension of the territory of the state, subject to its exclusive jurisdiction to the same extent as its land and coastline.⁹

2_ Enshrining air sovereignty in national legislation:

With the development of air transport in the early 20th century, states began to enact laws affirming their sovereignty over their airspace, such as the English Act of 1921, the German Act of 1922, and the French Air Navigation Act of 1924, under Article 2 thereof.

The same applies to American and Italian legislation, which affirmed the same principle, all of which stipulated that the airspace above the territory is subject to the absolute and direct sovereignty of the state, paving the way for its recognition as an established international principle .

In addition to Arab legislation such as the Egyptian Civil Aviation Law of 1971 in its Article 4, which was amended by Article 12 of 2017, the Lebanese Civil Aviation Law of 1949 in its Article 1, and the Syrian Air Navigation Law of 1949 in its Article 1¹⁰.

and the Algerian legislator under the first law relating to air interests, No. 64-166, issued in 1964, which was replaced by Law No. 98-06, issued in 1998, containing the general rules relating to civil aviation¹¹..

The effects of this sovereignty are manifested in the right of the state to allow or prohibit foreign aircraft from flying over its airspace and to impose restrictions it deems necessary for security or military reasons or for reasons relating to public order..¹²

3- Air sovereignty in the 1944 Chicago Convention:

The 1944 Chicago Convention on International Civil Aviation ,¹³ established the modern legal framework for the principle of air sovereignty, with its first article explicitly stating that 'every State has complete and absolute sovereignty over the airspace above its territory'¹⁴.

It also sought to reconcile this sovereignty with the principle of freedom of international civil aviation by establishing specific restrictions on rights of passage and technical and commercial landing, representing a shift from absolute sovereignty to sovereignty regulated by international agreements..¹⁵ It recognised the sovereignty of the state on the one hand and the freedom of peaceful flight of civil aircraft on the other, creating a balance between the requirements of sovereignty and the necessities of international freedom of air navigation. Thus, the concept of air sovereignty today is defined as legal sovereignty restricted by international obligations, based on the principle of respect for the territorial



jurisdiction of the state, taking into account the rules of civil aviation that guarantee freedom of peaceful passage and the safety of air navigation in international airspace¹⁶

The concept of air sovereignty has thus become international in nature, encompassing international recognition of a state's sovereignty over its airspace, as reflected in the aforementioned 1944 Chicago Convention, which imposes obligations on all member states without discrimination to ensure the safety of air navigation throughout the world. However, this sovereignty is linked to the borders of the state, which raises questions about its scope

second requirement: scope of air sovereignty :

According to Article 1 of the 1944 Chicago Convention, each state has absolute sovereignty over the airspace,¹⁷ that falls within the scope of Articles 1 to 4 of the 1967 Outer Space Treaty, the freedom to explore outer space, the peaceful use of outer space, and non-discrimination between states in the field of space research above their territory.¹⁸

These texts reveal two issues concerning the scope of air sovereignty. The first relates to its geographical extent, which can be expressed as the horizontal scope of air sovereignty, as we will attempt to clarify . The second issue concerns its extension into outer space, which can be expressed as the vertical or vertical scope of air sovereignty, which we will attempt to clarify .

Firstly: . Horizontal scope of air sovereignty:

The geographical extension of air sovereignty is determined in light of the principle of state sovereignty over the airspace above its land and sea territory, including everything that extends above its territory and territorial waters to the limits where effective control over air traffic can be exercised. International law, as enshrined in the 1944 Chicago Convention, recognises the state's 'complete and absolute sovereignty' over the airspace above its territory, which gives it the right to regulate air navigation within it and to authorise or prohibit foreign aircraft from flying or landing in it□□.

Article 2 of the 1944 Chicago Convention stipulates that the territory of a state includes its land and adjacent territorial waters, whether under its sovereignty or not²⁰.

It follows that the geographical extent of air sovereignty is not limited to land, but also extends to the atmosphere above the territorial sea, to the extent that the State's authority over the sea itself ends, in accordance with the rules of public international law. It follows from this principle that the airspace above the territory subject to the sovereignty of the State is considered an integral part of its legal territory, over which it exercises all aspects of sovereignty, such as licensing, inspection, prohibition, and designation of prohibited or dangerous areas for



aviation. The state may even close its airspace, in whole or in part, in cases of war or emergency to preserve its national security and that of persons under its protection or mandate.²¹

It should be noted that some states resort to establishing defensive identification zones around their airspace, known as Air Defence Identification Zones (ADIZ), as a preventive regulatory measure, primarily aimed at identifying aircraft approaching their airspace. Aircraft that do not comply with identification procedures (such as submitting a flight plan in advance or specifying their location, altitude and time) are considered suspicious or even hostile, justifying their military interception. These zones do not imply an extension of sovereignty beyond national airspace, but are regulatory measures to verify the identity of aircraft before they enter sovereign airspace.²²

In the United States, for example, the Civil Aviation Administration issues regulations (Part 620), while Canada relies on an official notice issued by the Transportation Administration (NOTAM 22/55). These regulations precisely define the boundaries of the areas through geographical coordinates of longitude and latitude, and these areas often extend far over international waters, up to 300 miles from the coast.²³

Secondly -Vertical extension of air sovereignty:

Through research into the development of the concept of air sovereignty, and considering the text of Article 1 of the Chicago Convention, as well as the aforementioned 1967 Outer Space Treaty, which gave rise to several jurisprudential differences regarding the determination of the boundary between the airspace subject to state sovereignty and outer space subject to freedom of exploration, which diverged into an opinion establishing absolute air sovereignty, an opinion that the air is not subject to the sovereignty of any state and advocates freedom of the air, and an opinion that reconciles the two approaches and advocates restricted air sovereignty .

1- Absolute air sovereignty:

This theory views airspace as a natural extension of a state's territory, and therefore all layers of airspace, regardless of altitude, are subject to the absolute and unrestricted sovereignty of the state. According to this view, the state has full control over entry into and exit from its airspace, as well as the authority to prohibit or regulate aircraft flying over its territory.²⁴

The 1919 Paris Convention is the historical basis for establishing the principle of a state's complete sovereignty over the airspace above its territory. However, this recognition does not necessarily imply that this sovereignty extends indefinitely in altitude, since Article 1, despite recognising the principle of absolute sovereignty, does not specify a precise vertical limit to the scope of this



sovereignty. It should be noted in this context that the Convention failed to establish a consistent legal standard that could be used to determine the upper limit of the airspace subject to state sovereignty.

Referring to the provisions of the 1944 Chicago Convention, as the contemporary legal framework governing international civil aviation, it is clear that it did not add to the principle of air sovereignty enshrined in the Paris Convention, except to subject its exercise to a set of regulatory restrictions related to the control and safety of air navigation, in order to serve the requirements of international civil aviation security and regularity, without explicitly specifying the vertical limit at which a state's air sovereignty ends.

What can be said about the exercise of sovereignty in terms of its vertical extension to infinity is that it is illogical and inconsistent with scientific reality, because vertical extension is unlimited. and its implementation in this manner would constitute an obstacle to space exploration, especially since states vary in terms of scientific and technological development, and would therefore constitute an obstacle to scientifically advanced countries in space exploration.

Furthermore, considering sovereignty to be absolute in terms of its vertical extension conflicts with the 1967 Outer Space Treaty²⁵. which is the basic document regulating the activities of countries in space, including the moon and celestial bodies, and which emphasises the freedom to use space without any country having sovereignty over it, which would disadvantage less developed countries²⁶.

2- Freedom of the air:

This theory is based on a principle similar to that of freedom of the seas, whereby air is considered a natural element not subject to the sovereignty of any state, and the airspace above a territory must be open to free passage, as is the case on the high seas. This theory considers that airspace is not part of a state's territory but rather an international domain, which eliminates any exclusive exercise of authority by states over their airspace²⁷.

This view was advocated by the United States of America as a result of the tremendous development of American aviation and its desire to facilitate international air navigation for the purposes of competition and airspace penetration. It defended this position at the 1944 Chicago Conference. However, this trend was opposed at the conference by Great Britain, which argued for the need to place restrictions on this freedom²⁸.

Perhaps one of the most prominent reasons for the rejection of the theory of freedom of the air was its conflict with the first article of the 1919 Paris Convention²⁹, which recognised absolute air sovereignty and was in force for



member states. The Chicago Convention later confirmed that the principle of freedom of the air would not be implemented and continued to affirm the sovereignty of states over their airspace, while imposing restrictions on this sovereignty. This is reflected in the text of Article 1, which recognised the sovereignty of states over their airspace, and in paragraph (c) of Article 2 of the same convention, which stipulated that no aircraft not covered by the provisions of the convention may use the airspace of a state without the prior permission of the authorities of that state³⁰.

3- Relative sovereignty:

This establishes the state's sovereignty over its airspace, but not absolute sovereignty, both in terms of the exercise of air sovereignty, where the Chicago Convention imposes restrictions to ensure the smooth functioning of international air navigation, as mentioned above, and in terms of the vertical extension of this sovereignty. Opinions differ in this regard, with some arguing that the nature of the activity should be used as the basis for determining the boundary between airspace and outer space (the functional school) and others arguing that a specific spatial boundary should be established (the spatial school).

A-The functional school:

This school considers the nature of the activity or function performed by the object under study to be the basis for determining the legal regime applicable to it, whether it concerns aerospace or space activities. The criterion adopted by this school is not based on the altitude reached by the object in the atmosphere, but rather on the purpose for which it is used. If the activity involves space tasks such as launching satellites or space exploration, it is subject to the rules of international space law. If it relates to aviation activities within the airspace, the rules of air law apply.³¹ Among the countries that have advocated the functional school approach are the Soviet Union and the United States of America³².

The essence of this school of thought is to avoid drawing a fixed spatial boundary between airspace and outer space. and its approach is based on the principle of applying the legal system (air law or space law) based on the nature and type of activity practised, rather than on geographical location. This approach requires clarification and verification of the legal definitions of relevant terms, such as the distinction between a spacecraft and an aircraft³³.

B -The spatial determination school:

This school of thought believes that the distinction between airspace and outer space must be based on purely spatial or physical criteria, i.e. on the altitude at which outer space begins and a state's airspace ends. Its proponents consider airspace and outer space to be two physically separate domains, and therefore this boundary can be determined scientifically. Several theories have branched out from this,³⁴ the most important of which are :



B-1- The Earth's gravity theory: This theory defines the upper limit of airspace at a point between the upper limits of airspace and Earth's gravity, which is located at an altitude of 363 miles above sea level.³⁵

B-2-The atmospheric theory: According to this theory, outer space is the space in which the layers of the atmosphere exist, i.e. the area in which air affects moving objects. When the air becomes so thin that it no longer affects the movement of aircraft or vehicles, we may have entered outer space. However, this theory is difficult to verify because it varies according to physical conditions³⁶.

B-3-The artificial satellite orbit theory: This theory holds that the boundary between airspace and outer space can be defined at the lowest point at which satellites orbit in a stable orbit. Since these satellites are not subject to prior authorisation from countries when passing over their territories, anything above this altitude cannot be subject to the sovereignty of any country.³⁷

B-4-Kármán line theory: One of the most common criteria, this is a hypothetical line located at an altitude of approximately 100 km above the Earth's surface. This line is used as a technical and legal criterion to determine the beginning of space, which is not subject to the sovereignty of states, unlike airspace, which is under the sovereignty of the state above its territory.³⁸ It is therefore used as a dividing line between the two domains, with outer space beginning at this point and above. Some states have adopted this line in their official positions, and it has technical support from aeronautical institutes.³⁹

United Nations document A/AC.105/1039/ADD10 addressed the Kármán line theory as the physical basis for determining the boundary between airspace and outer space at an altitude of 100 km above the Earth's surface. It considered this line to be a useful scientific criterion, but deemed it insufficient for establishing clear legal boundaries of air sovereignty or for determining the legal regime applicable to suborbital flights. It therefore proposed the adoption of a flexible comparison based on the creation of an intermediate legal zone known as 'near space' with an altitude between 50 and 150 km, in order to overcome the practical limitations imposed by this theory. Such a union⁴⁰.

We believe that the Karman line theory strikes a balance between freedom of space exploration and the air sovereignty of states, particularly in relation to unmanned aerial vehicles, and we support our position with the following arguments:

This altitude is sufficient to ensure the security of states from the threat of illegal and unauthorised flights that could pose a risk to their security and safety. At this altitude, the density of the atmosphere is so low that aircraft wings cannot generate sufficient lift, while drag is too high for spacecraft to fly in orbit around the Earth⁴¹.



Unmanned aircraft, which are the focus of our study, do not fly at altitudes higher than those of manned aircraft at present, which makes this theory sufficient to address the dangers of their illegal use.

Through our research, we have not found any unmanned aircraft that can fly at altitudes higher than manned aircraft, although there are unmanned aircraft that can fly for long periods and distances that are almost comparable to manned aircraft, such as the Zephyr unmanned aircraft, developed by the European multinational aerospace company Airbus, which can fly to a distance of 75,000 feet, equivalent to 22.88 kilometres⁴². However, it has not reached an altitude higher than that of ordinary aircraft, which supports our preference for adopting the Kármán line theory as the basis for determining the vertical scope of air sovereignty .

The second topic :The legitimacy of the Algerian forces' use of force against the Malian drone:

States may resort to the use of force to protect their sovereignty and ward off aggression, as flying over their territory without their permission may be considered an act of aggression. In this regard, the incident of the use of force by Algerian air defence forces against a Malian drone that violated Algerian airspace stands out.

However, the resort to the use of force is strictly regulated and is not an absolute right applicable under all circumstances. While Article 51 of the United Nations Charter recognises the right of states to defend themselves against any attack that threatens their security, it also imposes restrictions on the legitimacy of such force .Conversely, Article 3 bis of the Chicago Convention establishes the principle of prohibiting the use of force against civil aircraft, which raises the question of the legality of the Algerian defence forces' shooting down of the Malian drone and the appropriate legal classification of the incident. To answer this question, we will examine the principle of prohibiting the use of force against civil aircraft and the extent to which it applies to the Malian drone (first Requirement), and then we will examine the extent to which the Algerian forces' response to the Malian drone can be considered legitimate defence (second Requirement).

First Requirement: the extent to which the principle of prohibiting the use of force against civil aircraft applies to the Malian drone:

Article 3bis of the 1944 Chicago Convention states that "All Contracting States recognise that every State shall refrain from resorting to the use of weapons



against civil aircraft... Every State has the right to exercise its sovereignty to compel any civil aircraft flying over its territory to land at a specified airport ,⁴³ Article 3bis thus prohibits the use of any kind of force against civil aircraft and only permits the aircraft to be compelled to land, without going beyond that⁴⁴. Below, we will discuss the conditions for implementing the principle of prohibiting the use of force against civil aviation (firstly), while we will attempt to clarify the extent to which this principle can be applied to the Malian drone (Secondly).

firstly: Conditions for the application of the principle of prohibition of the use of force against civil aircraft:

Article 03 bis mentioned above stipulates an important principle in international law, which prohibits the use of force against civil aviation, and which has been enshrined in order to preserve the lives of aircraft passengers and even the aircraft themselves. This is understood from the phrase 'the lives of persons on board and the safety of the aircraft shall not be endangered' in paragraph (a) of Article 3 bis above⁴⁵.

. Consequently, the protection provided for under this principle – the prohibition of the use of force against civil aircraft – covers civil aircraft even if they are not carrying passengers. More precisely, the text combines the protection provided for passengers and for the aircraft itself, with the stronger presumption prevailing, namely that there are passengers on board.

This is because Article 03 bis above combines the necessity of not endangering the lives of passengers and the safety of the aircraft itself. However, the application of this principle depends on the civilian use of aircraft, as we will show, and then we will highlight the extent to which it extends to include unmanned aircraft .

A- Civilian use of aircraft:

It follows from Article 3(a) of the Chicago Convention that its scope of application in terms of aircraft type is limited to aircraft used for civilian purposes and does not extend to state aircraft. It should be noted in this context that the international legislator did not adopt the terms 'military aircraft' or 'war aircraft', but rather resorted to using a broader concept, namely 'state aircraft'. which broadens the scope of the exception to include, in addition to military aircraft, other categories of non-civilian aircraft, such as police and customs aircraft and other public facilities.

Accordingly, the principle of prohibiting the use of force against civil aviation applies only to civil aircraft, without extending to state aircraft, which remain subject to a different legal regime governed by considerations of sovereignty, national security and the relevant rules of public international law.



Paragraph (b) of the same article (3) then clarifies what is meant by state aircraft, defining them as aircraft used for military, customs or police services, but stating that these types are examples and not an exhaustive list, as indicated by the phrase ‘are considered state aircraft...’. This implies that the concept of State aircraft may be broadened to include aircraft used for purposes other than civil uses. Non-civil aircraft are subject to special regulations established by each State Party concerning the operation of such aircraft within its territory⁴⁶.

These types of aircraft (state aircraft) do not have the right to fly over or land in the territory of a state without prior authorisation from the latter, as stipulated in paragraph (c) of the aforementioned Article 03⁴⁷.

A distinction must therefore be made between the civil and military use of aircraft. The 1944 Chicago Convention does not apply to aircraft used for military, customs and police services, but is limited to civil aircraft only. Military use is therefore excluded from the scope of international civil aviation regulation⁴⁸.

There is also a problem that arises in this regard, which is the possibility of the disguised use of aircraft, such as the use of civil aircraft for military or police operations, which raises the question of whether the aircraft should be considered civil or non-civil under this use. This possibility is addressed in Article 4 of the Chicago Convention, which obliges member states not to misuse civil aviation in a manner inconsistent with the objectives of the Convention.

By extrapolating from paragraph (b) of Article 3 bis of the aforementioned Chicago Convention, it can be concluded that, in the face of such use, a state has the right to compel the aircraft to land at an airport designated by the authorities of that state, provided that there are reasonable grounds for that state to believe that the aircraft in question is being used for purposes that are not in accordance with the Chicago Convention. This raises many possibilities regarding unlawful use, which the article refers to as ‘inconsistent with the purposes of the Convention’, as it could be military, customs or police use, or other uses that fall within the scope of paragraph (b) of the aforementioned Article 3, or that the aircraft is subject to unlawful seizure by criminal persons or organisations.

The same paragraph above also adds the possibility for the authorities of the State concerned to issue any other instructions to the aircraft, which may be to leave the airspace, or to intercept the aircraft in accordance with the same paragraph, while always ensuring that the lives of the passengers and the safety of the aircraft are not endangered.

The pilot flying the aircraft must comply with these instructions, as stipulated in paragraph (c) of the aforementioned Article 3 bis, which obliges States, in order



to ensure this, to include in the laws and regulations of the Contracting States severe penalties for any pilot who fails to comply with the instructions⁴⁹.

A careful reading of the text of Article 3 bis of the aforementioned Chicago Convention leads to the conclusion that, in order to protect its sovereignty from violation by aircraft likely to be used for non-civilian purposes, a State is obliged to take gradual measures, beginning with issuing instructions to the pilot to either leave the airspace or land at a specific airport. and the pilot must comply with that order, then resort to intercepting the aircraft if the pilot does not comply with the previous instructions, with the need to protect the lives of passengers and the safety of the aircraft within the strategy of gradual measures.

B - Application of the provisions of the Chicago Convention to unmanned aircraft:

Article 8 of the Chicago Convention stipulates that no unmanned aircraft may fly over the territory of a State unless it has been authorised to do so by that State⁵⁰.

The Convention therefore requires prior authorisation to fly in the airspace of a State. However, it should be noted that this provision is contained in Chapter II of the Convention, which deals with flights over the territory of a Contracting State, and that this type of aircraft (unmanned aircraft) is not mentioned in Chapter I, which deals with the scope of application. This raises the question of whether the scope of application of the Convention extends to this type of aircraft or not. We note here that the specific reference to unmanned aircraft in this chapter, which deals with flying over the territory of a contracting state, and the linking of such flying to the condition of prior authorisation, emphasises the protection of the airspace of contracting states from unauthorised use of their airspace, especially by this type of aircraft. This reinforces the protection of air sovereignty.

Annex VII, Part II, entitled 'Classification of Aircraft,' states in paragraphs 2.2 and 3.2 that unmanned aircraft are: "Aircraft intended to be operated without a pilot on board, additionally classified as 'unmanned'

Unmanned aircraft include unmanned free balloons and remotely piloted aircraft⁵¹. This makes unmanned aircraft fall under the jurisdiction of the International Civil Aviation Organisation in terms of classification, registration and determination of nationality, As the provisions of the aforementioned Annex require unmanned aircraft to carry nationality and registration marks like other manned aircraft, in accordance with Article 20 of the Chicago Convention Consequently, as these aircraft are subject to the same registration, nationality and classification procedures, as well as compliance with air navigation rules, they are considered part of the international civil aviation system and are subject to the International Civil Aviation Organisation (ICAO). This shows that the provisions of the Chicago Convention apply to civil unmanned aircraft in principle, but in



accordance with the conditions set out in the Convention and by ICAO. The first of these conditions is the civil use of the unmanned aircraft, as well as obtaining prior authorisation before flying in the airspace of a given country.

Secondly: The extent to which the principle of prohibiting the use of force against civil aviation can be applied to the Malian march :

According to an official statement issued by the Algerian Ministry of National Defence, on the night of April 1st, an Algerian air defence unit detected and intercepted a drone that had penetrated national airspace for a distance of approximately 2 km. The Ministry confirmed that this operation demonstrates the army's heightened vigilance in safeguarding borders against any threats to national sovereignty⁵². This incident raises a pivotal legal question: Was the Algerian defence forces' resort to force against the Malian drone lawful, or did it contravene the international principle prohibiting the use of force against civil aviation, whose conditions were outlined in the previous section?

To answer this question, we must evaluate whether the criteria for applying the prohibition of force are met in this specific case. This requires examining, firstly, the legal classification of the Malian aircraft based on its operational use (which must be civilian to enjoy protection). Secondly, we will investigate whether the Malian authorities had obtained the mandatory prior authorization from Algerian authorities to operate an aircraft within their sovereign airspace.

A -The Legal and Technical Nature of the Malian Drone:

Mali filed a formal complaint with the International Court of Justice on September 19, 2025, accusing Algeria of shooting down a Malian military drone. The Malian defense characterized this action as a clear violation of the principle of non-use of force and an unlawful act of aggression under international law⁵³.

According to security reports, the drone intercepted by Algerian forces was an advanced Turkish-made Bayraktar Akinci, after it entered Algerian airspace from the Malian border on the evening of April 1, 2025. The unmanned aerial vehicle (UAV) was detected and shot down within 30 to 45 seconds of entering national airspace, having penetrated two kilometres into Algerian territory prior to its interception⁵⁴.

This specific drone model possesses advanced tactical capabilities, with an operational range of up to 5,000 km and the ability to fly for 24 hours at altitudes of up to 40,000 feet. It is equipped with advanced Active Electronically Scanned Array (AESA) radar systems, electronic warfare suites, and is capable of carrying up to 1,350 kg of guided munitions⁵⁵.



The technical specifications and operational capabilities of this UAV clearly establish its military character. Consequently, being configured exclusively for combat and state operations, it fails to qualify for the protective regime of Article 3 *bis* of the Chicago Convention, which prohibits the use of force against civil aircraft. This exclusion is explicitly mandated by Article 3 (paragraphs a, b, and c) of the Chicago Convention, which exempts state aircraft—including military, police, and customs aircraft—from its civil aviation framework, while strictly prohibiting such aircraft from flying over or entering the airspace of a contracting State without prior express authorization⁵⁶.

B - The Requirement of Prior Authorization:

The absence of the first condition (civilian status) necessitates examining the extent to which the second condition—namely, obtaining prior operational authorization from the Algerian authorities—has been met.

A meticulous analysis of the official statements issued by the Algerian Ministry of Foreign Affairs and their Malian counterparts reveals the absence of any prior bilateral agreement or specific authorization permitting Malian military aircraft, including drones, to penetrate Algerian airspace. Furthermore, no defense cooperation agreement exists between the two governments that sanctions the shared use of airspace for joint military operations. Logically, had such an authorization existed, the Malian defense would have explicitly invoked it to support its claims before international bodies.

While Mali characterized the downing of its UAV in the Tinzaouaten region as an act of aggression contrary to international law—arguing that it obstructed its domestic counter-terrorism operations against armed groups⁵⁷.its official rhetoric refrained from claiming any prior flight permission. Instead, Mali initially contested the airspace penetration itself, before subsequently attempting to justify its border proximity as a tactical pursuit of insurgent factions.

Conversely, the statement issued by the Algerian Ministry of Foreign Affairs on April 7, 2025, confirmed that comprehensive technical data verifying the airspace violation by the drone is permanently logged within the database of the Ministry of National Defence. The statement further clarified that this incident was not an isolated event, but was preceded by similar unauthorized incursions by the same aircraft on August 27, 2024, and December 29, 2024⁵⁸ This persistent pattern confirms the lack of any legal framework granting Malian forces permission to utilize Algerian airspace for military maneuvers.



Consequently, the unauthorized flight of the Malian military aircraft within Algerian airspace constitutes a manifest infringement of national sovereignty, in direct violation of Article 3 (specifically paragraphs b and c) and Article 8 of the Chicago Convention⁵⁹. Such an unlawful intrusion legally triggers the right of the territorial State to defend its sovereign airspace, in accordance with the public international law regimes that will be examined in the following section.□

Second Requirement: The extent to which the Algerian forces' response to the Malian drone can be considered legitimate self-defense:

Legitimate self-defense is an inherent right guaranteed to all States, recognized under customary international law and codified across successive international instruments. Crucially, it serves as a ground for precluding wrongfulness, exempting a State from international responsibility regarding the prohibition on the use or threat of force, as stipulated in Article 2, paragraph 4, of the United Nations Charter,⁶⁰ provided its strict conditions are fully satisfied. These consist of criteria relating to the nature of the aggression (firstly) and criteria governing the defensive act itself (secondly). This section evaluates the extent to which these legal conditions were satisfied during the interception of the Malian unmanned aerial vehicle (UAV) by the Algerian air defense forces.

Firstly: Conditions relating to the act of aggression

Under international law, a State may resort to armed force in the exercise of its inherent right to self-defense only if it is reacting to an "armed attack." According to established doctrine and the jurisprudence of the International Court of Justice (ICJ), this aggression must be unlawful, actual, and of a sufficient scale and gravity; a mere frontier incident or minor violation does not automatically trigger the right to self-defense⁶¹ Article 51 of the Charter of the United Nations explicitly mandates that nothing in the Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations⁶².

Furthermore, the threat must be immediate and direct, meaning the attack has either commenced or its effects are ongoing. This strict temporal requirement generally excludes preemptive use of force against potential or distant future threats, as indirect provocation (such as military maneuvers within foreign borders) does not legally constitute an "armed attack"⁶³.



This strict definition of an armed attack as a prerequisite for self-defense has been consistently affirmed by the International Court of Justice, notably in the *Nicaragua* and *Oil Platforms* cases, effectively rejecting broad doctrines of preemptive or preventive self-defense⁶⁴.

Additionally, the attack must directly threaten a State's core attributes protected under international law, namely its territorial integrity and political independence⁶⁵.

Applying these parameters to the incident, the Algerian Ministry of National Defence stated that a drone violated national airspace, penetrating to a depth of 1.6 km at 00:08 on April 1, 2025. According to the official narrative, the UAV exited and subsequently re-entered in a hostile tactical posture, which prompted air defense units to neutralize it⁶⁶.

From the Algerian legal perspective, this maneuver represented an unlawful, operational threat that directly infringed upon national sovereignty and posed an immediate risk to border security and military facilities.

This incursion constitutes a clear breach of territorial sovereignty, contravening Article 1 of the Chicago Convention, which recognizes that every State has complete and exclusive sovereignty over the airspace above its territory, as well as Article 8, which expressly prohibits unmanned aircraft from flying over the territory of a contracting State without prior express authorization. The assessment of the drone's hostile posture fell within the operational competence of the territorial defense unit. Furthermore, the Algerian authorities noted that the same aircraft had recorded unauthorized airspace penetrations on August 27, 2024, and December 29, 2024.⁶⁷

arguing that force was withheld until the final incursion on April 1, 2025, when the aircraft's maneuvers—interpreted as hostile reconnaissance preceding an imminent strike—presented a real and immediate threat. The Algerian Ministry of Foreign Affairs subsequently affirmed that material and technical data validating these facts were preserved within the defense databases.⁶⁸

Secondly: Conditions relating to the act of defense:

Under customary international law, famously articulated in the *Caroline* case, a lawful act of self-defense must strictly satisfy two core criteria: necessity and proportionality⁶⁹.



1. Necessity:

The principle of necessity dictates that the resort to force must be the absolute last resort, meaning the defending State has no alternative peaceful means—such as diplomatic recourse or the immediate, effective intervention of an international body—to repel the threat⁷⁰. If a situation remains at the level of a non-imminent threat, it falls under the purview of the UN Security Council under Chapter VII, specifically Article 39⁷¹.

In this case, the justification for necessity rests on the operational reality: an armed, unidentified drone performing rapid maneuvers inside sovereign airspace leaves no temporal window for diplomatic arbitration or Security Council notification before the potential threat materializes.

However, a legal question arises as to why the Algerian authorities did not formally notify the Security Council regarding the prior incursions of August 27 and December 29, 2024.⁷²

A comparative analysis of the conflicting official statements provides legal clarity. Initially, the Algerian Ministry of National Defence issued a prompt statement identifying the target generically as an "armed drone near the border town of Tinzaouaten," implying that the aircraft's specific state ownership was not yet verified through technical signature tracking. Concurrently, on April 1, 2025, the General Staff of the Malian Armed Forces (FAMA) issued a public communiqué stating that a FAMA unmanned aircraft had crashed near Tinzaouaten in the Kidal region during a routine surveillance mission, emphasizing that the crash caused no casualties due to safety protocols preventing the detonation of its onboard munitions⁷³.

Subsequently, on April 6, 2025, the Malian Transitional Government issued Communiqué No. 073, shifting the legal narrative,⁷⁴ It asserted that it lost contact with its drone within Malian territory, claiming the wreckage fell within its borders, and requested technical data from Algeria to prove the alleged 2 km airspace intrusion. The statement further claimed the drone was actively transmitting intelligence regarding a high-level meeting of terrorist factions.

From an international law standpoint, the material contradictions between the initial Malian military communiqué (characterizing the flight as a routine mission) and the subsequent governmental statement (characterizing it as an active counter-terrorism operation) create a manifest evidentiary inconsistency. This discrepancy suggests either a failure of operational command and control over the asset or an



attempt to retroactively invoke counter-terrorism imperatives to justify repeated airspace violations. Crucially, neither hypothesis absolves the State of responsibility under international law, given Malis explicit acknowledgment of state ownership over the military asset.

2. Proportionality:

Proportionality requires that the defensive force employed must be strictly limited to repelling the immediate attack and must not exceed the scale of the threat or be used to achieve collateral political or territorial objectives⁷⁵.

In the present incident, the evidence indicates that the Algerian response was strictly localized, limited exclusively to neutralizing the specific intruding asset, and did not escalate into cross-border strikes or retaliatory actions against Malian military infrastructure.

Consequently, while the defensive act satisfies the threshold of proportionality, the unauthorized deployment of a state military asset into foreign territory constitutes a wrongful act. Because the Malian Transitional Government has explicitly claimed ownership of the UAV, Algeria retains the right under public international law to seek legal remedies and state responsibility claims for the violation of Articles 1 and 8 of the Chicago Convention⁷⁶.

It is critical to observe that while Algeria limited its immediate response to the tactical downing of the asset—likely guided by its role as a regional mediator—Mali chose to escalate the dispute by submitting a formal application to the International Court of Justice,⁷⁷ However, under international law, the ICJ does not possess automatic jurisdiction over sovereign disputes. Pursuant to Article 36, paragraph 2, of the Statute of the ICJ, the Court's jurisdiction is strictly consensual, meaning the case cannot proceed to the merits unless Algeria explicitly accepts the jurisdiction of the Court for this specific dispute⁷⁸.

In conclusion, abstracting from political rhetoric and relying strictly on verifiable technical evidence, the unauthorized penetration of a state military drone in a hostile posture establishes a clear breach of airspace sovereignty. This legally validates the tactical defensive response under the strict exceptions of state sovereignty and necessity.



Conclusion and Recommendations:

In conclusion, this study has addressed the complex legal nature of airspace sovereignty, examining both its theoretical conceptual parameters and its practical boundaries. It highlighted the longstanding jurisprudential debates surrounding the vertical extension of sovereignty into outer space—a realm that currently lacks precise, universally binding international codification.

Furthermore, the study evaluated the legal regimes governing State responses to airspace violations by unmanned aerial vehicles (UAVs), emphasizing the critical necessity of distinguishing between civilian and military aircraft. In this regard, it demonstrated that civilian aircraft enjoy robust protection under international law, primarily through the absolute prohibition on the use of force codified in Article 3 *bis* of the Chicago Convention, provided their utilization remains strictly commercial and does not transfigure into an operational threat undermining the target State's security.

Conversely, the unauthorized penetration of sovereign airspace by military drones constitutes a *prima facie* violation of State sovereignty under international law, particularly Article 1 of the Chicago Convention. Depending on the objective tactical circumstances, such incursions can be legally classified as an armed attack, thereby triggering the inherent right of individual self-defense under Article 51 of the UN Charter. Under this framework, the defensive measures must satisfy the strict requirements of necessity and proportionality. Applying these principles to the recent incident, the operational data indicates that the Malian military drone posed an immediate threat to Algerian territorial security. Consequently, its interception and neutralization complied with the customary international law requirements of legitimate self-defense.

Recommendations:

Based on the findings of this study, the following recommendations are proposed:

- Codification of Vertical Boundaries: International judicial and legislative bodies must cooperate to establish a binding treaty defining the precise vertical limits of State airspace sovereignty. To resolve the ongoing doctrinal divergence and balance territorial security with the freedom of space exploration, it is recommended to formally adopt the Kármán Line (established at 100 km) as the definitive legal boundary in international



texts, while embedding flexible mechanisms for review to adapt to future aerospace technological developments.

- Establishment of a Sanctions Regime for State UAV Incursions: The international community should institute strict diplomatic and economic regulatory sanctions against States whose state-owned or military drones are proven to have violated the sovereignty of foreign nations. Failure to deter such unlawful, non-consensual state incursions poses a severe threat to the safety, stability, and predictability of international civil aviation routes traversing those regions.
- Institution of a Permanent International Fact-Finding Commission: A permanent international commission of inquiry should be established under the auspices of the United Nations or ICAO, specifically mandated to investigate unauthorized airspace incursions by military aircraft and drones. This commission must be granted robust investigative powers, including the authority to conduct immediate on-site inspections and physical debris forensics. In this context, analyzing physical wreckage—such as that of the Malian drone, the exact location of which remains unverified by the transitional government—remains the primary scientific methodology to uncover the material facts and determine international responsibility in such incidents.

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