COUNTERACTING EXTRATERRITORIAL SANCTIONS – BY WHICH MEANS?

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SUMMARY:
The International society is in a chaotic situation due to ongoing violations of International Public Law whose effectiveness and existence are called into question. We are witnessing a balance of power where the strongest imposes its law on the weakest, taking advantage of its political, economic and financial privileges.

This context is illustrated by the unilateral sanctions which are countermeasures, thus acts of war, taken in an unlawful way. These measures affect not only the countries that are sanctioned, but also the third States, victims of the side effects (extraterritorial effects) of these sanctions.

These measures undermine the principles and peremptory standards of International Public Law (jus cogens) : the principle of sovereignty of States, the principle of non-interference, the one of freedom of trade including the free navigation, the favored-nation clause, the non–discrimination in trade sector according to GATT standards.

This situation needs to be remedied by taking adequate measures, including reprisals, even if these last are illicit by nature. Indeed, they become licit if they are taken against illicit countermeasures. In other words, we fight unlawful acts by unlawful acts in this struggle that demonstrates the drift of the international institutions that must be reformed as proposed by former Secretary General of the United Nations, Late Boutros Boutros-Ghali, in order to save them and to remove them from political arbitrariness.

Etymologically, a sanction is "an approval for something, which commits its accuracy, validity and sustainability"[1]. Thus, in certain constitutional monarchies, a sanction is an act by which the monarch, or his representative, approves a legislation passed by the parliament. It is a process that ratifies and enforces a legal provision. This provision will be confirmed by the "sanction" which appears as the consequence of a given behavior or conduct.

This positive meaning of "sanction" explains its use in certain areas of law: To sanction a decree, a law or a privilege. It is also used in other contexts that refer to the idea of a privilege: A diploma is said to sanction school or university studies.

But there is another etymological source of this word which meets its most common meaning, especially in criminal law. It derives from the Latin words *sancio* and *sancire* that refer to the idea of consecrating a decision and making it "inviolable", therefore irrevocable, by a religious act[2]. Thus, the Justinian Code defines "*sanctum"* as what is forbidden and protected from the attack of men[3]: "*proprie dicimus sancta, quae neque profana sunt, sed sanction quadam confirmata: ut leges santae sunt, sanctioned enim quadam subnixae. Quod enim sanctioned quadam subnixum est, id sanctum est, and deo not sit consecratum"*[4].

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1 "Sanction et Socialisation", Erick PRAIRAT, Chapter 1.

2 Gaffiot Dictionnary, Hachette, 1934, p. 1388

3 Justinian Code, "*Imperatoris Ivstiniani Opera"*, Digestae, liber, I, 8.8.

4 Properly denominated as "*sancta"* are things which are neither "sacred" nor profane, but which are confirmed by a certain "sanction", as for example the laws are *sancatae*; what is subject to sanction is *sanctum*, which is not consecrated to the gods. Ibid.

Therefore, according to Emile Benveniste[5], the *"sanctus is the state of a prohibition for which men are responsible, and of a prescription supported by a law"*. Thus, the "sanction" goes along with a notion of virtue. And since it comes within the disciplinary framework, it serves organizations. Hence its purposes are both to put an end to an act that is prejudicial to society in order to protect people and property, and to change behaviors that have caused this act and that may continue to trigger it. Preserving the social and moral order, fixing the disorder and preventing from the repetition of acts that lead to disorder, all these have given the sanction its repressive character: to humiliate and scare the perpetrator of the action or behavior that caused social disorder.

The sanction will therefore become a penalty imposed on those who have violated a standard of any kind: an unwelcome conduct of a child, violating the disciplinary rules and good behavior, may be sanctioned by the deprivation of timeouts or desserts; an adult who has committed an act undermining the social order incurs a punishment, etc ... This repressive measure must be taken by a superior authority, that is recognized and accepted as such with a deterrent effect of neutralization and prevention of new transgressions.

It was the second etymological source that has given the repressive character to the "sanction" as it was gradually adopted in criminal law. "To sanction" has become the act of punishing[6], demonstrating to a person that he/she has broken a rule and that he/she has done something wrong. By punishing this person, we give satisfaction to the public opinion - the society - because, in reality, it is easier to punish a person than to remedy a situation.

Yet for the sanction to have any meaning, the members of the society must, above all, understand and identify the law, recognize it and accept it, be it a natural law[7] or the expression of the popular will.

In accordance with the law[8], the sanction must be a means and not an objective or a purpose. It is thus supported by the law which structures the social life and defines the reprehensible acts. Consequently, the sanction can only be pronounced after the recognition of guilt which requires the existence of a fact that is prohibited by the law and that can be imputed to its author when he/she has the necessary discernment to admit that he/she violated a norm and caused harm to society as well as to the direct victim of his/her act.

All of these considerations that are related to the definition and the delimitation of the notion of sanction in criminal law have been transposed into public international law. Hans Kelsen's definition of sanctions in public international law is the best illustration of this: *"The sanction is a reaction to the unlawful. It is the main consequence of an unlawful conduct"*[9].

Indeed, the development of public international law, since the League of Nations times, and since the creation of the United Nations whose Charter[10] has allowed the development of an international legal order with mandatory norms and principles (particularly the *jus cogens*[11]), has obliged, at least theoretically, the States and all the actors of the international society to conform to it. Thus, the mandatory nature of the rules of public international law is similar to the mandatory nature of the law

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5 Emile BENVENISTE, in *"Vocabulaire des institutions européennes"*», Tome II, Editions de Minuit, 1969, page 189.

6 In fact, the term "sanction" was not legally appropriate until very recently. The criminal lexicon referred to punishment and repression before adopting the terminology "sanction".

7 The main wrongdoings by nature are murder, rape, theft in all its forms.

8 "*Nulla poena sine lege"*

9 See V. Hans Kelsen, The Law of the United Nations : A Critical Analysis of its Fundamental Problems, New York, Praeger, 1950, p. 706. Also, see Allgemeine Theorie der Normen, Vienne, Manz, 1979, p. 115.

10 Charter of the United Nations

11 Peremptory and imperative norms and standards

in general. The rule of international law must therefore be respected and made compulsory, especially when it come to a peremptory rule[12].

As stated in previous developments, in domestic law, the rule[13] comes along with a punitive sanction, pronounced by the judicial authorities that decide on cases and assess the degree of punishment according to the gravity of the offense or the crime committed. In public international law, the enactment of punishment is more complicated because of the controversial peremptory nature of the rule of law. This is due to the self-interpretation of the rules which is of decisive importance to the legal norms that regulate the most delicate aspects of international relations, particularly the political economic and military interests considered vital for States[14]. Added to this is the difficulty of enforcing the rule of law since, contrary to domestic law, there is no binding authority in the international order capable of exercising means of enforcement.

This unequal situation, resulting from balances of power, and taking advantage of the lack of organized structures at the global level, i.e. supra-national structures, led States and the most powerful political groups to impose political or economic coercions without going through an institutionalized international sanctioning process[15], especially through the UN apparatus called upon to perform this role in an objective and fair manner. This undermines the effectiveness and efficiency of public international law.

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[12] Peremptory rules (or *jus cogens*) are those that organize or prohibit conduct preventing the subject from being able to evade them, while suppletive laws, which are also mandatory, may be rejected by legal subjects. They come, in fact, to make up for the lack of will expressed and to apply, by default, to legal situations. See in this regard: The Fundamental Rules of the International Legal Order: Jus Cogens and Obligations Erga Omnes, Leiden, Martinus Nijhoff, 2006.

[13] Essentially the rule in criminal law.

[14] In reality, the States and the dominant political groups leave the rule of law imprecise in order to protect their interests and to be able to inflict only political and moral sanctions.

[15] Taking non-coercive measures in accordance with the provisions of Article 41 of the United Nations Charter. See infra.

Thus extraterritorial sanctions taken by some States against others, according to their own political and/or economic interests, or according to the values inherent to their societies, are the illustration of this unequal situation. It is therefore necessary to determine the scope and the limits of extraterritorial sanctions (I) in an attempt to overcome this situation, by seeking a way to reduce the chaos and legal insecurity they provoke on the international scene (II).

I- THE SCOPE AND LIMITS OF EXTRATERRITORIAL SANCTIONS :

By virtue of the principle of sovereignty, it is perfectly fair for a State to take sanctioning measures, on the one hand, in its territory, against any act undermining its internal public order or even international public order[16] and, on the other hand, against acts committed by its nationals outside its territory, for the same reasons, in addition to the imperatives of preserving its own national interests.

Nevertheless, if these legislative measures affect foreigners whose domicile or registered office (for legal persons) is outside the territory of the country that enacts these sanctioning measures, they will undermine international public order. They become unlawful and therefore reprehensible measures and must incite the international society, through its legitimate organs, to take sanctions against the State or States that have adopted them[17].

It is therefore necessary to examine the nature and extent of these measures (A) in order to assess to what extent they affect public international order (B).

A- The extent of extraterritorial sanctions:

The State is the main actor of international relations[18] and therefore the founding element of public international law which is, in fact, the consequence of the will of States. The states are defined as organized and independent communities made up of structured human groups, regardless of their number or homogeneity. In other words, these groups are subject to political power and to institutions called “The Government Apparatus”. This apparatus defines the state and is the State. Therefore, it must exercise effective power[19] over the population who must accept this power and obey to it, in an independent manner.

In fact, independence is legally translated by the concept of “sovereignty, which is an attribute recognized by public international law to any legal person having the status of State. The sovereignty attribute must not be submitted to a superior or foreign authority. Sovereignty allows states to protect

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16 Penalties for violation of norms or principles of public international law. These violations must constitute acts that are manifestly unlawful under international law. See in this regard: Jochen FROWEIN, “Reactions By Not Directly Affected States to Breaches of Public International Law”, Collection of Courses of the Hague Academy of International Law, vol. 248, 1994; Kay HAILBRONNER, "Sanctions and Third Parties and the Concept of International Public Order", Völkerrechts Archive, Vol. 30, 1992; Thorsten STEIN, “International Measures Against Terrorism and the Sanctions By and Against Third States”,Voliv des Völkerrechts, vol. 30, 1992; Michael AKEHURST, “Reprisals by Third States” British Year Book of International Law, vol. 44, 1970.

17 “The Classification of Obligations and the Multilateral Dimension of the Relations of International Responsibility”, European Journal of International Law, vol. 13, 2002

18 The international society is made up of entities having legal personalities: States, international organizations (governmental organizations) and non-governmental organizations which have grown considerably in recent years. International organizations are the result of international treaties established by States. This is why they remain at the center of public international law because they constitute what is called the “international community”.

19 In order for it to be effective, this power must be freely chosen or accepted by the population (not necessarily through the election) and exercised by its rulers, without being subject to any authority that is foreign to it.

their freedom, in other words their independence. This was enshrined in the Charter of the United Nations in Article 2[20].

By virtue of the principle of sovereignty, each State is free to adopt its own standards which correspond to the needs and values[21] of its community and, consequently, to impose sanctions on any person who transgresses them.

These standards are applicable to anyone on its territory, regardless of nationality, even if, in reality, this leads to absurdities: twenty-year-old French people who consume an alcoholic beverage on the American territory to celebrate a party may find themselves in custody and possibly sentenced and imprisoned because it is forbidden for young people under 21 to consume alcohol in this country. It will be the same if the latter are in this situation in countries that prohibit the consumption of alcoholic beverages in an absolute manner (Saudi Arabia, Iran, Afghanistan, etc.); a French driver who strikes a sacred animal in a foreign country that sanctifies certain animals risks punishment up to imprisonment; a foreigner who ignores the prohibition of smoking in public places may be fined in France if he violates, even without knowing it, this prohibition, etc.

National standards may also have extraterritorial applications, without undermining the principle of sovereignty, depending on connecting factors related to the nationality of the people who commit acts that are punishable under their national law or that (the nationality) of victims who underwent tortious or criminal acts. Thus, the French criminal law sanctions any person of French nationality if he/she commits an offense or a crime abroad that is reprehensible by the French law. That person may be tried in the country where he/she committed the offense or the crime, according to the laws applicable to the acts committed. But he/she can very well be prosecuted and judged by the courts of the country of which it holds the nationality, according to the own laws of that country (in this case France), especially if he/she has not been tried in the country where he/she committed the wrongdoing[22]. The

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[20] Article 2 of the said Charter provides:

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. *The Organization is based on the principle of the sovereign equality of all its Members.*
2. *All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.*
3. *All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.*
4. *All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*
5. *All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.*
6. *The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.*
7. *Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."*

[21] These values vary from one society to another. They can be secular, religious, moral, etc ... Thus, some societies prohibit in an absolute way the consumption of alcohol under penalty of sanctions, in the public places, either for religious or moral reasons: in Saudi Arabia, in the United States of America, in Iran ... Other societies impose the veil on women (countries with Islamic legislation) while other societies and states sanction the wearing of the veil by women in public places (Kemalist Turkey, France ...).

[22] It cannot nevertheless be judged, for the same facts, by two jurisdictions (that of the country where the acts were committed and that of the country of which it holds the nationality) by virtue of the principle *non bis in idem*. However, this principle is not universally applied. Some countries impose a double punishment for the same acts, hence the need to impose this principle as a *jus cogens* norm.

French criminal law also allows the prosecution of a foreigner who has committed a wrongdoing whose victim is of French nationality.

In addition to that, territorial jurisdiction allows certain States to punish acts occurring abroad if they have an effect on their national territory, which is the case for certain penal laws adopted in the United States of America or in Canada.

Similarly, given the internationalization of phenomena and the accumulation of regulations in economic relations, private international law allows certain national standards to have extraterritorial applications, without affecting the sovereignty of the State that "imports" them, depending on the distribution of powers between the states. It is, in this case, an extraterritorial implementation of a territorial norm by the courts: a judge of a court of a State (A) can be brought to apply the law of a State (B) to a situation or act occurring on the territory of that State (State B). Or, there may be an extraterritorial implementation of an extraterritorial norm when a foreign court of a State (A) applies a norm of a State (B) to facts or a situation occurring in the territory of a State (C), on the basis of the nationality of the parties (nationals of State B). Similarly, a State may proceed to extraterritorial application of its law (in the area of private international law) by applying its norms to facts situated outside its territory. This situation is identical to that applicable in criminal law[23].

Thus, the Extraterritorial elements can be detected in three situations: that of the extraterritorial implementation of a territorial standard, that of the extraterritorial implementation of an extraterritorial standard or that of the direct extraterritorial implementation of a standard.

When we talk about the extraterritorial application of legal norms, we generally refer to a whole series of situations that are different from each other; situations that have in common the fact that a state claims to apprehend, through its legal order, elements outside its territory[24]. It is therefore necessary to distinguish the extraterritorial imputation and the extraterritorial application of norms, on the one hand, and the enactment of norms by the normative apparatus of States with extraterritorial effect, on the other hand. This process of enactment of norms undermines the principle of state sovereignty and generates legal uncertainty that can lead to serious economic problems and political tensions. This means the development of laws aimed at sanctioning a foreign state for political or economic reasons, as these laws indirectly apply to people who do not have a direct connection with the state that enacted these standards. This is the case, for example, of extraterritorial American sanctions that were adopted in 1996 (Helms-Burton Laws), aimed at sanctioning commercial transactions with Cuba, Libya and Iran. Another example is the recent US sanctions against Iran after the US release of the Iranian nuclear treaty. These laws apply to all "US persons"[25] but also to any entity that uses the US currency (the US Dollar) or has any business relationship with the United States[26]. They entail heavy penalties for businesses.

The extent of these sanctions does not seem so excessive in regards to the principle of the internal sovereignty of States, taking into account the connecting factor of the persons targeted by these sanctions, with the exception of the extension of these so-called "primary" sanctions to foreigners, nonresidents in the United States, who carry out transactions in dollars or who are in a financial market that is regulated by US laws.

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23 See B. STERN, ibid.

24 See the work of Professor Brigitte STERN on extraterritorial standards, including « L'extra-territorialité revisitée » which speaks of Alvarez-Machain business, Pulp Wood and a few others .... French Yearbook of International Law, Volume 38, 1992 pp. 239-313; www.persee.fr/doc/afdi_0066-3085_1992_num_381_3072.

25 US citizens, foreigners residing permanently in the United States, any entity organized under US law, any person or entity present on US territory.

26 See below "secondary sanctions".

Those are especially so-called "secondary" sanctions that undermine the diplomatic and economic independence of third states, and therefore the sovereignty of the latter. These sanctions apply to all non-American actors operating outside the United States, if they do not comply with the United States boycott rules against a third State, subject to such sanctions, which affects companies, large groups, SMEs as well as financial institutions[27] that are not established in the US and do not have the citizenship of this country. These entities are obliged, through this legislation, to abandon some markets, to interrupt others, to engage colossal[28] investments to develop compliance services aiming at determining the degree of connection with the United States[29]. Otherwise, they incur financial penalties or even retaliation for the assets they hold or the activities they carry out in the United States, like the following French companies[30]: Technip[31] was sentenced to pay $338 million in negotiations with the US Department of Justice (DoJ) and the US stock market authorities following a lawsuit filed against it for corruption in Nigeria. TOTAL was sentenced to pay a $300 million fine in a 2013 case on the margin of another case for which it was prosecuted for corruption during the signing of two gas contracts in Iran in 1997[32]. ALSTOM was fined $772 million, in 2014, for alleged corruption committed in Africa. BNP Paribas Bank was fined $8.9 billion in 2014 for violating embargoes against Sudan, Cuba and Iran on behalf of nationals of those countries, it was also sentenced in 2018 to pay another $90 million fine for being involved in a conspiracy to the world's largest banks to distort prices on the foreign exchange market[33]. Crédit Agricole was fined $787.3 million for trading in dollars between 2003 and 2008 on behalf of Sudanese, Iranian, Cuban and Burmese entities while being struck by unilateral American sanctions[34]. Societe Generale was sentenced by the American Justice to two fines in 2018 for corruption committed in Libya, as well as for manipulation of the Libor rate[35]. Etc ...

Thus, the extraterritorial effect of national laws elaborated for the purpose of punishing a third State or situations that do not comply with the internal public policy of the State which enacts[36] them undermines the independence of third States. The use of these laws translates into the use of the Law in the service of political objectives[37] and economic interests, leading to a balance of power on the international scene.

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27 Under US law, any bank opening an account in the United States is subject to the regulation of that country.

28 Sometimes the budget for these investments is worth the amount of the fine that could be imposed on companies that do not comply with this extra-territorial legislation.

29 Determining the connecting factor of foreign companies with the United States is not easy: Having dealt a transaction in US Dollar can be enough to be involved. Also, using American technology to justify the extraterritorial jurisdiction of the US courts can lead to being convicted.

30 French companies are obviously not the only ones concerned. A plethora of European and foreign companies have also been condemned to pay billions of dollars to the US Treasury after being convicted by the courts because of the extraterritorial jurisdiction of the latter. More than twenty billion fines from European companies.

31 French oil services group.

32 TOTAL was alleged to have bribed an Iranian public oil actor on the sidelines of the South Pars gas agreement and for the signing of a contract in 1995 for the exploitation of Iran's oil fields Siri A and E., worth $ 2 billion. TOTAL had finally found an arrangement in this case by paying the sum of 398 million dollars to American justice.

33 According to the accusations of the American DoJ

34 According to the accusation of 4 US regulators. Operations, totaling more than $ 32 billion, would have allowed these entities to illegally access the US financial system.

35 This bank was forced to pay $ 1.34 billion as a fine.

36 Commercial sanctions against a State found guilty by the State which enacts these sanctions of violation of the public international law following the suspicion of a possible explicit support to terrorist organizations. Sanctions against companies alleged to promote corruption or drug trafficking, etc.

37 The motivation of the United States is political. It was unveiled by the US President Donald TRUMP who explained his exit from the Iranian nuclear treaty by a desire to “apply financial pressure on the Iranian regime in order to find a sustainable solution to all Iranian threats: development of ballistic weapons, regional hostility, support for terrorist groups, pernicious activities of the members of the Revolutionary Guards and their auxiliaries”. It is obvious that these reasons invoked by the United States to justify these

According to this logic adopted by US lawmakers supporting the sanctions against Iran, the latter, and also Russia or China, which are in the process of building a global alliance, could prevail primary and secondary sanctions taken by their own legal systems, against the United States invoking an internationally wrongful act committed by the US: its support to the ISIS terrorist organization, taking into account the declaration of the US current President, Mr. Donald Trump, who had accused, during his election campaign, the administration of his predecessor, Barack Obama, for creating and supporting this terrorist organization. He openly denounced Mrs. Hillary Clinton by saying that she is "the co-founder of the ISIS organization"[38]. Moreover, Hillary Clinton acknowledged this fact, in her book "Hard Choices", by revealing that this terrorist organization was created and supported by the American Administration with the aim of proceeding to a new sharing of the Middle East region and that this initiative was coordinated between Washington and the Muslim Brotherhood: *"We agreed with the Muslim Brotherhood in Egypt to announce the Islamic State in Sinaa and to hand it over to Hamas with part of it to Israel in order to protect it, to add Halayeb and Challatine to Sudan and to open the Libyan borders on the side of Salloum "(...)" we have infiltrated the war in Iraq, Libya and Syria and all was going for the best. Then, suddenly, a revolution took place in Egypt and everything changed in 72 hours "....*

These possible sanctions taken by Iran, Russia and China against the United States of America may have extraterritorial effects, affecting any entity that has an economic or financial relationship with this sanctioned country (USA).

Similarly, and according to this same logic, China can, for its part, have recourse unilaterally to sanctions, in retaliation to those taken by the United States against Huawei. These sanctions could also affect global businesses trading with America or having economic interests with China. Or, Arab oil-producing states can enact laws with extraterritorial effects (both primary and secondary) by imposing a boycott against Israel; the latter having committed internationally wrongful acts and being targeted by war crimes and crimes against humanity before the International Criminal Court. Other countries may also adopt unilateral international sanctions with an extraterritorial scope and effects relating to certain situations that contravene the values advocated by their respective domestic societies, etc.

The multiplication of these measures, in an international balance of power, inevitably leads international society towards chaos and undermines the international legal order.

B- Infringements of the international legal order by extraterritorial sanctions:

Since the dawn of time, human societies have engaged in hostilities, fighting, conquests, invasions, raids, and so on. at the end of which the victors, the strongest, dominate the vanquished entities and exert on them their hegemony. In this balance of power that characterizes wars, all means were legitimate to make the enemy yield.

From Antiquity to the Middle Ages, these war techniques were similar or even identical. In parallel to the traditional mechanisms of attacks, there was the development of tactics to exert pressure on the opponent to force him to capitulate: state of siege, blockade, embargoes, etc ...

It was not until the 17th century that the war was outlawed and that humanity started witnessing the beginnings of an international law, after the Thirty Years' War (1618 - 1648) which had caused the

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countermeasures are subjective. They are the result of a political analysis that was not based on actual evidence.

[38] "It is Barak Obama and his administration who founded ISIS. He founded it, ok? He founded it, … In many respects, you know, they honor President Obama", declared president Donald Trump in the Chicago Tribune. Moreover, in an interview with CBS, Trump said it was "the insane policy of Hillary Clinton that led to the appearance of ISIS terrorist group »

death of more than two millions of soldiers on the European continent. The genesis of this matter is essentially due to Hugo Grotius, who relied on natural law[39] to formulate its principles[40].

At the same time, in 1648, two Peace Treaties signed in Osnabrück and Münster, known as the Treaties of Westphalia[41], introduced the guiding concepts of public international law by declaring outlawed war[42] and establishing the principle of non-interference in the affairs of others, a corollary to the recognition of the inviolability of national sovereignty.

Gradually, an international legal order emerged with a set of rules adopted by the states. And as these states have participated in the implementation of these norms to which they have adhered freely, these rules have become obligatory, and imposed themselves on them, according to the adage *pacta sunt servanda*.

All these rules governing international public order come from bilateral and multilateral treaties to which States participate or adhere in the manner provided for by the texts[43]. This is enshrined in article 26 of the 1969 Vienna Convention: *"Every treaty in force is binding on the parties and must be performed by them in good faith"*. These treaties include those governing the freedom of international trade protected by the World Trade Organization (WTO).

At the same time, the "international community" is subject to other mandatory rules to which even treaties cannot derogate. These are *jus cogens* norms.

Among these *jus cogens* principles, the first is that of the inalienable sovereignty of states and its corollaries: the sovereign equality of states as well as the non-interference in the internal affairs of countries. This is enshrined in the Charter of the United Nations[44], which outlaws war and the countermeasures of the past.

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39 Natural law is the set of ideal rules governing the conduct of the human race to which positive law must be subjected. For Grotius, natural law must be deduced from the nature of men. Before him, the Greek philosophers (Aristotle, Plato, and the Stoics) regarded natural law as the highest principle of justice, inscribed in the nature of things and in conformity with the good order of nature and the city. Finally, for St. Thomas Aquinas, natural law is inspired by God.

40 One of these principles is the extraterritoriality of the maritime space, which can be freely used by all nations for commercial navigation purposes.

41 The Westphalian Treaties have also established an international order in which multilaterism has emerged, based on the balance of powers and the submission of states to common rules defined by them. In this context, the system of collective security was born. Therefore, the aggression of one of the members belonging to this system constituted an aggression against the whole and called then for a collective answer, particularly by the use of force.

42 However, it was not until the twentieth century that the use of force was prohibited by Article 2 (4) of the United Nations Charter, with the exception of self-defense on a provisional basis, until the Security Council takes the necessary measures. This principle has been repeatedly and explicitly confirmed by a large number of resolutions aimed at avoiding open conflicts through the use of preventive rules. The Security Council has thus become the only organ in the international order that can authorize or even order the use of force under the provisions of Chapter 7 of the Charter but also to order sanctions against States, entities or even persons who commit internationally wrongful acts.

43 The ratification of treaties by states integrates them into their internal legal order and makes them compulsory and binding on their communities. Article 55 of the French Constitution of 1958 gives "treaties or agreements duly ratified or approved (...), as soon as they are published, an authority superior to that of the laws, subject, for each agreement or treaty, to its application by the other party ". French positive law has extended the application of this article of the Constitution to the secondary legislation, admitting that the accession of France to certain treaties, like those of the European Union, is the consequence of submitting the rules laid down by the bodies set up by these Treaties and having the function of legislating (the Commission or the European Parliament concerning the organs of the European Union and the Security Council concerning ht organs of the United Nations) .

44 See the provisions of this article, supra.

In recognizing the legal equality of States, the Charter of the United Nations confirms the free enjoyment by States of the rights inherent in their full sovereignty, the duty to respect the juridical personality, the independence and therefore the sovereignty of other States, by not interfering with their right to freely choose and develop their own political, legal, economic, social and cultural systems. Each state is thus free and sovereign to legislate on any question that fits in its political, economic and territorial space, to decide the nature of its regime, its political institutions, its foreign policy, etc ... Any measure taken with the aim of exerting pressure on the exercise of these prerogatives constitutes a violation of the principle of sovereignty. This follows from another principle recognized both by the League of Nations[45] and by the United Nations Charter: that of self-determination and the freedom of peoples to self-determination[46].

Consequently, or even as a corollary, non-intervention or non-interference in the internal affairs of States constitutes a fundamental principle of public international law, enshrined in the Charter of the United Nations[47], under which each State is given the right to exercise exclusively its powers, falling within its national domain, without any external constraint. According to this principle, each State must respect the internal sovereignty of other States.

These are the principles of public international law to which the laws adopted by certain States to punish other States with extraterritorial effect, thus affecting the international legal order, are infringed[48].

We must see in these legislations[49] taken with the objective of sanctioning a State or fighting against acts that are manifestly illegal or recognized for such by most states worldwide as the fight against corruption, tax evasion, drug trafficking in human beings, etc., a breach of the sovereignty of third States and the principle of the equality of States, as the State which enacts these sanctions establishes itself as moralizing the international society, by encroaching on the prerogatives of the United Nations[50] which has the role and the duty to control situations and, consequently, to take measures (sanctions[51]) to remedy the illicit at the international level.

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45 It was proclaimed by US President Woodrow Wilson, at the end of the First World War, in his famous fourteen points.

46 See paragraph 2 of the Preamble to the United Nations Charter which, when listing the objectives of the World Organization, provides:

"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;"

Similarly, Article 55 of the Charter, inserted in Chapter IX on international economic and social cooperation, adds:

"With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".

47 See Article 2 paragraph 7, ibid: *"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll"*

48 See, in this regard, the report of the International Law Commission on the work of its thirty-first session ", Yearbook CDI 1979, vol. II (2).

49 With regard in particular to secondary sanctions laws, see supra.

50 See infra.

51 It is in fact "sanctions" even if this expression is not used in the United Nations Charter which speaks about "non-monetary measures". See above.

In its resolution 67/170 of March the 20th, 2013, the United Nations General Assembly condemned these unilateral sanctions measures, considering in its preamble that these "*unilateral coercive measures and legislation are contrary to international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among States".*

In paragraph 4, this resolution states that the Assembly « *strongly objects to the extraterritorial nature of those measures which, in addition, threaten the sovereignty of States, and in this context calls upon all Member States neither to recognize those measures nor to apply them, as well as to take administrative or legislative measures, as appropriate, to counteract the extraterritorial applications or effects of unilateral coercive measures »*;

After recalling and reaffirming the principles under which these measures are illegal[52], this resolution condemns, in paragraph 5, « *the continuing unilateral application and enforcement by certain Powers of unilateral coercive measures, and rejects those measures, with all their extraterritorial effects, as being tools for political or economic pressure against any country, in particular against developing countries, adopted with a view to preventing those countries from exercising their right to decide, of their own free will, their own political, economic and social systems, and because of the negative effects of those measures on the realization of all the human rights of vast sectors of their populations, in particular children, women, the elderly and persons with disabilities* »

Finally, this resolution, which stresses the illicit nature of these measures, which question the principles of public international law, « *Calls upon Member States that have initiated such measures to abide by the principles of international law, the Charter, the declarations of the United Nations and world conferences and relevant resolutions and to commit themselves to their obligations and responsibilities arising from the international human rights instruments to which they are parties by revoking such measures at the earliest possible time* »[53].

This allows us to conclude that sanctions unilaterally imposed by States against other international actors, without going through the UN mechanism, affecting in addition third parties in a secondary way, violate the principles recalled by the United Nations General Assembly in its aforementioned resolution. These measures undermine the sanctioned State and the international community and, consequently, the international legal order[54]. This attitude leads the other actors, who consider themselves to be victims of this situation, to react unilaterally, individually or collectively, to make up for the impotence of the United Nations to re-establish the international legal order affected by these measures.

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[52] See the Preamble to this resolution but also and especially paragraph 8 in which this resolution « *reaffirms in this context, the right of all peoples to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development* »

[53] Paragraph 7 of the Resolution of March 20th 2013 (A/RES/67/170)

[54] See:

Linos-Alexandre SICILIANOS, *Les réactions décentralisées à l'illicite : des contre-mesures à la légitime défense*, Paris, LGDJ, 1990 ;

Ian BROWNLIE, « International Law at the Fiftieth Anniversary of the United Nations », *Recueil des cours de l'Académie de droit international de La Haye*, vol. 255, 1995, p. 220 ;

Prosper WEIL, « Le droit international en quête de son identité : cours général de droit international public » *Recueil des cours de l'Académie de droit international de La Haye*, vol. 237 ;

Jerzy MAKARCZYK (dir.), *Theory of International Law at the Threshold of the 21st Century: Essays in Honour of Krzysztof Skubiszewski*, La Haye, Kluwer, 1996 ;

Pierre-Marie DUPUY, « Responsabilité et légalité », in Societe Française pour le Droit International (dir.), *La responsabilité dans le système international*, Paris, Pedone, 1991.

II- REACTIONS TO SANCTIONS WITH EXTRATERRITORIAL EFFECTS:

There are unilateral, multilateral or even collective means to react to any measure affecting the international legal order: infringements of the principle of sovereignty, non-interference, free commercial exchange, etc. It should be useful to enumerate some of them and to examine their lawfulness in regards to the principles of public international law (A). Nevertheless, the United Nations machinery, as well as the institutions of the World Organization, which need to be strengthened, must remain the main recourse and the sole authority responsible for restoring the international legal order. For this, it is necessary to give them both normative and coercive means to do so (B).

A- Multilateral and collective reactions :

As demonstrated in previous developments, countermeasures or unilateral sanctions by one or more countries against a State for political or economic reasons undermine international public policy[55] because this process violates the above-mentioned principles of public international law[56]. It is the same when these measures are taken against a State or against an actor of the international society endowed with legal personality to sanction an act or a behavior considered as "illicit" by the State or all the States which take these measures[57], especially if these sanctions have extraterritorial effects affecting international economic and trade relations. This actually violates the principles and treaties of the World Trade Organization[58] and causes chaos insofar as States and Victims of these sanctions are tempted to retaliate.

Thus, the automatic and logical reaction to the countermeasures is made by reprisals taken by the victim State to which other States or actors of the international society can associate themselves, victims of the secondary effects of these acts. The purpose of this reaction will be to exert pressure on the State, author of the countermeasures, to reconsider the measures taken by its legislative apparatus. It is therefore a balance of power between the author of the countermeasures and the victims of those countermeasures[59].

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55 The *jus cogens*: "There is an international public order within the society of states as there is an internal public order within the same state's collectivity. Treaties that states pass between them cannot derogate from these main rules. " BOY WUT . SCELLE, Course on Public International Law, page 640. This assertion coincides with the provisions of Article 103 of the United Nations Charter.

56 See above. In this regard, it is worth recalling the provisions of the United Nations General Assembly Resolution 2625 of 24 October 1970 on friendly relations and cooperation between states, which states : *« Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State ».* Article 41 of the United Nations Charter similarly states that : *« No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law. »*

57 Sanctions against States or legal persons for having acted in violation of international treaties or, quite simply, for having committed an act considered by the State or a group of States as being "unlawful".

58 Like the American sanctions against Alstom which was condemned to 770 million Euros for having contravened international illegal acts, with regard to the corruption.

59 International law which, as a general rule, prohibits reprisals and the intervention of States in the internal affairs of other States, which has been reaffirmed by the International Court of Justice in the case of the United States military and paramilitary activities in Nicaragua in 1986, however, legitimizes the recourse to these measures if they are taken to stop a wrongful act and to oblige the State, author of the initial countermeasures, to repair the damage resulting from its action.

Indeed, public international law makes measures of retaliation[60] lawful, even if it is unlawful in nature, when they are used in response to countermeasures, affecting the international public order[61] and the international legal order, which are, therefore, illicit.

Nevertheless, such reprisals must not, under any circumstances, contravene the provisions of Article 33, paragraph 1, of the United Nations Charter[62] which enshrines the principal objective of the World Organization: that of the non-use of force or violence in international relations.

Therefore, in order to demonstrate compliance with these provisions, such reprisals should be carried out in accordance with the procedure suggested by the United Nations International Law Commission, which since 1959 has been trying to find a solution to countermeasures and their effects[63].

Likewise, this reaction to the unlawful nature of these reprisals must be substantiated, emphasizing that it was initiated in response to an unlawful act in accordance with the principle of proportionality. However, it is materially difficult to respect this principle insofar as each State is made to benefit from elements and interpretation of situations in its favor, hence the formula "*nemo judex in causa sua*".

In any case, retaliation, taken unilaterally by the state victim of countermeasures, but also in a multilateral way by a group of States or in a collective way by the international community – because of extraterritorial side effects that these countermeasures provoke –, must respect the conditions of form and substance enacted by the International Law Commission[64]. The latter, after recalling the general principles of law which may determine the characteristics of the internationally wrongful act[65] caused by a State or a group of States[66], has provided the modalities of bringing the responsibility of these states into question and, consequently, those of countermeasures (or reprisals) which may be taken with an aim of putting an end to the illicit and redressing all the prejudices which the principal countermeasures have provoked in a direct or indirect manner to all States and actors on the international scene.

Moreover, the International Law Commission has provided, in this text, the terms of compensation for the damage suffered by the State or all States as a result of countermeasures, both those taken in a direct manner and those with side effects (extraterritorial effects), ranging from restitution to compensation and satisfaction[67].

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60 See *« Justice privée et ordre juridique internationale : étude théorique des contre-mesures en droit international public »*, Denis ALLAND, Paris, Pedone, 1994.

61 The *jus cogens*

62 Article 33 : *« The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.*

The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means ».

63 In 1959, the International Law Commission drew up a draft on the responsibility of States for acts they commit which constitute internationally wrongful acts. On this occasion, it suggested in this text the conditions of form and substance concerning the taking of countermeasures by the States in order to frame in particular the recourse to reprisals and thus to quell the bidding of international tensions.

64 It is a draft article on the responsibility of the State for internationally wrongful acts, endorsed by the United Nations International Law Commission at its fifty-third session in 2001, and submitted to the United Nations General Assembly in the context of the report of the Commission on the work of that session. The report, which also contains comments on the draft articles, is reproduced in Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A / 56/10).

65 Especially the violation of an international obligation in a continuous manner but also by a composite fact, in a series of actions, the exercise of a constraint on a state, etc.

66 The behavior of the organs of a State, a person or entity exercising prerogatives of public power, or even that of an organ placed at the disposal of one State by another State, etc.

67 See the provisions of Articles 34 to 39 of the cited text. Ibid.

With regard to the manner in which States, victims of direct or indirect countermeasures, must comply, they must demonstrate a violation or a series of violations of mandatory norms (*jus cogens*) by the author of the countermeasures.

Third States, victims of the secondary effects of countermeasures, may therefore avail themselves of the provisions of Articles 40, 41 and 48 of the said Commission text[68]. It is advisable then, and for the sake of prudence, to respect the formal requirements of this text by notifying the decision to resort to retaliation to the State responsible for countermeasures that have provoked a disturbance of the international public order and to demonstrate willingness to negotiate with it beforehand.

Thus, States aggrieved by countermeasures may take, in a multilateral or in a collective manner, any measure to block the extraterritorial effects of the measures taken by the State or States responsible for such countermeasures, and to protect their operators on the international scene by adopting, on their side, measures to prevent any co-operation or exchange of information between their administrations and those of the States which are the authors of laws having extraterritorial effect, or even, as suggested by the Raphael Gauvin's[69] report, provide for sanctions against those who transmit information relating to natural or legal persons to foreign judicial or administrative authorities, in particular to those who drew up these laws. This report also suggests the "modernization" of the 1968 French law, known as the "Blocking Law" (Loi de Blockage), and the adoption of another piece of legislation to protect French companies against *"the transmission by web hosts of their non-personal digital data to the foreign judicial authorities: an extension of the GDPR to the data of legal entities, which will sanction the digital data hosting companies that would transmit to foreign authorities non-personal data relating to French legal entities outside the channels of the mutual administrative or judicial assistance "*.

Retaliation against extraterritorial countermeasures can be illustrated by recalling the European regulation, also known as "Blockage Regulation", which is inspired by the French law of 1968[70]. This Regulation was adopted in 1996 by the European Union in connection with the Helms-Burton and D'Armato-Kennedy[71] Acts in order to ensure the protection of the legal order and the interests of the Member States of this institution, neutralizing and blocking extraterritorial effects within the Union of countermeasures taken by the United States of America. This law nullified the extraterritorial effect of any judicial decision, arbitration award, act or provision made in connection with such US law[72].

At the same time, the regulation provided for retaliatory measures and called on EU Member States to adopt internal legislation penalizing both natural and legal persons for any infringement of the provisions of this law[73].

Thus this retaliatory measure taken by this European text affected American interests in the case of the BAWAG bank in Austria. This bank, bought by a US fund, has been threatened with criminal prosecution.

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68 Ibid.

69 This report titled « Rétablir la souveraineté de la France et de l'Europe et protéger nos entreprises des lois à portée extraterritoriale » ("Restoring the sovereignty of France and Europe and protecting our companies from laws with extraterritorial effect") was established on June 26, 2019 by Mr. Raphaël GAUVAIN, Member of the French National Assembly, at the request of the French Prime Minister, Mr Edouard PHILIPPE.

70 Ibid

71 The European Economic Community.

72 Article 4 of that regulation prohibits the recognition of such decisions by national authorities, including courts and their exequatur within the Union. Similarly, Article 5 of that regulation prohibited undertakings established within the European Union and citizens of the Member States of the Union from complying with the laws and judicial decisions pronounced by the American authorities, pursuant to those countermeasures.

73 Many member countries of the Union have complied with this obligation by adopting internal laws sanctioning the violation of the "blockage" enacted by the Union (Great Britain, Ireland, Sweden, the Netherlands, etc.).

It is obvious that all these legal measures remain theoretical, especially if the author of the countermeasures takes advantage of his dominant position on the international scene, like the United States of America. This has led the actors of the international society to consider more concrete measures to limit the harmful effects of extraterritorial laws, as the proposal made by the High Representative of the European Union for Foreign Affairs to the United Nations, Mrs. Frederica Mogerini, who proposed the establishment of an autonomous accounting platform to record the exportation of Iranian products (oil, agricultural products) by opening up exportation capacities to companies in third countries towards Iran, without trading financially[74].

But all these legal and even extra-legal[75] measures point out the fragility of the international legal order and lead the international society once again to chaos, especially since even the doctrine has finally admitted the response to illicit by the illicit, leading to an overbidding of measures adopted by the States, making it difficult for the domestic courts to rule on reciprocal violations of these laws.

Therefore, consideration should be given to ways of restoring the international legal order, strengthening the international bodies of control and regulation of the international society, protecting them from political influences and providing them with guarantees that they can exercise their prerogatives in complete independence, freedom and objectivity.

B- The use of international bodies and the restoration of the international legal order :

Any unlawful act as well as any situation that causes harm must be resorbed in order to restore order and to repair the damage caused. It is incumbent upon neutral bodies, acting impartially and endowed with means allowing the execution of their decisions, to accomplish this task: to notice the illegality and to determine the responsibilities in order to be able to pronounce a possible conviction.

Thus, in the case of countermeasures affecting third parties (in relation to the initial measures), this situation must be brought to the attention of international bodies authorized to notice objectively and impartially the violation of norms, standards and principles of public international law, especially through economic embargoes[76] with extraterritorial effects that have the character of real "secondary" sanctions. These secondary sanctions can range up to the condemnation of actors by domestic jurisdictions. These bodies are called upon to recall the law and to compensate for the damage caused by these situations and by these acts, including convictions handed down by domestic courts in violation of the provisions and principles of public international law.

Recourse to the United Nations Security Council, for this purpose, is obsolete because of the composition of this body : It is composed of five permanent members with a veto right that is systematically exercised by one or more of them, giving a political character to the decisions of this body, some of which resolutions are never respected by the States when they have political privileges because of their proximity to one of the five permanent members.

There is no need to enumerate multiple examples on this subject, therefore, we will site only, as an illustration, resolutions taken against Israel. These resolutions have never been respected by this entity: Resolution 236 (11 June 1967), Resolution 237 (14 June 1967), Resolution 242 (22 November 1967), Resolution 250 (27 April 1968), Resolution 251 (2 May 1968)), resolution 252 (21 May 1968), resolution 267 (3 July 1969), resolution 340 (25 October 1973), resolution 446 (22 March 1979), resolution 468 (8 May 1980), resolution 487 (19 June 1981), resolution 592 (8 December 1986), resolution 605 (22 December 1987), resolution 607 (5 January 1988), resolution 608 (14 January

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74 "Special purpose vehicle" (SPV), allowing to make compensations with the sale of oil that will be registered in euro, opening the right to the purchase of goods coming from the countries which participate in this SVP.

75 Reprisals, practical and accounting actions undertaken to counteract countermeasures.

76 According to the provisions of Article 3c of United Nations General Assembly Resolution 3314 of 14 December 1974, embargoes constitute an aggression, thus an internationally wrongful act.

1988), resolution 636 (6 July 1989), resolution 641 (30 August 1989), resolution 672 (12 October 1990), resolution 673 (24 October 1990), resolution 681 (20 December 1990), resolution 694 (24 May 1991), resolution 799 (18 December 1992), resolution 904 (18 March 1994), resolution 1322 (7 October 2000), resolution 1397 (12 March 2002), resolution 1402 (30 March 2002), resolution 1405 (19 April 2002), resolution 1435 (24 September 2002), Resolution 1515 (19 November 2003), Resolution 1544 (19 May 2004), Resolution 1850 (16 December 2008), Resolution 1860 (8 January 2009), Resolution 2334 (23 December 2016), etc.

It is therefore more appropriate to resort to the World Trade Organization (WTO) through a complaint[77]. The WTO has a dispute settlement system[78] that operates according to the rules, procedures[79] and practices established under the 1947 General Agreement on Tariffs and Trade (GATT)[80].

Indeed, as demonstrated in previous developments[81], countermeasures adopted by a State or a group of States affect in a secondary way the economic and financial relations of the State which has been the object of these measures with other States or third parties, calling into question the most-favored-nation clause. This violates the freedom of transit, navigation and trade, and constitutes trade discrimination, in violation of GATT rules, implemented by the WTO, and this justifies the use of this process in the first place before the Dispute Settlement Body (DSB) of that institution, according to the above rules.

This approach had been adopted by the European Economic Community in an appeal lodged by the WTO on the occasion of the adoption of the Helms-Burton Act by the United States in 1996[82], along

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77 Only governments and separate customs territories that are members of the WTO can participate directly in the settlement of disputes as parties to the dispute or as third parties. Under the WTO rules, a member is not required to demonstrate that he has a specific legal or economic interest in the matter that is the subject of the case. For example, in the "EC - Bananas" disputes - the longest disputes in WTO history - the United States complained that the European Union (EU) granted banana producers from African countries, Caribbean and Pacific (ACP) preferential access to European markets, in violation of non-discrimination rules established under the WTO, even if the United States did not export bananas to the EU. However, in most cases, the member making the complaint is directly affected by the action of the member being challenged.

78 The Dispute Settlement Body (DSB), made up of representatives of all WTO members.

79 The rules and procedures of the WTO Dispute Settlement System are set out in a Memorandum of agreement called the Dispute Settlement Understanding (DSU) which is administered and established by the Dispute Settlement Body (DSB) formed by representatives of all WTO members. The DSU offers the possibility of establishing a panel in cases where several WTO members have made complaints about the same issues. Indeed, once seized, the WTO Dispute Settlement Body (DSB) must automatically establish panels to consider complaints and adopt the findings of panels and the Appellate Body, unless the WTO members unanimously agree, at the DSB meeting, not to do so. This is known as the "reverse consensus" rule, which ensures that the political weight of the parties does not affect the outcome of disputes. Panels and, if necessary, the Appellate Body examine whether a member's actions violate the specific provisions of the WTO Agreements identified in the complaint. The complaining member is generally not required to prove the adverse trade effects resulting from the alleged violation.

80 A formal complaint by a member automatically triggers the dispute settlement procedure. This first step is the "request for consultations", and the concerned members will first try to settle the dispute by consulting one another. If that fails, a panel is established to consider the case. Thus, the examination of the complaint is carried out first by a group of three persons, who constitute the special group and are specially selected for the case. Their findings are published in a report that may be appealed to the concerned members. Appeals are then considered by the WTO Appellate Body, consisting of seven members elected for four years.

81 See Supra

82 In this respect, the EEC had made use of the violation of the principle of the general elimination of quantitative restrictions and the non-discriminatory application of quantitative restrictions, the freedom of transit and the provisions of the General Agreement on Trade of Services (GATS) providing that a WTO Member shall not apply restrictions on international transfers and payments in respect of current transactions relevant to its specific commitments. Finally, the EEC has also made use of the most-favored-nation principle and the right of access to markets, as well as the "national treatment" rule of the GATS in its appeal.

with the adoption of the blocking regulation[83] by this body. But this procedure had failed because US President Bill Clinton had decided to suspend the secondary sanctions, and a consequence of that was the lapse of this appeal.

Even if the WTO is reluctant to decide on issues that are more politically expedient, especially in view of the "national security reserve and the protection of essential security interests" provided for in Article XXI of the GATT[84] which could be raised by the State or group of States that have taken countermeasures with secondary (or extraterritorial) effects, in order to give a legal basis to their act (the taking of extraterritorial countermeasures), the fact remains that the WTO would have to examine the conformity of those countermeasures with the *jus cogens* principles violated by these[85], in the course of the legal procedures that have been engaged before it (before the WTO).

In addition to that, the UN General Assembly should be sensitized to applying to the International Court of Justice (ICJ) in accordance with the provisions of Article 96 of the UN Charter[86], even if this requires political consultation between member States of the World Organization. The advantage of this initiative is to make the illegality of countermeasures and their consequences on the States and the actors on the international scene known because the opinions of the ICJ are not binding.

Finally, and after consuming these possibilities, another procedure could be considered: that of recourse to the United Nations Human Rights Committee, by submitting a complaint, in accordance with the provisions of Article 41 of the International Covenant on Civil and Political Rights[87]. This

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83 See supra

84 This article provides : *« Security Exceptions Nothing in this Agreement shall be construed (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests (i) relating to fissionable materials or the materials from which they are derived; (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; (iii) taken in time of war or other emergency in international relations; or (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security »*

85 See Supra.

86 Article 96 of the United Nations Charter provides for this possibility:

"1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities."

87 This article provides:

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally

initiative has the merit of forcing the United Nations to respond to the illicit and declare its position on it, or at least proceed by condemning it morally.

Recourse to this process can be made by the State, which is prejudiced mainly by countermeasures, but also by a group of States, highlighting the violation of peremptory norms of public international law.

It is certain that all of these suggestions aiming at taking legal and judicial steps remain theoretical. International practice demonstrates the political hold on international bodies and bodies that seem paralyzed and therefore useless. The law of the jungle applies in international society. The strongest imposes its law on the weakest, by resorting to illegal maneuvers and by blackmailing all the actors of the international society. The attitude of the United States of America illustrates this: its use of a series of countermeasures with extraterritorial effects in violation of the principles mentioned above[88] in recent years.

Taking advantage of its dominant position at the economic and financial level[89] and its political grip on international bodies and bodies such as the UN Security Council, NATO, etc ... since the end of the period of the bipolarization, this country (the USA) takes hostage the whole of the international society and proceeds to a real act of political and economic war, by affecting the States or the entities sanctioned, in a direct way, and affecting the other States and actors in an indirect way (secondary). The unilateral measures taken by this country cannot use the terminology of "sanctions" in view of the purpose of the sanctions[90]. Moreover, it is not enough for these sanctions to be legal but they must

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recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

88 These countermeasures constitute genuine acts of war of an economic nature (blockade against Iran: a real state of siege which the United States has started using as a "secondary" sanction weapon) . See in this respect United Nations General Assembly Resolution 3314, and also 2625 of October the 24th 1970 on friendly relations and cooperation between states which states that states have the duty to "abstain, in international relations, to use military, political, economic or other constraints directed against the political independence or territorial integrity of any State ". See above. See also UN General Assembly Resolution 69/5 of October the 28th 2014 on the embargo against Cuba.

89 The use of the US dollar in international transactions, the Swift stranglehold, etc.

90 See the introduction of this document, supra

have a legitimate aim, in accordance with that of the United Nations and the principles of public international law, which the United States of America is constantly violating.

And yet, three decades ago, after the collapse of the former Soviet Union and the invasion of Kuwait by Iraq, former US President George W. Bush announced a "New World Order" based on law and the end of the law of the jungle, in a famous speech delivered on March 6, 1991 before the US Congress: *« We are today at an exceptional and extraordinary moment. The crisis in the Persian Gulf, despite its gravity, offers a rare opportunity to move towards a historic period of cooperation. From this difficult period (...)* ***a new era emerged, less threatened by terror, stronger in the search for justice and safer in the quest for peace****. An era where all the countries of the world, whether East or West, North or South, can prosper and live in harmony. A hundred generations have sought this elusive path that leads to peace, while a thousand wars raged through the history of man. Today, this new world is trying to be born. A world quite different from the one we knew. A* ***world where the rule of law replaces the law of the jungle****. A world where states recognize the common responsibility to guarantee freedom and justice.* ***A world where the strong respect the rights of the weakest*** *».* In spite of President Bush's arrogance in making his country the "world policeman" with the prerogative of settling international situations, this is less shocking than the current behavior of the United States because what he says remains legal : *« (...) Other leaders in Europe, the Gulf, and other parts of the world understand that, the way we solve this crisis today could shape the future of generations to come. The challenge we face is important, as are the stakes. This is the first assault on the new world we are looking for, the first test of our determination. If we had not reacted decisively to this first provocation, if we had not continued to be firm, it would had been be a signal given to current and potential tyrants around the world. The United States and the world must defend their vital common interests. And they will do it. The United States and the world must support the rule of law. And they will. »*

Indeed, this attitude of the United States shows that this country has changed, like Athens in antiquity, from protector to ruler, by no longer rendering accounts to international authorities.

It is therefore appropriate and necessary to put an end to this international disorder, resulting in particular from the condemnation of actors by the local domestic courts of certain States[91], by taking recourse to the aforementioned procedures[92], the inefficiency of which will, however, have the merit of stating the drifting of supra-state international institutions and their submission to political arbitrariness, leading the international society to more and more chaos and demonstrating the inefficiency of public international law. This can and should lead to a deep thinking on the reform of these institutions, enabling them to more effectively, objectively and impartially ensure the application of the law.

A few years before his death, the former Secretary-General of the United Nations, Boutros Boutros-Ghali, raised all these difficulties that he was confronted to during the exercise of his mandate, especially when taking sanctions against Iraq[93], or those encountered during the war in former Yugoslavia, the conflict in Rwanda that led to a genocide, etc ...He then thought about this subject, taking into account the international political upheavals.

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91 Admittedly, these convictions are pronounced in all internal legality with regard to the extraterritorial jurisdiction that the internal laws offer to their jurisdictions. Nevertheless, the disorder comes from the legislative and executive apparatus of the states that allow the taking of these measures which are illegal under public international law.

92 It is appropriate to claim the reimbursement of any sum paid under the legislation that has allowed the domestic courts to convict actors under the extraterritorial internal laws, before the international authorities and jurisdictions. In the current state of affairs, retaliation or non-payment of monetary penalties remains the only way to combat these countermeasures.

93 Sanctions against Iraq, led by the United States and Israel, costed the lives of more than one million people between 1991 and 2003.

The former head of the UN executive spoke of political pressure from Washington exerted on him during his mandate. He particularly recalled those that took place after the Qana massacre in southern Lebanon in 1996, where he had allowed himself to condemn this crime perpetrated by the Israeli army, both verbally and in writing. The US Secretary of State, Madeleine Albright, then campaigned against him, preventing his re-election as head of the United Nations. With his usual humor, he responded to her maneuvers by pointing out that the Americans wanted him to be "a Secretary and not a General".

Indeed, since his eviction from the United Nations, this body has lost all its credibility, its effectiveness and therefore its consideration.

As a first step, it is important to think about the change of the headquarters of this organization by moving it from New York where it is subject to interference and surveillance by the security services of the hosting country, which is also a permanent member of the Security Council.

With a state structure and moral legal personality, the United Nations organization with more than 37,000 people it employs should opt for an HQ on a self-proclaimed island with an inviolable international status[94].

In addition to that, its principal institutions, starting with the Security Council, should be reformed by abolishing the status of permanent members and abolishing the right of veto they have and by giving a legal value to the General Assembly resolutions that is equivalent to that of the General Assembly advice.

The General Assembly should become both a forum for negotiations and discussions between UN member states and an apparatus called upon to enact the rules of public international law.

It is also necessary to reform the statute of the International Court of Justice, by endowing its decisions with an enforceable value, in violation of which the Security Council will have to take binding measures against the convicted actor.

Similarly and in parallel to that, the prerogatives of the International Criminal Court must be strengthened, whether the nations do adhere to its statute or not, allowing it, in regards to the peremptory principles and norms of public international law, to accomplish its mission, outside of the legal frame granted to it by the Treaty of Rome[95]. The finality of that is to decide on crimes that are internationally recognized[96], leading to the emergence of an international criminal law that overcomes the universal jurisdiction of certain national jurisdictions.

Finally, and given the political changes on the international scene, the evolution of the international society with the emergence of Non-Governmental Organizations (NGOs) concerned with defending the interests of social groups that are outside the political sphere, it should be advisable to allow these NGOs to have a legitimate place and exercise power in the General Assembly of the World Organization.

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94 Boutros BOUTROS-GHALI had thought of an island in the Mediterranean, a place of convergence of the three main continents.

95 War crimes and crimes against humanity.

96 The fight against corruption, organized crime, drug trafficking, trafficking in human beings, etc ...

This outline that has been suggested by the former Secretary General of this institution deserves further reflection and an international commitment to prevent the international institutions from drifting and to subtract the law to political arbitrariness.

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