

COMMENT

THE ALGERIAN QUESTION *

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"Patience and perseverance must never be grudged
when the peace of the world is at stake."

—WINSTON CHURCHILL

I. INTRODUCTION

The present question involving France and Algeria cannot be underestimated in its importance. On the part of France, she feels that if Algeria is alienated by the fanatic Pan-Arab movement, the rest of her North African empire will soon follow.¹ In the words of former French Premier Edgar Faure, the separation of Algeria from France would lead to the territory's economic collapse and would also bring about serious consequences for France herself.²

The conflict at times has threatened the unity of the North Atlantic Treaty Organization (NATO), resulted in the fall of several French governments, and poisoned France's relations with her former protectorates of Tunisia and Morocco. It has forced even the United States into a delicate position in her efforts to remain loyal to her French ally and yet prevent North African nationalists from turning against the West. France has stripped her Nato Forces in Europe to send an army of about 480,000 men to put down the rebellion. It costs her five million dollars a day.³ Aside from tying down 400,000 French troops in Algeria, the conflict has cost thousands of French and Moslem lives, and has drained France's treasury of an estimated \$1,800,000-000 in three years.⁴

Mr. Belfrage, the Moroccan Foreign Minister, made the following statement before the General Assembly of the United Nations sometime in October, 1957:⁵

"The direct and daily impacts of the war—the Algerian war—on the internal situation of our country are becoming increasingly grave and involve us in the risk of seeing our relations with France poisoned. Fire rages at our frontiers and threatens to extend to our own territory."

It has even been said that no one but those who have lived in or visited North Africa could realize how violently the whole area is shaken by the Algerian war. The close ties of nationalism, religion, history, family relationship and neighborhood, and countless

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¹ *The Manila Chronicle*, June 1, 1955.

² *The Manila Bulletin*, September 27, 1955.

³ Associated Press Dispatch, New York, May 16, 1958.

⁴ United Press Dispatch, Algiers, June 6, 1958.

⁵ A/C.1/PV. 917, pp. 58-60.

other factors which bind Algeria to Morocco and Tunisia, make it inevitable that any event taking place in any one of them react deeply on the rest. Hence, the sufferings, devastations and bloodshed which is taking place in Algeria has left its deep mark on the people and Governments of Tunisia and Morocco.⁶ More than this, the Algerian tragedy is putting the whole North African continent on fire.⁷

It might be over-emphasizing the obvious if we state that this world has been made much smaller by science and technology. As a result, a slight disturbance on one side of the world produces a corresponding, if not graver, chain reaction on the other side.

The trouble now raging in Algeria might appear to a casual observer as isolated from the other problems of the Middle East. But it should be remembered that Algeria, Morocco and Tunisia are considered Arab countries, and that the term "Middle East" is sometimes stretched to include them.⁸

During the Suez war, it was shown that the different Arab governments could present a solid front when their interests coincided or when the demands of the masses were universal.⁹ In this connection, one has only to bear in mind that the Arab League is behind the nationalist movement in Algeria and other North African countries.¹⁰ Also to be considered is that the Middle East contains 170 billion barrels of oil or about 60% of the known world reserves, and that $\frac{3}{4}$ of its annual production of about 1½ billion barrels is exported to the West. If this supply were suddenly cut off, the industries of Europe would have to lower production considerably, unless American oil were imported, which could only be done at a much higher price.¹¹ Furthermore, the area also provides for the shortest air and water routes between the Far East and Western Europe.¹²

In an article pointing out that Algeria and not Tunisia is the pivotal issue in North Africa Joseph Kraft stated thus:¹³

"Even if the Nationalists are a weak splinter group (the Algerian front for national liberation has raised an army of at least 30,000 men, uniformed, equipped with small arms (including machineguns), and led by officers vetted in the French army or in FLN training schools), Algerian independence would be inevitable. Take geography first. Tunisia, Algeria and Morocco—the 'Maghreb' as the Arabs have been calling the North African tryptique since the 8th century—make up a single ethnic bloc. Nationals of the three territories, practically indistinguishable in manner and appearance, are bound by ties of language, religion, blood and common historical experience. But for better or worse—and it is by no means certainly for better—Tunisia and Morocco are independent. To suppose that in the long run two things of the Maghreb can be independent and the other third something else is to dream.

Nothing better demonstrates the solidarity of the three territories than the curious position of President Bourguiba of Tunisia and King

⁶ *Ibid.*

⁷ *United Nations Review*, Vol. 3, No. 2, p. 42, August, 1956.

⁸ *Sunday Times Magazine (Special)*, p. 3, September 21, 1958.

⁹ *Op. cit.*, p. 10.

¹⁰ *The New York Times*, November 7, 1954.

¹¹ *Sunday Times Magazine (Special)*, p. 11, September 21, 1958.

¹² *Ibid.*

¹³ *The New Republic*, Vol. 138, p. 10, February 24, 1958.

Mohammad V of Morocco . . . So great is the popular support in Morocco and Tunisia for Algerian independence that the two leaders have no choice. They would be out of power in a matter of days if they did not help."

The open support given by some Arab countries to the Algerian nationalists,⁴¹ taken together with the foregoing factors, provides a clear implication which requires no elaboration.

Scope.—The subject under study covers the question arising from the claim of the Algerian people to independence and the contention of France that Algeria is an integral part of her metropolitan territory. From this main problem spring the corollaries that, on the part of the Algeria people, the present conflict is but an exercise of their right to self-determination, and that, on the part of France, her sending of troops to that area is a normal exercise of her sovereignty to put down a rebellion.

Also to be considered are the events which took place since the start of the hostilities on All Saints day, November 1, 1954.⁴⁵ It is to be noted that these happenings have complicated the problem to a serious extent, and made the situation much graver.

Before proceeding to the discussion of the main question and its implications, the writer proposes to have a glimpse into the historical background. The discussion will also include the subject relating to the competence of the United Nations Organization and its organs to intervene in the conflict. Special account will be taken of the respective positions of the parties to the dispute. An objective appraisal of the issues and the arguments raised by each side will precede the concluding portion of this paper.

Approach.—With a historical background as the starting point, the writer proposes to analyze the question in the light of the relevant happenings and the applicable principles of international law. As to legal postulates, emphasis will be made on the pertinent provisions of the Charter of the United Nations and the interpretations of these provisions.

With respect to the sources of the materials used in the preparation of this work, the writer has borne in mind the bias and the prejudices which permeate the literature and the speeches on the subject. Care has been taken in this connection.

There are, however, some sources which may be considered as neutral and therefore can be taken as objective and impartial. On these sources, the writer has relied much.

It has to be confessed here that the materials on this subject are quite voluminous. But this should not deceive us. A casual examination of these records and documents easily reveals that the points raised, or rather the subjects covered, are just simple and limited in scope, but only repeated over and over by different writers and speakers. This is specially true with regard to the debates in the two organs of the United Nations—the Security Council and the General Assembly. To avoid unnecessary repetition, if not confusion, efforts have been made to choose only those points which are

⁴⁴ *The New York Times*, November 7, 1954. Also Associated Press Dispatch, UN, New York, October 2, 1956

⁴⁵ *The Daily Mirror*, May 19, 1956.

typical for each side of the question. This has been done with the hope that the question may be discussed in this work objectively and with clarity.

Definition.—For the sake of convenience and brevity, it is believed that for the purpose of this paper a definition of terms is in order.

“Charter” shall be construed to mean the Charter of the United Nations.

“Council” means the Security Council of the United Nations.

“Assembly” stands for the General Assembly of the United Nations.

“Court” refers to the International Court of Justice of the United Nations.

“Domestic Jurisdiction” is the internal power or authority of a State, member of the United Nations Organization, to determine and decide a cause or causes.¹⁶

By the term “Member” shall be understood a State which is a Member of the United Nations Organization.

II. BRIEF HISTORICAL BACKGROUND

Geography.—Algeria is a country in North Africa.¹⁷ For 300 years Algiers, its capital city, was the headquarters of piracy, the meeting-place of sea-robbers, and the terror of all civilized countries, which it defied with audacity born of long impunity.¹⁸

On the north, it is bounded by the Mediterranean Sea, on the east by Tunisia, on the south by Italian Libya and French West Africa, and on the west by Morocco.¹⁹ With a high birth rate, it has a total population of 9,530,000 of whom 8,000,000 are Moslem²⁰ and about 1,300,000 are French.²¹

Pre-French Period.—The history of Algeria is the history of successive conquests; the Carthaginian, the Roman, the Vandal, the Byzantine, the Arab the Turkish and the French. It has no unity; it is not the story of a nation or of a historical community. The Berber tribes, of which the inhabitants of Algeria are generally known, were split up; each settlement and each tribe had a history of its own.²²

What marks the beginning of the historical age in North Africa is the Phoenician colonization which took place as early as the 12th

¹⁶ The following is a portion of the transcript taken during the hearings before the Committee on Foreign Relations of the United States Senate, 79th Congress, First Session, July 10, 1945:

“Senator MILLIKIN. Is there any other international aspect to a labor problem or a racial problem or a religious problem that does not originate domestically? . . .

Mr. PASVOLCKY. Well, Senator, I suppose we can say that there is no such thing as an international problem that is not related to national problems, because the word ‘international’ itself means that there are nations involved. What domestic jurisdiction relates to here, I should say, as it does in all of these matters, is that there are certain matters which are handled internally by nations which do not affect other nations or may not affect other nations. On the other hand, there are certainly many matters handled internationally which do affect other nations and which by international law are considered to be of concern to other nations.”—LOUIS B. SOHN, *CASES AND OTHER MATERIALS ON WORLD I.A.W.*, p. 136 (1950).

¹⁷ *The Encyclopedia Britannica*, 14th Edition, Vol. I, p. 614.

¹⁸ *Op. cit.*, p. 618.

¹⁹ *Op. cit.*, p. 614.

²⁰ *The Daily Mirror*, July 11, 1955.

²¹ *Associated Press Dispatch*, New York, May 16, 1958.

²² *The Encyclopaedia Britannica*, 14th Edition, Vol. I, p. 617.

century B.C. From this time until the French conquest in 1830, the history of Algeria is one of successive conquests and colonizations.²³

Early French Period.—The settlement of the French in Algiers opened a new period in the history of North Africa. However, the French found that, although they had put an end to Turkish rule in Algeria, they were not yet in possession of the country. It had to be wrested yard by yard from the native population. By 1848 the conquest of Algeria could be regarded as accomplished.²⁴

Later French Period.—According to observations made lately, economic development has not kept pace with the rapid population rise in Algeria. The problem is to industrialize a country which is now principally agricultural, with emphasis on wine-growing.²⁵

Since 1830 up to the years following the end of World War II, plenty of water has passed under the bridge, so to speak. Like most areas dominated by colonial powers, North Africa has been engulfed in the post-war surge of nationalist sentiment. Being predominantly Moslem, it has been extremely sensitive to the politico-religious fervor that has gripped other Moslem areas to the detriment of the Western powers who held imperialist positions. The Arab League, principal agent of Moslem aggressiveness, has made intensive propaganda in Algeria, Morocco and Tunisia, and its material aid, though difficult to measure, probably has been very substantial.²⁶

The shots fired on the night of November 1, 1954 by the Nationalist terrorists in Algeria came as a shock to Frenchmen. While the protectorates of Tunisia and Morocco had been the scenes of bloodshed and disorder in the last few years, Algeria had remained calm and seemingly impervious to the nationalist currents that had swept its two neighbors.²⁷

It started on All Saints day, November 1, 1954, when a raging band of 3,000 Algerians swept down out of the Aures Mountains and began a campaign of pillage, arson and death under the banners of the "Aroy of Allah". At first, it was concentrated on the infertile coastal plain. Then it spread.²⁸

As noted earlier, there are clear indications that the conflict might engulf the whole African continent.²⁹

III. Status of Algeria in International Law

In 1830 when France conquered Algeria, the latter was inhabited by the Berber tribes who had no unity, and could hardly be called a state.³⁰

When the French conquest became an accomplished fact in 1848,³¹ and subsequently followed by colonization,³² France acquired title to the territory. It is worthwhile to look into the following authority:³³

²³ *Op. cit.*, pp. 617-618.

²⁴ *Op. cit.*, p. 618.

²⁵ *The Daily Mirror*, July 11, 1955.

²⁶ *The New York Times*, November 7, 1954.

²⁷ *Ibid*.

²⁸ *The Daily Mirror*, May 19, 1956.

²⁹ See Note 7, *supra*.

³⁰ See Note 22, *supra*.

³¹ See Note 24, *supra*.

³² *Encyclopaedia Britannica*, 14th Edition, Vol. I, p. 618.

³³ CHARLES CHENEY HYDE, *INTERNATIONAL LAW*, Second Revised Edition, Vol. I, pp. 356-358 (1945)

“Conquest. The term conquest appears to be used to refer to at least two distinct processes or activities: first, that by which a military commander in time of war gains possession of hostile territory and subjects it and its occupant to his control; and secondly, that by which a victorious belligerent compels its enemy to surrender the sovereignty of territory belonging to it.

It is not believed that conquest indicates a mode by which a right of sovereignty comes into being, or by virtue of which an existing one is transferred. If the inhabitants of the territory concerned are an uncivilized or extremely backward people, deemed to be incapable of possessing a right of sovereignty, the conqueror may, in fact, choose to ignore their title, and proceed to occupy the land as though it were vacant. In such case the conquest refers merely to the military or physical effort by means of which occupation becomes possible. If, on the other hand, the vanquished enemy is a State, or a country whose exclusive rights as sovereign over the territory concerned have been respected, the conqueror is not, at least at the present time, regarded as deriving rights of sovereignty from the military achievement. Although the victor may be able to bring about a transfer of such rights by some appropriate action, the bare possession of the requisite power does not suffice to effect a change. The State whose armies have gained control of enemy territory and occupied it may have no design of doing more. In such case it would be unreasonable to shift the title, and transform the conqueror into the territorial sovereign, even against its will. Thus, in practice, upon the withdrawal of a belligerent occupant, the normal government of the State resumes automatically the exercise of its right in behalf of its sovereign which are deemed to have been suspended rather than transferred during the period of occupation.

If, however, the conqueror so desires, it may, in theory, retain as the fruits of victory the territory which is held, and acquire the sovereignty thereof. The common method of so doing is the demanding and obtaining a transfer embodied in an appropriate treaty.

The conqueror may in fact resort a different procedure. It may formally annex the occupied yet hostile territory to its own domain. By so doing it announces to the outside world both the design to acquire the rights of sovereignty over the area concerned, and the achievement of that end solely by its own act. This process is described as subjugation. It betokens not only the acquisition of rights of sovereignty by virtue of sheer power, but also unconcern on the part of the conqueror as to the lack of any agreement manifesting acceptance of the change by its foe. Subjugation, in so far as it is employed with respect to territory already subjected to rights of sovereignty by the country which is ousted therefrom, cannot be regarded as indicative of a method by which such rights come into being. It manifests rather a mode by which an existing right of exclusive control is taken away from one State (possibly by its very extinction) and lodged in another.”

The following observation of another authority on the subject³⁴ may also be pertinent:

“Subjugation must not be confused with conquest, although there can be no subjugation without conquest. Conquest is taking possession of enemy territory by military force, and is completed as soon as the

³⁴ H. LAUTERPACHT, OPPENHEIM'S INTERNATIONAL LAW, Seventh Edition, Vol. II, p. 600 (1952).

territory is effectively occupied. Now, it is obvious that conquest of a part of enemy territory has nothing to do with subjugation, because the enemy may well reconquer it. Even the conquest of the whole enemy territory need not necessarily involve subjugation; for in a war between more than two belligerents, the troops of one of them may evacuate their own country and join the allied army, so that the armed contention is continued, although the territory of one of the allies is completely conquered. Again, a belligerent, although he has annihilated the forces and conquered the whole of the territory of his adversary, and thereby brought the armed contention to an end, may nevertheless not choose to exterminate the enemy State by annexing the conquered territory, but may conclude a treaty of peace with the expelled or imprisoned head of the defeated State, re-establish its Government and hand back to it the whole or a part of the conquered territory. Subjugation takes place only when a belligerent, after having annihilated the forces and conquered the territory of his adversary, destroys his existence by annexing the conquered territory. Subjugation may, therefore, be correctly defined as extermination in war of one belligerent by another through annexation of the former's territory after conquest, the enemy forces having been annihilated."

It should be noted, however, that Algeria is neither a colony in the usual sense, nor a simple aggregate of French departments; it has no complete autonomy yet it is not entirely assimilated to France.³⁵

By the French Constitution of 1848, the populous northern part of Algeria was divided into three French departments and thus made part of France. Legally, Algeria is almost an integral part of France as Normandy.³⁶

Recently, however, the Algerian national liberation front (FLN) proclaimed a provisional Algerian Republican government-in-exile in Cairo on September 19, 1958 with Ferhat Abbas as premier. The Arab States, led by Iraq and the United Arab Republic, immediately began extending recognition to the independent government of Algeria. Tunisia and Morocco, France's former possessions in North Africa, also immediately announced formal recognition of the Algerian government-in-exile.³⁷

IV. THE QUESTION

Statement of the Question.—The problem at hand boils down to the competence of the United Nations or of any of its organs to intervene in the Algerian question existing between France and the people of Algeria. As initially brought to the attention of the Council, the request for intervention is based on "that the situation in Algeria had been deteriorating to such an extent that the United Nations could not remain indifferent to the threat to peace and to the flagrant violation of fundamental human rights".³⁸ In the explanatory note attached to the letter of July 16, 1958 requesting inclusion of the Algerian question in the agenda of the 13th session

³⁵ *The Encyclopaedia Britannica*, 14th Edition, Vol. I, p. 618.

³⁶ *The New York Times*, November 7, 1954.

³⁷ *The Sunday Times*, September 21, 1958.

³⁸ *Year Book of the United Nations*, 1956, pp. 115-116.

of the Assembly, it is stated that "the hostilities in Algeria continue unabated causing increasing suffering and loss of human life, and . . . in the past few months there have been dangerous indications that the hostilities might spread even beyond the frontiers of Algeria. . . ." ³⁹

Stated simply, the question is whether or not, under the Charter, the United Nations is competent to discuss the matter and to decide or make recommendations with respect to the same. This is the procedural aspect of the problem.

As to its substantive aspect, the question hinges on the right to independence on the part of the Algerian people and on the obligation of France to grant it.

Status of the Question.—At the Assembly's tenth session, the Afro-Asian nations ⁴⁰ accepted postponement of further discussion of the question in the hope that France would meanwhile negotiate a peaceful settlement with the Algerian people. This hope had, however, been in vain. France continued its act of extensive military repression, and increased its armed forces in Algeria from 150,000 men to over 450,000. ⁴¹

On April 12, 1956, in a letter to the President of the Council, seventeen Asian- African Member States ⁴² called attention to the deteriorating situation in Algeria. ⁴³ Due to the objections raised principally by the representative of France, the Council decided against the adoption of a provisional agenda to include the question. ⁴⁴

On October 2, 1956, fifteen Arab and Asian Member States ⁴⁵ asked that the question be included in the agenda of the Assembly's eleventh session. They stated that, by its policy of repression and extermination of the Algerian people, France violated the Genocide Convention to which it was a party, and that a continuation of repression operations would endanger international peace. ⁴⁶ This request was granted when on November 15, 1956, the Assembly decided to include the item on its agenda. The matter was considered by the First Committee during its meetings held on February 4-13, 1957. ⁴⁷ After a lengthy debate, the Assembly, in its plenary meeting on February 15, 1957, unanimously adopted a resolution, expressing "the hope that in a spirit of cooperation, a peaceful, democratic and just solution would be found, through appropriate means, in conformity with the principles of the Charter of the United Nations". ⁴⁸

During the twelfth regular session of the Assembly, the question was again in the agenda and was discussed in its plenary session. As a result, the Assembly for the second time unanimously adopted a resolution on December 10, 1957, expressing "the wish

³⁹ Letter addressed to the Secretary-General, A/3853, 16 July 1958.

⁴⁰ Afghanistan, Burma, Ceylon, Egypt, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Pakistan, the Philippines, Saudi Arabia, Syria and Yemen.

⁴¹ *Year Book of the United Nations*, 1956, p. 117.

⁴² Afghanistan, Burma, Ceylon, Egypt, India, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Pakistan, the Philippines, Saudi Arabia, Syria, Thailand and Yemen.

⁴³ *Year Book of the United Nations*, 1956, p. 115. See also Note 38, *supra*.

⁴⁴ *Op. cit.*, p. 116.

⁴⁵ See Note 40, *supra*.

⁴⁶ See Note 41, *supra*.

⁴⁷ *Ibid.*

⁴⁸ *Op. cit.*, pp. 116-120. See Resolution 1012 (XI).

that a spirit of effective cooperation, *pourparlers* (informal discussions) will be entered into, and other appropriate means utilized with a view to a solution, in conformity with the purposes and principles of the Charter of the United Nations".⁴⁹

In a letter dated July 16, 1958, the Afro-Asian group has requested the inclusion of the question in the agenda of the Assembly's thirteenth regular session.⁵⁰ Although France has stated firmly that it will not take part in any discussion of Algeria, the steering committee put the item on the Assembly's agenda.⁵¹

V. THE ALGERIAN POSITION

The main claim of the Algerian people is their right to self-determination and independence. In support of this claim it has been asserted that Algeria had been a sovereign State before the French occupation and had not been integrated into France either in fact and in law. Whatever the political methods used by France, Algeria is not part of a genuine union. The relationship of France and Algeria was rather that of one country trying to colonize another. It is further argued that, according to international law and the Charter, the Algerian people have an inalienable right to self-determination.⁵² A refusal to allow the Algerian people to exercise the right of self-determination would violate the Charter, particularly Article 1, paragraph 2.⁵³

With respect to the procedural aspect of the question it is contended that the United Nations is competent to intervene because the matter does not fall essentially within the domestic jurisdiction of France. This contention is based on the argument that Algeria is not an integral part of France or a French colony. Moreover, it is argued that a question concerning violation of human rights and affecting relations of Member States cannot be regarded as essentially a matter of domestic jurisdiction.⁵⁴ Besides, the Algerian situation has threatened world peace and the freedom of nations and has provoked tension in the relations between the Arab world, especially Egypt, and the West.⁵⁵

Dr. Djalal Abdoh, Iran's representative in the Council, spoke for all the thirteen sponsoring States. He pointed out that Algeria was an independent country before the French forces landed in Algeria, the sovereignty which was vested in the Algerian people did not disappear; it merely remained dormant and was able to be reawakened by a national movement like the one now taking place.

⁴⁹ Resolution 1184 (XII).

The question came before the Assembly for the second time on September 20, 1957 when that body decided to include the item on the agenda of the twelfth session.—*United Nations Review*, Vol. 4, No. 8, p. 27, February, 1958.

⁵⁰ See Note 39, *supra*.

⁵¹ *The Philippines Herald*, September 22, 1958.

Most of the other items on the provisional agenda will go before the Assembly with little opposition. Although some of them, such as the Algerian rebellion, the British-Turkish-Greek dispute over Cyprus, and the situation in the territory of Southwest Africa, are certain to cause bitter argument, there is no firm opposition to the Assembly discussion.—*Ibid*.

⁵² *Year Book of the United Nations*, 1956, pp. 115, 118.

⁵³ *Op. cit.*, p. 116.

"The Purposes of the United Nations are.

1. x x x

x x x

x x x

2. To develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples "

⁵⁴ *Ibid*.

⁵⁵ *Op. cit.*, p. 118.

From this he deduced that the question under consideration is purely a colonial one, since Algeria forms part of the French colonial empire.⁵⁶

According to Dr. Abdoh, if we take into account the extent of the military operations and the resulting loss of life, we can but conclude that we are faced with a full-scale war, with all its consequences at both the national and the international level. He adds that, even if there were any doubts about the status of Algeria, this war would still be a full-scale war, and nothing in international law prevents such a civil war from assuming the character of a conflict whose effects go beyond the national level to the international level.⁵⁷

For the sake of convenience, pertinent portions of some typical arguments in favor of Algerian position are herein below reproduced. During the Assembly's twelfth session, Mr. Tueni of Lebanon argued as follows:

"Even if we were to admit, for the sake of argument, the thesis of French domestic jurisdiction over Algeria, we could not fail to see, in the history of the Algerian conflict, a most convincing proof that violation of human rights does endanger world peace and must therefore be considered an international question, for which specific provisions should have been found in the Charter.

By *presence française* in Algeria, the representative of France does not merely mean the simple fact that France is, or has been, in Algeria. "France has been in Algeria since 1830"; that we know and need not be reminded of. Furthermore, none of us contests the fact that Algeria has been technically incorporated into France since the Constitution of the Second Republic. We also know that this happened before the incorporation of Savoy and Nice, two provinces which the representative of France was well advised to describe as "authentically French". For inasmuch as we know, those two provinces have always been considered by France as falling within her natural boundaries. We have never heard that those natural boundaries extended to the heart of the Sahara, or that the Duc d'Aumale went to North Africa in response to any "authentically French" will of the Algerians, yearning to be united with their motherland. On the contrary, we can be here endlessly quoting books, articles and speeches by very well known French leaders exhorting their Government to promote immigration into Algeria, to uproot the populations living there and establish a "white man's right" to their land. As far back as the nineteenth century, many eminent French authors spoke of the resistance of the Algerians and their rebellion against colonial rule. None, to our knowledge, spoke of any Algerian, living then, who claimed to be "authentically" or "non-authentically", anything near a Frenchman."

Mr. Al-Dalli, representative of Iraq, supported the Algerian position in this wise:⁵⁸

"The impact of the Algerian was on Tunisia and Morocco, however, goes beyond the immediate burden of the refugees. In the words of Mr.

⁵⁶ *United Nations Review*, Vol. 3, No. 2, p. 42, August, 1956.

⁵⁷ *Ibid.*

⁵⁸ A/C.41/PV.917, pp. 58-60.

⁵⁹ A/C.1/PV.917, pp. 58-60.

Belfrage, the Moroccan Foreign Minister before the Assembly last October:

"The direct and daily impacts of the war—the Algerian war—on the internal situation of our country are becoming increasingly grave and involve us in the risk of seeing our relations with France poisoned. Fire rages at our frontiers and threatens to extend to our own territory."

These are frank and truthful words. I commend them to the members of this Committee to ponder. No one but those who have lived in or visited North Africa could realize how violently the whole area is shaken by the Algerian war. The close ties of nationalism, religion, history, family relationship and neighborhood, and countless other factors which bind Algeria to Morocco and Tunisia, make it inevitable that any event taking place in any one of them reacts deeply on the rest. Hence, the sufferings, devastations and bloodshed which is taking place in Algeria has left its deep mark on the people and Governments of Tunisia and Morocco.

The poisoning of Franco-Moroccan relationship referred to by the Moroccan Foreign Minister, and no less tension often recurring in Franco-Tunisian relations, is a direct result of the Algerian war. France has maintained or reinforced its troops in those countries instead of reducing or withdrawing them after these countries attained their independence. The application of the so-called right of pursuit and the violation of the frontiers and the sovereignty of these countries with so many unfortunate incidents has been an almost daily occurrence. The recent furor in Paris over the supply of very limited supplies of small arms to Tunisia by other Western countries is another phase in an increasingly tense situation. The freezing or stoppage of standing financial arrangements between France and each of those States specifically for the purpose of putting pressure on them to modify their stand on the Algerian question, has had crippling effects on the economic development and the welfare of those countries."

Speaking for Saudi Arabia, Ahmad Shukairy reviewed the status of Algeria prior to its coming under the French rule. It had not been a wild and uninhabited region before the arrival of the French, but on the contrary had been a sovereign country. Between 1690 and 1830, the Algerian Government had negotiated fifty-seven treaty agreements with France, had signed treaties with the United States as early as 1795, and had an ambassador at London. The Algerian people had never given up their aspirations to reachieve their independence.⁶⁰

VI. THE FRENCH POSITION

As presented by its Foreign Minister Christian Pineau, France's basic position is that the United Nations does not have the competence, under the Charter, to go into the question.⁶¹ Even during the previous session, the French representative contended that Article 2, paragraph 7, of the Charter, precluded consideration of the Algerian question, and that, the United Nations being committed to respect the national boundaries of its Member States, any inter-

⁶⁰ *United Nations Review*, Vol. 4, No. 8, p. 29, February, 1958.

⁶¹ *Op. cit.*, p. 28

vention it makes in violation of the principle of domestic jurisdiction would imply a direct threat to the territory integrity and, indeed, to the very existence of the States.⁶²

To sustain this contention, it is argued that Algeria was integrated into the national territory of France in 1848, when the Constitution of the Second Republic was adopted, and France joined the United Nations "with the frontiers that had been traditionally recognized as belonging to it". It is further argued that the events taking place in Algeria are not elements of a national uprising against foreign oppression, "but a political enterprise undertaken by a minority", utilizing terrorism and subversion. Mr. Pineau also pointed out that as early as March 9, 1956, France had made a public appeal to the rebels for a cease-fire, to be followed by free elections, after which conversations would be held on the formation of a "new Algeria". But while France remained ready for a cease-fire, according to him, the opposing Algerian elements had set preconditions for ending the hostilities—the foremost being recognition of Algerian independence—which only make negotiations pointless. He stated further that France had already undertaken changes in the administration and political structure of Algeria even without waiting for the restoration of order.⁶³

It may not be amiss to note that voting on the new French Constitution was recently conducted in all French territories including Algeria.⁶⁴ The Constitution for the fifth French Republic was approved by 78.5 per cent of the voters who went to the polls. Interior Minister Emile Pelletier of France announced that the official tabulations showed 17,666,828 yes votes and 4,624,475 no votes. The Constitution will give France's overseas possessions limited autonomy within a French confederation.⁶⁵

In an article entitled "Algeria Is A Real Part Of The French Republic," columnist Edgar Ansel Mowrer takes up the cudgel for France. The bone of his contention is that, Algeria being an integral part of the French Republic just as Hyderabad is a part of India, the United Nations is forbidden by the Charter from discussing the Algerian question. He finally argues that if the United Nations has a right to discuss the "Algerian question", then it should discuss the question of every discontented minority everywhere, and until it does, it had better drop the "Algerian question".⁶⁶

The same columnist in another article asserted that "Algeria is a French Department and an integral part of France whose inhabitants are French citizens", and that "giving independence to Algeria would mean disenfranchizing the Europeans and that section of the North Africans who vote".⁶⁷

During the debate in the twelfth session of the Assembly, the Spanish representative sided with France. The pertinent portion of his speech is herein below reproduced:⁶⁸

⁶² *Year Book of the United Nations*, 1956, p. 117.

⁶³ See Note 61, *supra*.

⁶⁴ *The Manila Chronicle*, September 28, 1958.

⁶⁵ *The Manila Chronicle*, September 30, 1958.

⁶⁶ *The Manila Times*, January 6, 1956.

⁶⁷ *The Manila Times*, February 14, 1956.

⁶⁸ A/C.1/PV.917, pp. 78-91.

"When, in 1830, the last king of France Charles X—there was an emperor who followed him but he was the last king—and his Minister, Polignac, together with General Bourmont, decided on the expedition to Algeria, they invited the then King of Spain, Ferdinand VII, also a Bourbon, to co-operate in the enterprise. I have just read this in a history of Algeria. As I mentioned last year, Spain passed through Oran. It had occupied it; it had made some historical expeditions, and it had left certain traces. I would ask the representatives to try to understand the position in 1830. The same situation existed for the French King as for the Spanish King. There was a tempting possibility of expansion over a land that could offer the tightly pressed countries of Europe development for their populations and increase of power. The King of Spain refused, according to Mrs. Escaler, who is the author of the history to which I am referring. He refused because of his many preoccupations with internal politics. And that was the time of an internal situation which cost us, incidentally, a war which was perhaps more difficult than that in which we might have been involved in Algeria. If things had been different, and if there has not been these internal preoccupations, Spain might perhaps participated in this affair. To a certain extent we are concerned with it, because the Spanish helped in the development of the European colony in Algeria, and hundred of thousands of workers and artisans from our own Mediterranean Levant went there and, from the middle of the nineteenth century, began to settle in Algeria as a very considerable part of the immigrating population.

For France, Algeria was a great lesson. To a large extent, Algeria permitted France to fulfill many dreams. Napoleon III, writing to Marshal Pelissier in 1890, said:

'Algeria is not a colony, properly speaking, but an Arab kingdom. The indigenous inhabitants have the same right to my protection as the settlers. I am as much the Emperor of the Arabs as the Emperor of the French. I prefer to make use of the bravery of the Arabs rather than to exploit their poverty.'

My delegation feels that Article 2 (7) of the Charter is fully applicable to the discussion of the Algerian question, which Article prohibits the United Nations from intervening in matters which are essentially within the domestic jurisdiction of any State. When France became a Member of the United Nations, Algeria was a constitutional part of the French State. It is still part of the French State. As the representative of Belgium reminded us, an effort by France to change this situation when human rights were violated, when the violation itself was termed a threat to peace, was rejected by the General Assembly itself. And now it has become the home of rebellion and uprising.

The very existence of our world will be endangered unless we respect this Article of the Charter. Therefore, with regard to the Algerian question, we stand by the rigorous interpretation of Article 2 (7)."

VII. UNITED NATIONS COMPETENCE TO INTERVENE

Preliminary Question.—Before any discussion can be had as to whether or not the Council or the Assembly can entertain the question now existing between France and the people of Algeria, the preliminary matter to be determined is whether or not the United Nations itself is competent to deal with the matter. In other words, it is a condition precedent to find out that the United Nations is

not precluded by the Charter, particularly Article 2, paragraph 7, from discussing the subject. For the sake of convenience, the aforementioned provision of the Charter is quoted as follows:

"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."

It is true, as contended by those subscribing to the French view, that the over-riding principle embodied in the aforesaid provision of the Charter constitutes the fundamental condition and limitation of the obligations imposed on Member States by other provisions of the Charter.⁶⁹ In fact, if it were not for this provision, it is alleged, there is grave doubt as to whether many of the present members of the United Nations should have joined the organization.⁷⁰

But it is also true that in the very provision of Article 2, paragraph 7, an exception to the aforesaid over-riding principle of domestic jurisdiction has been contained. This relates to enforcement actions of the Council with respect to threats to the peace, breaches of the peace, and acts of aggression.⁷¹

In this connection, it is important to note that in practice both the Council and the Assembly have developed and adopted two other exceptions in addition to enforcement actions as expressly provided for in the said Article 2, paragraph 7, in conjunction with Articles 39 to 51, of Chapter VII. These additional exceptions are, to wit: (1) questions arising from treaty obligations; and (2) questions concerning violations of human rights and fundamental freedoms.⁷²

From the foregoing, it is clear that there are three guideposts that can lead us to the proper solution of the preliminary procedural question. In other words, all that we have to do is to examine the nature of the Algerian question in the light of available facts and determine if it falls under any of the categories considered as exceptions to the principle of domestic jurisdiction. If it does, then the inescapable conclusion is that the United Nations can properly consider the question. If it does not, no amount of logic can get it out of the prohibition which the aforesaid provision of Article 2, paragraph 7, of the Charter, imposes upon the United Nations. In the affirmative case, it follows that if the United Nations has jurisdiction over the subject, then either the Council or the Assembly, or both of them, in proper cases, can take cognizance of the same.

Coming to the problem at hand, this preliminary question has virtually become academic in view of the discussion of the matter

⁶⁹ *Year Book of the United Nations*, 1956, p. 118.

⁷⁰ *Ibid.*

⁷¹ Chapter VII, Articles 39-51, Charter.

⁷² See LOUIS B. SOHN, *CASES AND OTHER MATERIALS ON WORLD LAW*, p. 140 (1950).

"After remarking that his delegation attached great importance to a strict interpretation of the Charter, Mr. van Roijen (of Netherlands) noted that there were three types of exception to the inviolability of domestic jurisdiction referred to in the paragraph in question:

- (1) Exceptions expressly recognized by the Charter, of which there was at present only one, relating to enforcement measures imposed by the Security Council.
- (2) Exceptions derived from the general rules of international law, for instance in cases of extreme persecution of minorities.
- (3) Exceptions established by special rules of international law, that is to say those arising from treaty obligations." — *Op. cit.*, p. 146.

by the Assembly during its two previous regular session.⁷³ This is specially so in connection with inclusion of the question in the current agenda of the Assembly's thirteenth regular session.⁷⁴

Another point which should not be overlooked in this respect is the announcement which the French representative has repeatedly made to the effect that he did not oppose the inclusion of the item because, among other, he wished to reply publicly to the campaign of systematic denigration directed against France for years, and also to draw attention to foreign interference with the Algerian conflict.⁷⁵ This, he stated, is without prejudice to France's stand challenging the competence of the United Nations on this matter,⁷⁶ in which stand there has been no change.⁷⁷

At this point, it should also be considered that the Council has already decided on this preliminary matter. It has voted not to include the item in its agenda in view of the provisions of Article 2, paragraph 7, *aforecited*.⁷⁸

Authority of the Council.—In the preceding discussion, it has been noted that the Council has already decided not to include the item in its agenda.⁷⁹ The implication is clear that the Council considers itself precluded by the Charter from discussing this subject. The result of the voting on this matter in the Council was two to seven, with two abstentions.⁸⁰

There can be no doubt that the Council could have decided, and can decide, to discuss the question under the provisions of Chapter VII of the Charter which have been expressly excepted from the scope of the over-riding principle of domestic jurisdiction.⁸¹ Its members can have no fear as to doubtful points of law on this matter. This, of course, assumes that the Council is convinced that there is a threat to international peace and security. Otherwise, it has no other alternative but the one it has already chosen.

As to the other possible ground for the Council's deciding to take up the Algerian questions that is, violations of human rights and fundamental freedoms, its members might entertain doubts, as they did, to the same. The most that can be said on this point, therefore, is that the Council could have possibly relied on this ground. Of course, it has to be taken into account that the question could have probably obtained the required number of votes as a procedural matter,⁸² but considering the stand of France and the big powers siding with her,⁸³ its chance of going through the Council machinery as a substantive matter is practically nil.⁸⁴ As permanent members of the Council,⁸⁵ Great Britain and the United States—as allies of France—are likely to veto the question.⁸⁶ The stand of these two big powers has been clearly shown during the voting on the proce-

⁷³ See Notes 45 and 49, *supra*.

⁷⁴ See Note 51, *supra*.

⁷⁵ See Note 62, *supra*.

⁷⁶ *Ibid*

⁷⁷ *United Nations Review*, Vol. 3, No. 2, p. 43.

⁷⁸ *Ibid*. See also Note 53, *supra*.

⁷⁹ *Ibid*

⁸⁰ See Note 77, *supra*.

⁸¹ See Article 2, par. 7, Charter.

⁸² Chapter V, Article 27, par. 2, Charter.

⁸³ See Notes 76 and 77, *supra*.

⁸⁴ Chapter I, Article 2, par. 7, Charter.

⁸⁵ Chapter V, Article 23, par. 1, Charter.

⁸⁶ See Note 84, *supra*.

dural aspect of the Algerian question. If and when the question is put to vote as a substantive matter, their support in favor of the French position can be well expected.⁸⁷ In the case of France herself, although she also is entitled to exercise the veto power in certain cases, as a party to the dispute, she is enjoined under the Charter to abstain from voting.⁸⁸

Authority of the Assembly.—The Assembly has considered the question previously⁸⁹ and has adopted resolutions on the matter.⁹⁰ It has even included this item in its current agenda.⁹¹ As observed earlier, this preliminary procedural question has become academic as far as the Assembly is concerned.⁹²

The Charter itself is explicit that the Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and may make recommendations to the Member or to the Council or to both on any such questions or matters.⁹³ The exceptions provided in the Charter are those relating to the principle of domestic jurisdiction⁹⁴ and any dispute or question pending consideration by the Council.⁹⁵ In the latter case, the Assembly shall not make any recommendation on the matter, unless the Council so requests.⁹⁶

In addition to the foregoing, the Assembly may also discuss any questions relating to the maintenance of international peace and security brought before it by any Member, or by the Council.⁹⁷ It should be noted that any Member may bring any dispute or any situation which is likely to endanger the maintenance of international peace and security to the attention of the Council or of the Assembly.⁹⁸ In the case of a State which is not a Member, it may bring the dispute to which it is a party to the attention of either organ if it accepts in advance, for purposes of the dispute, the obligations of pacific settlement provided for in the present Charter.⁹⁹ This again is deemed subject to the same exceptions and prohibitions noted above.¹⁰⁰

With respect to the aforesaid questions, the Assembly may make recommendations with regard to the same to the State or States concerned or to the Council or to both. Any such questions on which action is necessary shall be referred to the Council by the Assembly either before or after discussion.¹⁰¹ The Assembly may call the attention of the Council to situations which are likely to endanger international peace and security.¹⁰² This shall not however, be construed to limit the general scope of the powers given by Article 10 of the Charter to the Assembly.¹⁰³

⁸⁷ *The Manila Bulletin*, September 28, 1955. Also *The Philippines Herald*, September 27, 1958.

⁸⁸ See Note 84, *supra*.

⁸⁹ See Note 73, *supra*.

⁹⁰ Resolutions 1012 (XI) and 1184 (XII)

⁹¹ See Note 74, *supra*.

⁹² See Note 73, *supra*.

⁹³ Chapter IV, Article 10.

⁹⁴ Chapter I, Article 2, par. 7, Charter

⁹⁵ Chapter IV, Article 12, par. 1, Charter.

⁹⁶ *Ibid.*

⁹⁷ Chapter IV, Article 11, par. 2, Charter.

⁹⁸ Chapter VI, Article 34 and 35, par. 1, Charter.

⁹⁹ Chapter VI, Article 35, par. 2, Charter.

¹⁰⁰ See Notes 94 and 95, *supra*.

¹⁰¹ Chapter IV, Article 11, par. 2, Charter

¹⁰² *Op. cit.*, par. 3.

¹⁰³ *Op. cit.*, par. 1.

Reference to Court for Advisory Opinion.—The procedural question may be clarified further and with much more weight by a reference to the Court for an advisory opinion. The legal question to be resolved by the Court is whether or not the Algerian question is a matter essentially within the domestic jurisdiction of France. Such step may dispel doubts with respect to legal points on the subject.

Under the Charter, the Court may give an advisory opinion on any legal question at the request of whatever body which may be authorized by or in accordance with the Charter to make such request.¹⁰⁴ The Assembly and the Council are authorized to request the Court to give an advisory opinion on any legal question.¹⁰⁵

The question may be laid before the Court by means of a written request for an advisory opinion containing an exact statement of the issues, and accompanied by all documents likely to throw light upon the question.¹⁰⁶ After the hearing,¹⁰⁷ the Court shall deliver its advisory opinion in open court, prior notice to be given to the Secretary-General and to the representatives of Members, of other States and of international organizations immediately concerned.¹⁰⁸

It will not be the first time that a question of this nature is referred to the Court for an opinion. As far back as 1920, during the days of the League of Nations, the need for such opinion was felt in the Aaland Islands dispute,¹⁰⁹ and also in the dispute between France and Great Britain over the nationality decrees in Tunisia and Morocco in 1923.¹¹⁰ In the early days of the United Nations, the advisability of such reference was likewise recognized in connection with the dispute between India and the Union of South Africa concerning the treatment of the Indians in the latter country.¹¹¹

Objections have, however, been raised with respect to such move. During the deliberations in the Assembly on the Indian question, Mr. Wellington Koo, China's representative, made the following objections:¹¹²

"What are the advantages and disadvantages of referring the matter to the International Court of Justice. In the first place, it is clear that the Court can only give a decision in one way or the other; it can decide that this matter is within the competence of the United Nations, in which case the situation remains the same, and the Assembly will have to take

¹⁰⁴ Chapter IV, Article 65, par. 1, Statute of the Court.

¹⁰⁵ Chapter XIV, Article 96, par. 1, Charter.

¹⁰⁶ Chapter IV, Article 65, par. 2, Statute of the Court.

¹⁰⁷ *Op. cit.*, Article 66.

¹⁰⁸ *Op. cit.*, Article 67.

¹⁰⁹ LOUIS B. SOHN, *CASES AND OTHER MATERIALS ON WORLD LAW*, n. 89 (1950).

¹¹⁰ "The Council in considering the question, was of opinion that before endeavoring to effect a settlement of the dispute in the interest of international peace, and of the good understanding between nations, a decision must be arrived at on the claim made by Finland that the case of the Aaland Islands arose out of a matter which by international law is solely within the domestic jurisdiction of Finland.

This preliminary question, which is connected with that of the applicability of the 8th paragraph of Article XV of the Covenant, would have been placed by the Council before the Permanent Court of International Justice for its advisory opinion had that body already been established.

The Council, being desirous that a solution should be reached as quickly as possible, decided that this particular question should now be submitted for an advisory opinion to a Commission of three International Jurists, the Council reserving its further action in the case."

¹¹¹ *Op. cit.*, pp. 121-131.

¹¹² *Op. cit.*, pp. 141, 144, 145, 147-148, 160-161.

¹¹³ *Op. cit.*, p. 160.

it up and deal with it. That means a delay of several months, and in the present situation, in the present unsettled condition of the world, is it wise for us to let the strained situation remain as it is. Are we sure that it will not be aggravated in the interval?

There is the other alternative: The Court may decide that the matter is not within the competence of the United Nations, namely, that it is essentially within the domestic jurisdiction of the Union of South Africa. Would such a decision help South Africa to settle this case, or make it easier to deal with, and afford the necessary relief to the Indians? That is the question also for us to consider.

There is another aspect to consider. In view of the important issues involved in this case, issues which affect, as I said in the Committee, the honour of a whole continent, the price of half of the human family, the dignity of man himself, are we sure that the Court will be able to reach a unanimous decision. I hope it will. But none of us can be sure, and we know that the world tribunal is composed of representatives from all races, at least the principal races.

Suppose we get a divided opinion. Would that help us very much. Would that help the prestige and authority of the Court itself? If it is a divided opinion, maybe the majority opinion will be on one side, the minority opinion on the other. That opinion will expose the Court to criticism and to praise in some quarters, and to criticism in others.

Are we justified, in the early stage of existence of the Court, in putting such a heavy strain on that tribunal, whose authority and prestige we have every reason to uphold in the interest of the whole world? Therefore, we are decidedly of the opinion that the best course for the General Assembly to pursue now is to make a friendly offer of good offices, to make an effort to facilitate a settlement of the case by the parties, either separately or together. That is precisely what the resolution before us proposes to do."

Sr. Hartley Shawcross of the United Kingdom gave a very illuminating answer to the Chinese representative's objection.¹¹³ We quote:

"We have heard some very eloquent and perhaps vehement speeches, but this of all matters is one to be dealt with coldly and dispassionately, for every single speaker has said, and I have noted this particularly, and it is a matter which must affect our eventual method of voting, that this is a grave and serious matter; and so it is a matter of great importance, important certainly to the position of the Indians in South Africa and certainly not less important to the future of our own Organization. If we are going to ignore, in this matter, the appeal which has been made here by one of our Member States for an authoritative decision that this Assembly has jurisdiction to try that State before we condemn it, we shall be leading our Organization into the gravest danger for the future. It is not merely that no other tribunal in the world would dream of acting in this way. It is that a denial of this appeal for an authoritative legal decision would do far more harm to our Organization than it will ever do good to the Indians in South Africa.

Mr. Wellington Koo, our distinguished colleague, said yesterday that if this matter were referred to the Court, it might be that the Court would be divided. Well, if that is so, it is, of course, all the more reason why

¹¹³ *Op. cit.*, pp. 161-163.

we should hesitate to take rash and political decisions and to put rash and political interpretations upon the meaning of the Charter, according to the way of our emotions are swayed by the last speech we happen to have heard. For my own part, I see no reason why the Court should be divided on this perfectly straight-forward constitutional question, nor do I think that it would be a great disaster if the Court were divided.

"We cannot preserve the International Court of Justice in cotton wool under a glass case, only to be taken out and allowed to act when we know that we can put something before it upon which it is obviously certain to agree. Is that the way in which the rule of law is administered and enforced in our own countries? Is that how we are going to administer it and enforce it and enhance it in international affairs? Are we going to say now that Article 2(7) of our Charter is a complete dead-letter? Are we going to say that this organ of our own, which we have set up to administer justice, is to be completely discarded? What is important is not the risk that the Court might possibly disagree, but that we ourselves here are hopelessly divided on this matter.

"In the Political Committee, I ventured to say that if this matter left the Assembly more or less evenly divided about what we should do, our proceedings would be regarded with derision in South Africa and with contempt throughout the world. Strong words, but true.

"Who could regard with anything but contempt an organization so uncertain, so unsure of the ground upon which it wanted to act, that it would not refer the matter to its own judicial organ for decision? And that, of course, gives rise to the question: What do we really want to do here? Whom do we really want to help by the proceedings in which we are engaged? Is it the Government of South Africa? I hardly think that we are concerned to bolster it up by a decision in one sense or another. Is it the Indian politicians, so unhappily divided by communal strife and discrimination in their own country? I do not think we are concerned with their position. Or is it, after all, the Indians in South Africa? Are those the people we want to help? With them, I venture to think, we are concerned.

"Now, can anybody here really think—I put this question in all sincerity, and I hope that those who eventually come to cast their votes, will answer it in all sincerity—can anybody here really think that a decision passed by this Assembly, by a mere majority, having no kind of obligatory force, by whatever majority it might in these circumstances be passed, could do anything but exacerbate the present unhappy position in South Africa?

"On the other hand, can anybody for a moment doubt that a decision having the weight and authority of the International Court behind it would be one which the Government of South Africa would have to implement? Does anybody deny, any single representative here, that in matters of this kind, the juridical solution is always more acceptable and easier to apply than the political one?

"What does this clause about domestic jurisdiction really mean? How does it relate to the provisions of our Charter, repeated over and over again, about fundamental human rights? That is the question, a purely legal, constitutional question. There is no question of the merits here. I have indeed, myself, throughout assumed that the merits are all upon one side. The question is not what are the merits, but what are the powers, what are the powers that we possess in such a matter. To give an emo-

tional and a political answer to that question is to strike at the very roots of the rule of law which our Organization is pledged to uphold and to enhance."

VIII. AN OBJECTIVE APPRAISAL

The preceding portions of this work have been devoted almost exclusively to the presentation of the arguments raised by both sides. Some legal and factual points have been discussed in order to give light to the problem under consideration. In view of the seriously conflicting views on the subject, not to mention the heat and bitterness generated by it in international circles, the foregoing presentation is deemed necessary, if not indispensable, as a background before any objective analysis should be ventured.

Procedural Aspect.—Both the preliminary and the main procedural question on the matter revolves around the jurisdiction of the United Nations or any of its organs, particularly the Council and the Assembly, to discuss the Algerian question.

Examining the authorities, as well as the arguments advanced by both sides, it may be gleaned that Algeria is constitutionally or legally an integral part of France, the former having been acquired by the latter by virtue of conquest.¹¹⁴ It is also clear that Algeria has not been completely assimilated into the French political system.¹¹⁵ There are admissions made by no less than responsible French leaders themselves to this effect.¹¹⁶ This gives color, if not weight, to the claim that the integration of Algeria into France, being a unilateral act on the part of France, is but a legal fiction and contrary to reality.¹¹⁷

It is not denied that the Algerian people are entitled to exercise their right to self-determination. But on this basis alone, intervention by the United Nations raises grave doubts, especially in the face of the overriding principle of domestic jurisdiction embodied in Article 2, paragraph 7, of the Charter.

But this is only the beginning of the story. Of paramount importance to be considered are the actual events taking place not only in the Algerian soil but also in the neighboring countries. Hand in hand with this should also be considered the human carnage and sufferings which has been happening daily in the North African area since the start of the hostilities on November 1, 1954. The magnitude and extent of the French military and naval operations in the area also deserves to be taken into account. Not to be overlooked is the impact caused by the Algerian war on Tunisia and Morocco.¹¹⁸ It may not be amiss to take into account the Egyptian intervention in this matter, and the sympathy and support of the Arab League for the Algerian cause.¹¹⁹

Under the circumstances, there are two grounds on which the United Nations can base its right to interfere in the Algerian conflict.

¹¹⁴ See Notes 24, 33, and 34, *supra*.

¹¹⁵ See Note 35, *supra*.

¹¹⁶ *United Nations Review*, Vol. 4, No. 8, p. 29, February, 1958. See also Note 49, *supra*.

¹¹⁷ *Ibid*

¹¹⁸ See Notes 5 and 59, *supra*.

¹¹⁹ *The New Republic*, Vol. 138, p. 10, February 24, 1958. Also *The Manila Times*, October 20, 1956, and *The New York Times*, November 7, 1954.

First, there is evidence to show that the conflict has gone beyond the Algerian border into the Tunisian territory as occasioned by the practice of hot pursuit on the part of the French troops. This practice has in fact resulted in casualties on the Tunisian population and damage to Tunisian property.¹²⁰ The open support in supplies of arms and other overt acts on the part of Egypt, Tunisia and Morocco have been the object of French charges in the United Nations, and the French have in their possession sufficient evidence to prove the charge.¹²¹ The threat to the maintenance of international peace and security occasioned by the Algerian conflict is therefore imminent.

In the course of this defense for France's position the French representative said:¹²²

"In truth, the maintenance of order in any province of any one of the seventy-six Member States could not in itself affect international peace and security. To conceive of a disturbance of international peace, either the forces of the State concerned would have to go beyond its frontiers improperly in their operations, or third states would have to intervene in the rebellion."

By virtue of the foregoing words, France virtually concedes the competence of the United Nations in the face of the trespassing by French troops against the lives and property of the Tunisian people, and the open support given by certain Arab States to the Algerian nationalists.¹²³

Second, the repressive operations being conducted by the French military and naval might of about half a million troops have reached serious proportions to a systematic extermination of the Algerian nationalists. This is aggravated by the complete disregard by the French forces of the rules of belligerency in not distinguishing between combatants and non-combatants.¹²⁴ On this point alone, moral and legal responsibility arising from the humanitarian provisions of the Charter cannot allow the United Nations to remain indifferent. Its intervention in the conflict is not only legally justifiable but also necessary from the humanitarian point of view.

With the proclamation of an Algerian government-in-exile and the recognition accorded to it by same states,¹²⁵ the question has developed another important aspect in favor of the jurisdiction of the United Nations over it. We quote the following authority:¹²⁶

"It must, however, be observed that all that has been said concerning the attributes of the sovereignty of a State, generally speaking, only applies to a nation which is definitively constituted as a sovereign State and an independent member of the international community, and so long as it continues to possess these characteristics. From the point of view of both domestic and international law, the formation, transformation and

¹²⁰ See Note 59, *supra*.

¹²¹ *The Manila Times*, October 20, 1956. Also Associated Press Dispatch, Algiers, July 7, 1958.

¹²² *United Nations Review*, Vol. 3, No. 2, p. 43, August, 1956.

¹²³ See Notes 14 and 121, *supra*.

¹²⁴ See Note 117, *supra*.

¹²⁵ See Note 37, *supra*.

¹²⁶ LOUIS B. SOHN, *CASES AND OTHER MATERIALS ON WORLD LAW*, p. 93 (1950).

dismemberment of States as a result of revolutions and wars create situations of fact which, to a large extent, cannot be met by the application of normal rules of positive law. This amounts to a statement that if the essential basis of these rules, that is to say, territorial sovereignty, is lacking, either because the State is not yet fully formed or because it is undergoing transformation or dissolution, the situation is obscure and uncertain from a legal point of view, and will not become clear until the period of development is completed and a definite new situation, which is normal in respect to territorial sovereignty, has been established.

"This transition from a *de facto* situation to a normal situation *de jure* cannot be considered as one confined entirely within the domestic jurisdiction of a State. It tends to lead to readjustments between the members of the international community and to alterations in their territorial and legal status; consequently, this transition interests the community of States very deeply both from political and legal standpoints."

Substantive Aspect.—There is a preponderance of proof in favor of the theory that Algeria has not been politically integrated, much less assimilated, into the French system, if it were not by the mere expedient of the Constitution of the Second French Republic declaring Algeria as having been integrated.¹²⁷ The French attitude towards the inhabitants of Algeria, as well as to Algeria itself, during the long period of time from 1848 to 1954 shows that France has never seriously considered Algeria as part of her metropolitan territory. This is obvious from the very purpose for which France launched the colonization of Algeria as well as from the subsequent actions and utterances of responsible French leaders.¹²⁸ In fact, Algeria has not improved much under the French regime.¹²⁹ The proposed improvements planned and initiated by France only in much later times¹³⁰ are subject to well-founded suspicion that the same are being brought about and announced to the whole world only as a shield to French imperialist interests and in order to prevent the people of Algeria from claiming their right to self-determination.¹³¹

Although full credence may not be granted to the claim that Algeria was sovereign before the coming of the French in 1830, there are documentary evidence supporting such thesis.¹³² However, one thing cannot be denied, and that is that the Algerians have been continuously aspiring to be free and independent.¹³³ This aspiration has clearly and unmistakably manifested itself in the recent proclamation of an independent Algerian government.¹³⁴

IX. Conclusion and Recommendations

In the face of challenges hurled against it as tests of its practicability and usefulness, the United Nations should not remain indifferent to the demands being imposed upon it by the Algerian conflict. If ever it has its own way, that is, the politics of big powers

¹²⁷ See Note 114, *supra*.

¹²⁸ See Note 116, *supra*.

¹²⁹ *Year Book of the United Nations*, 1956, p. 118. Also see Note 25, *supra*.

¹³⁰ *The Daily Mirror*, July 11, 1955.

¹³¹ See Note 117, *supra*.

¹³² *Ibid*.

¹³³ *Ibid*.

¹³⁴ See Note 37, *supra*.

does not lie across the way, it is high time that the United Nations exercise tactfully but firmly its authority to intervene in matters involving its duty to maintain international peace and security, and to prevent violations of human rights and fundamental freedoms.

Due to difficulties occasioned by its structure, the Council cannot properly and adequately solve the problem at its initial stage. The Assembly is more fitted and equipped to deal with the question in its early stages, if the purpose to be achieved is the formation of world opinion on the matter. However, the Assembly is handicapped in the sense that unfettered debate participated in by eighty-one nations might only harden opposing positions and make settlement more difficult.¹³⁵ This, of course, is an advantage on the part of the Council which is composed of only eleven members.

In case of further doubts as to the competence of the United Nations to deal with the matter, it is suggested that the legal question be referred to the Court for an advisory opinion.¹³⁶

The circumstances are really such that neither France nor the Algerian nationalists are willing to give in a little in their respective claims. At least, so far, there are no indications of such willingness on the part of either of them. On the contrary, the Algerian nationalists are insisting on nothing short of recognition of Algerian independence.¹³⁷ On the part of France, she insists that there should first be a cease-fire, and that it is only after the cessation of hostilities that conversations be had to determine the political status of Algeria.¹³⁸

At present, the stage of the problem is such that there is undoubtedly a necessity for mediation as well as the employment of other pacific means of settling this question. While factual and legal difficulties are being threshed out in the halls of the Assembly, or the Court for that matter, it is suggested that nations sufficiently qualified by virtue of their position and relation with respect to the disputants should utilize their influence and situation to bring the parties to a conference table and have them talk over their differences peacefully.¹³⁹

Under the Charter, the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, are obliged, first of all, to 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.¹⁴⁰

For France, the only honorable exit from the conflict without much damage to her prestige and, if possible, saving her relations

¹³⁵ *The Evening News*, September 27, 1958.

¹³⁶ See Notes 104 and 105, *supra*.

¹³⁷ *The Manila Bulletin*, June 14, 1956.

¹³⁸ See Note 63, *supra*. See also United Press Dispatch, Algiers, June 6, 1958. A sign recently appeared indicating the possibility of a peaceful settlement of the dispute between France and Algeria. In commenting on the situation, Tunisian President Habib Bourguiba said that it would be criminal to allow the Algerian rebellion to continue since both the French and the Nationalist rebels are agreed on the principle of self-determination. Referring to French President, Charles de Gaulle as the only man who could bring peace to Algeria and speaking of de Gaulle's offer of self-determination to Algeria and the consequent rebel reply accepting the principle and asking for further negotiations, Bourguiba said "The main thing is not to lose this occasion to obtain peace which is impatiently awaited by the two peoples."—*The Daily Mirror*, October 2, 1959.

¹³⁹ See Chapter VI, Articles 33-38, Charter.

¹⁴⁰ Articles 33, par. 1.

with Tunisia and Morocco as well as with Algeria itself, is to grant independence to Algeria which may be done in a gradual manner. The cost of maintaining her occupation forces in Algeria is becoming prohibitive. Her treasury has been practically drained and the Paris Government has to exist on deficit spending.¹⁴¹ The only available means by which she can recoup her expenses in maintaining her occupation of Algeria is the exploitation and utilization of the oil deposits in the Sahara Desert. But even this is insufficient to cover her annual expenditure of one billion dollars the Algerian administration, excluding pacification operations which cost France more than two billion dollars annually. According to reliable figures, the Sahara venture will net France only the maximum possible return of \$400,000,000 a year. This has to be saved too by granting Algeria her independence, because the oil products from the Sahara have to be transported through pipe lines which have to cross a wide expanse of territory which is exposed and vulnerable to Algerian guerilla activities.¹⁴²

The problem involved in granting independence to Algeria is the protection of the European community in the territory. There are indications that the Algerian Moslems can live side by side with the European segment peacefully as proven in the case of Tunisia and Morocco. In the event that the Algerians will turn out to be like the Indonesians after the Dutch granted them independence, the presence of a sizable Algerian Moslem population in metropolitan France can serve as a deterrent against such possibility.¹⁴³

As far as France is concerned, the handwriting on the wall is clear. France only needs a face-saving device, that is, her prestige and standing as a world power be given due respect and consideration at the conference table. If the Algerian leaders are practical enough, they should seize this opportunity with all tact and diplomacy at their command. In this case, less blood will have to be shed and more lives will be saved. Yet Algeria, just the same, can attain her independence.

The Algerian question is just one of the many challenges at present being hurled not only against the United Nations but also against all civilized and peace-loving nations. At times, the question has been overshadowed by other problems confronting the world. But the fact remains that there is such a serious problem as the Algerian question still remaining unsolved and testing the capability and resources of a world organization on trial.

The answer to the Algerian dilemma will determine to a considerable extent the destiny of the United Nations and the future of mankind. To the latter, the answer will prove either of only two things: hope or nightmare.

¹⁴¹ *The New Republic*, Vol. 138, pp. 10-11, February 24, 1958.

¹⁴² *Op. cit.*, p. 11

¹⁴³ *Ibid.*