



The United Nations Charter and the Use of Force

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Abstract:

This study examines France's nuclear tests in the Algerian Sahara and the consequent legal and humanitarian repercussions. It details the historical context of these tests, the environmental and health damage inflicted on the local population, and the violations of international humanitarian law, particularly the Geneva Conventions protecting civilians and prisoners of war. The work discusses France's potential international responsibility for war crimes related to exposing civilians and prisoners to nuclear radiation and explores the criminal jurisdiction applicable to such violations. The analysis underscores the broader implications for international law and accountability in cases of nuclear experimentation in colonised territories.

Keywords: French nuclear tests, Algerian Sahara, international law, war crimes, Geneva Conventions

La Charte des Nations Unies et le recours à la force

Résumé :

Cette étude examine les essais nucléaires français dans le Sahara algérien et leurs répercussions juridiques et humanitaires. Elle détaille le contexte historique de ces essais, les dommages environnementaux et sanitaires infligés à la population locale, ainsi que les violations du droit international humanitaire, en particulier des Conventions de Genève protégeant les civils et les prisonniers de guerre. L'ouvrage examine la responsabilité internationale potentielle de la France pour les crimes de guerre liés à l'exposition de civils et de prisonniers aux radiations nucléaires et explore la juridiction pénale applicable à de telles violations. L'analyse souligne les implications plus larges pour le droit international et la responsabilité dans les cas d'expérimentation nucléaire dans les territoires colonisés.

Mots-clés : essais nucléaires français, Sahara algérien, droit international, crimes de guerre, Conventions de Genève

Introduction

The French colonial administration carried out several nuclear experiments in the Algerian desert, during which several prisoners from the National Liberation Front, as well as civilians residing in the region, were used to conduct these detonations. By examining the elements and circumstances of these nuclear experiments undertaken by France in Algeria, one must ask: What is the legal characterisation of such acts in light of international law? To address this question, it is necessary to investigate the international legal instruments that prohibit the violation of one state's territory by another and violations committed against vulnerable people. Among the international instruments that address these issues are the United Nations and the International Court of Justice. Within these frameworks, we review selected articles concerning this matter, particularly those related to threats to world peace, whether in the context of colonialism or regional conflicts.

1. The United Nations Charter

Provisions of the Charter Relating to the Use of Force

- **Article 2, Paragraph 4:**

All Member States must refrain from threatening or using force in their international relations against the territorial integrity or political independence of any state, or in any way that contradicts the goals of the United Nations.

- **Article 39:**

The Security Council is responsible for determining whether any threat to peace, breach of peace, or act of aggression exists, and must recommend or decide on appropriate actions under Articles 41 and 42 to protect or restore international peace and security. ⁿⁱ



▪ **Article 41:**

The Security Council may decide on measures that do not involve armed force to implement its decisions and may call on UN Members to enforce them. Such measures can include complete or partial interruption of economic relations, transportation (rail, sea, air), communications (postal, telegraph, radio), and severance of diplomatic relations.

▪ **Article 42:**

If the measures under Article 41 prove inadequate, the Security Council may authorize the use of military force by air, sea, or land to maintain or restore peace. This may include demonstrations, blockades, or other military operations by UN Member states.

▪ **Article 51:**

Nothing in the Charter limits the inherent right of individual or collective self-defense if an armed attack occurs against a UN Member, until the Security Council intervenes to maintain peace. Actions taken in self-defense must be reported immediately to the Security Council and do not diminish the Council's ultimate authority and responsibility to maintain or restore peace and security.

The establishment of the United Nations resulted from several factors, including the failure of the League of Nations to fulfill its role and the absence of influential states such as the United States. Its inability to prevent the Second World War also contributed to this. Consequently, over fifty nations signed the UN Charter at the San Francisco Conference on June 26, 1945; the Charter came into force on 24 October 1945.ⁱⁱ

The primary objective of this Charter was the preservation of international peace and security through the establishment of a system of collective security entrusted to a permanent political organisation, the United Nations.

2. The Peaceful Settlement of Disputes

In reality, Chapter VI of the Charter addresses the peaceful settlement of disputes. Article 33 obliges the parties to any dispute, the continuation of which is likely to endanger the maintenance of international peace and security, to seek solutions in the first instance by the means outlined therein, namely, negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and other peaceful means. This reflects the principle outlined in Article 2, Paragraph 3. Should these means prove ineffective, the dispute may then be submitted to the Security Council or to the General Assembly for consideration and recommendation. Furthermore, the Security Council may itself take the initiative to examine any dispute or situation, the continuation of which may jeopardise the maintenance of international peace and security.

Notably, throughout its provisions, the Charter abandoned the use of the word "war," with the sole exception of the preamble. Instead, it employs alternative terms such as "threat to the peace," "breach of the peace," and "act of aggression." The Charter of the United Nations prohibited the use of force absolutely, in accordance with Article 2, Paragraph 4. This prohibition applies not only to Members of the United Nations but also to non-Member states, as the prohibition on the use of force has become a customary rule of international law. Moreover, Article 2, Paragraph 6 of the Charter affirms that the United Nations shall ensure that non-Member states act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.

The importance of the system of collective security (*système de sécurité collective*) lies in the fact that the Members have conferred upon the Security Council the primary responsibility (*responsabilité principale*) for the maintenance of international peace and security. Furthermore, members have pledged to accept and carry out their decisions, recognising it as acting on their behalf, as stipulated in Articles 24(1) and 25. To enable the Security Council to perform its functions in maintaining



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international peace and security, the Charter furnished it with the means prescribed in Chapter VII. Pursuant to Article 39, the Security Council shall determine the existence of any threat to peace and may accordingly make recommendations or decide upon measures that do not involve the use of armed force.ⁱⁱⁱ

The Security Council may also request that members sever diplomatic, economic, and other relations with the party that has violated the Charter, as provided in Article 41. However, if the Council determines the existence of a breach of peace or an act of aggression, Article 42 authorises it to take such action by air, land, and sea forces as may be necessary to maintain or restore international peace and security.

What is particularly noteworthy in this regard, especially concerning Article 42, is that the Security Council has been unable to exercise the coercive powers granted to it. This incapacity is due, on the one hand, to the use of veto power by permanent members and, on the other hand, to the fact that Article 43, which provides for the establishment of United Nations forces, has not yet been implemented.^{iv}

For these reasons, among others, the General Assembly intervened in the early 1950s by adopting the “Uniting for Peace” Resolution (*La Unité de Paix Resolution*), which empowered it to determine the existence of a threat to peace, a breach of peace, or an act of aggression. Although the General Assembly does not possess the authority to adopt binding decisions, its recommendations—particularly in cases where the Security Council fails to fulfil its primary responsibility—provide Member States with a legal and political basis upon which they may take the necessary measures and define their positions in relation to any situation or dispute.

In conclusion, the use of force under the Charter of the United Nations is strictly and entirely prohibited, irrespective of whether it is deemed lawful or unlawful, given that the Charter does not engage in such distinctions. Nonetheless, it grants the Security

Council the authority to determine situations involving threats to peace, breaches of peace, or acts of aggression. The scope of the United Nations Charter has since been expanded to allow the General Assembly, by virtue of the “Uniting for Peace” Resolution, to make similar determinations.

Notably, however, in practice, the Security Council has often failed to discharge its mandate in this domain. Furthermore, although the General Assembly may issue recommendations concerning situations that endanger peace and security, such recommendations are not binding. However, this does not diminish their significance, as they provide Member States with important support in rallying global public opinion and in conferring a form of legal legitimacy upon their actions and positions in cases involving the use of force.^v

Although the Charter has surpassed many of the shortcomings found in both the Paris Covenant and the Covenant of the League of Nations in terms of legal drafting with respect to the prohibition of armed conflicts between states, by employing the phrase “use of force”, it nevertheless fails to clarify the very meaning of this expression. The following question thus arises: does it refer solely to armed force, or does it extend to other forms of pressure, such as political or economic coercion? In this regard, divergences and instability of interpretation are evident: Western states have generally maintained that the term should be confined to armed force alone, whereas weaker states have argued that economic and political pressures may at times prove even more pernicious than military force.

The Charter was, however, explicit in formulating exceptions regarding the possibility of recourse to force. Article 51 enshrines the right of self-defence, whereas the system of collective security authorises the Security Council to employ armed force—by land, sea, or air—pursuant to Chapter VII of the Charter. Moreover, national liberation movements may resort to armed struggle to liberate their territories. However, since the Security Council has frequently refrained from identifying the aggressor, preferring



instead to examine disputes as "situations" without naming the offending parties, and given that the General Assembly has achieved limited success in this sphere under the Uniting for Peace Resolution, the necessity has arisen for the United Nations to seek a precise formula for identifying the situations in which the use of force is prohibited. In other words, defining the concept of aggression has become imperative.^{vi}

2.1. Definition of aggression

The drafting technique employed in the Charter's provisions resulted in the emergence of flexible legal phrases, the precise content of which is often difficult to ascertain. Among these phrases are "threat to the peace" and "breach of the peace," which have been relied upon by both the Security Council and the General Assembly in their resolutions and recommendations. This approach serves to avoid accusing a particular party of being the aggressor for political reasons. Breaches and threats to peace inherently imply the existence of an aggressor and a victim. While "situations" do not require a definition of aggression, "conflicts" do, as identifying the aggressor is essential for the Security Council to impose sanctions as provided under the Charter.^{vii}

The idea of defining aggression is not recent; it dates back to before the Charter. In 1933, the Soviet Union submitted a definition to the Disarmament Committee of the League of Nations, which was adopted by the Committee and included the following:

"An aggressor is one who first commits any of the following acts:

- Declaration of war.
- Armed invasion.
- Armed attack on territory, whether maritime or aerial.
- Naval blockade.
- Supporting armed bands within a state's territory to invade another state, or failing to take the necessary measures to

stop or protect against such support despite urgent requests by the affected party.”

Notably, the aggressor is the one who initiates the first strike or willingly permits the first strike from their territory. However, despite this definition being adopted by the League’s Disarmament Committee, it was criticised for failing to protect the innocent state and for neglecting the case of legitimate self-defence.

Shortly after the establishment of the United Nations, its International Law Commission undertook the study of a definition of aggression. Importantly, there was a significant division among the members of this Commission, reflecting the existence of diverse schools of thought despite the guidance provided by the United Nations General Assembly. The Assembly’s directives to the International Law Commission included the following:

- Preparing a code of crimes against peace.
- Studying the Soviet proposal related to acts of aggression.

These were intended for use by United Nations bodies to rely upon. The Commission submitted its report to the General Assembly in 1951, but the Assembly failed to reach any agreement, resulting in the matter being postponed to the 1952 session. Three primary schools of thought emerged from the ensuing discussions.^{viii}

The enumerative school (*école de la enumerative*) is led by the Soviet Union, which called for listing the acts that constitute aggression. This proposal is considered an extension of what the Soviet Union submitted to the League of Nations Disarmament Committee in 1933. The Soviet Union later added clarifications to its proposal to avoid previous criticisms. These clarifications include the following: danger to the life of citizens or violation of treaties, no state may cross the borders of another state, and preparations at the borders only permit the other party to take similar measures without crossing the border.

The general definition of school (*école définition générale*), championed by France, holds that a general definition should be



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established to cover all cases while maintaining flexibility to encompass new situations of aggression.

Greece, the United Kingdom, and the United States of America advocated nondefinition schools (*école nondéfinition*). This school maintains that aggression cannot be defined either generally or through a list of acts. It argues that, among natural principles, law and facts may change with circumstances, and aggression may sometimes have a personal character (*personnalité*). This school thus leaves the Security Council, especially the General Assembly, free to assess each case individually according to its circumstances.

The debate over defining aggression continued for many years before an agreement was reached in 1974. In that year, the General Assembly succeeded in adopting a definition of aggression.

▪ **Article 1:**

Aggression is the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state, or in any other manner inconsistent with the purposes of the United Nations, as reflected in this definition.

Explanatory note: The term “state” in this definition is used without prejudice to issues of recognition or whether the state is a member of the United Nations. It also includes the concept of a “group of states” where appropriate.

▪ **Article 2:**

The initiation of the use of armed force in violation of the Charter by a state constitutes sufficient evidence to establish that it has committed an act of aggression. However, the Security Council may determine, in accordance with the Charter, that an act of aggression has been committed without reference to the surrounding circumstances, as well as considering whether the acts committed or their consequences constitute sufficient danger.

▪ **Article 3:**

Any of the following acts, whether accompanied by a declaration of war or not, constitute an act of aggression, taking into account the reservations of Article 2 and according to its conditions for aggressive action:

a) Invasion or attack by the armed forces of a state against the territory of another state, or any military occupation, even if temporary, resulting from such invasion or attack, or annexation by the use of force of the territory of another state or part thereof;

b) Bombardment by the armed forces of a state against the territory of another state or the use of any weapon by a state against the territory of another state;

c) Blockade of the ports or coasts of a state by the armed forces of another state;

d) Attack by the armed forces of a state against the land, naval, or air forces, or marine and air fleets of another state;

e) Use of armed forces of a state that are within the territory of another state with the agreement of the receiving state, in contravention of the conditions of the agreement or any extension thereof, or in any act of aggression by those armed forces after the expiration of the agreement;

f) Allowing one's territory to be used by another state to carry out an act of aggression against a third state;

g) Sending armed bands, groups, irregulars, or mercenaries to carry out acts of armed force against another state if such acts constitute a comparable danger to those listed above or participation in such acts.

▪ **Article 4:**

The enumeration of the acts mentioned above is not exhaustive, and the Security Council may designate other acts as acts of aggression in accordance with the provisions of the Charter.



▪ **Article 5:**

Any consideration of whatever nature — political, economic, military, or other — shall not serve as justification for aggression.

Notably, the definition of aggression is set out in eight articles in which the General Assembly sought to reconcile the various schools of thought previously mentioned. The Assembly also granted the Security Council the discretion to classify any act as aggression without justification.

Upon examining this definition, several fundamental questions arise, including the following: do states have the right to rely on this definition to characterise a particular dispute and thereby assist the victim?

Suppose the answer to the previous question is affirmative. How should conflicts be addressed when there is disagreement between the interpretation of a state or a group of states and the decision issued by the Security Council?

Does the General Assembly's absence of the right to define new acts as aggression imply a relinquishment of its acquired authority, particularly under the "Uniting for Peace" resolution?

Regarding the first question, it can be said that states may indeed rely on the definition of aggression as evidence to characterise a particular dispute and depend on this to extend aid and assistance to the victim, as outlined in the preamble to the definition of aggression in paragraph nine and on preparatory acts. It is also clear from the definition itself that the Security Council has original competence in determining cases of threats to peace and breaches of peace. Articles 2 and 4 of the definition reserve this competence for the Security Council. Consequently, the Council may broaden this definition (Article 4) or narrow it (Article 2).^{ix}

It can be concluded that the veto powers continue to exercise complete control over whether to attribute the characterisation of aggression to any act, according to the privileges granted to the Security Council under Article 39 of the Charter. Since United

Nations Member States are obliged to comply with the Security Council's decisions (Articles 24 and 25), the final authority in such matters lies with the Security Council.

The value of the new definition of aggression becomes apparent when the Security Council remains silent or is unable to characterise a particular dispute. In such cases, states may rely on the aforementioned definition as a justification for their actions, which is consistent with the new definition that recognises the General Assembly's ability to consider cases of aggression.

However, in paragraph four of the preamble to the definition of aggression, it is evident that this definition does not infringe upon the powers and competences of United Nations organs derived from the Charter. According to the Charter, the General Assembly may issue recommendations on any matter unless the Security Council is actively considering it (Articles 10 and 12). Given the authority acquired by the General Assembly pursuant to the "Uniting for Peace" resolution, it can be concluded that the General Assembly can examine international disputes and issue recommendations on the basis of the 1974 definition of aggression.^x

2.2. French Nuclear Tests in the Algerian Sahara

Algeria was a fertile ground for colonial France, not only because of its mineral and oil wealth but also because of its vast lands, which did not escape French attention. This led General de Gaulle, starting in 1959, to consider dividing the Algerian territory and separating the Sahara from Algeria, viewing it as a strategic rear base for French military industries. When the African Industrial Organisation Zone (ZOIA) was established, the Reggane and Ain Eker regions were chosen as sites for conducting nuclear tests in the Algerian Sahara.

The Reggane region was selected in 1957 for conducting French nuclear bomb tests after several surveys had been conducted there. Preparations for the base began in 1958, which rapidly developed into a settlement housing with 6,500 French

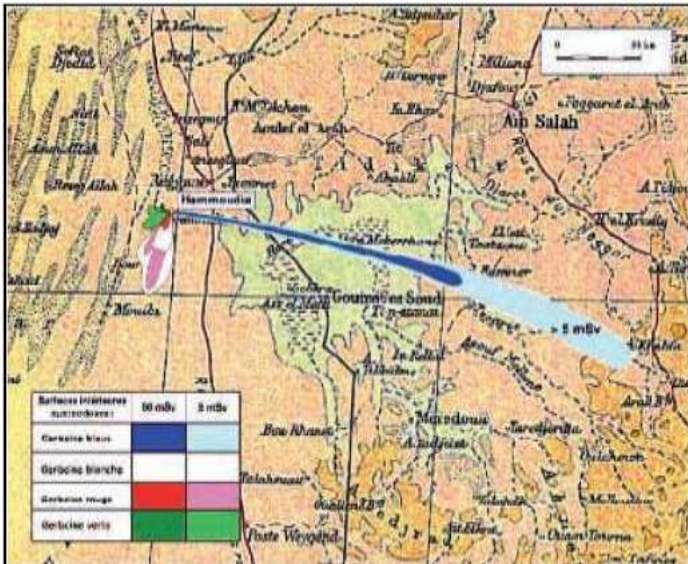


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personnel, including scientists, technicians, and soldiers, along with 3,500 Algerians employed as simple labourers and detainees. These workers were charged with completing the project within the designated timelines. From 1960 onwards, the area was declared a forbidden zone, divided into three main sectors for implementing the nuclear test project:

1. The central zone, covering 60,000 square kilometres, was where flight was permanently prohibited.
2. The area surrounding Reggane, spanning 10 kilometres, is designated the "blue zone," where flying below 300 metres was banned during the six hours following a detonation.
3. The "green zone," covering 200 kilometres east to west and 150 kilometres north to south, with a flight prohibition below 3,000 metres lasting 12 hours after a test.

Figure 1. Curve of the Range of Nuclear Impact for the Four Atmospheric Tests (Gerboise Series, Reggane Area, Algerian Sahara).



On the morning of 1 February 1960, at 07:04, residents of the Reggane area were awakened by the staggering explosion of the bomb. This event distorted the world's image of France as a civilised nation and revealed a long concealed reality: the local population had been turned into laboratory rats, whose bodies were disregarded in defiance of the human principles that France claimed to uphold. The emotional toll on the Algerian people and vulnerable nations worldwide went unnoticed. The reggane was the first site for French nuclear explosions, followed by additional tests thereafter.

The explosion left dire consequences for the inhabitants of the area, many of whom were transferred to the Reggane medical facility, suffering from conditions such as skin cancer, haemorrhaging, miscarriages among women, infertility, and eye diseases—including blindness caused by nuclear radiation exposure. The dangers extended to fetuses, with many births marred by congenital malformations and deformities due to radiation exposure.^{xi}

Conclusion

After presenting all these provisions, to what extent can international responsibility be established for France regarding the violation of the Geneva Conventions related to the protection of prisoners and civilians, as well as other treaties and international instruments? Considering that these violations constitute war crimes, is it possible to hold criminally responsible those who committed these acts, specifically exposing civilians and prisoners to direct radiation? Furthermore, what type of criminal jurisdiction applies to perpetrators of such violations related to the Geneva Conventions on the protection of prisoners and civilians?



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