

**"Come and Land in Algiers":  
Events of 22 October 1956 in International Law**

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**Abstract:**

On October 20, 1956, Prince Moulay Hassan son of the Sultan of Morocco flew to Tétouan (which recently served as capital for Morocco under Spanish protectorate) in his private aircraft, bringing five men back with him to Rabat. The same evening, the five men Ahmed Ben Bella, Mohammed Khider, Hocine Ait Ahmed [representing *l'Union Generale des Etudiants Musulmans Algeriens*, UGEMA], Mohammed Boudiaf, and Mustefa Lacheraf [UGEMA] arrived with Moulay Hassan in the new capital of a independent Morocco (Pierre Beyssade, *La Guerre D'Algérie*, 1954-1962/ 1968, p. 101). No claims have been made contesting the legal status of this act.

Two days later, the same five Algerian men (with plans that an independent Morocco and Tunisia would declare a North African Federation, proclaiming the independence of an Algerian state) boarded a Moroccan plane in Rabat. Submitting a flight plan for Tunis, this aircraft refueled at

Palma de Mallorca (the largest among Spain's Balearic Islands).

As historian of UGEMA, Ouanassa Sidi Sengour encourages colleagues to: "overcome [a] Manichaeism, which is not very productive for historical understanding, the best position for the historian is undoubtedly to try to measure the tension that surrounds any act of commitment. This can be the fruit of an experience matured often by a militant practice as it can arise thanks to the urgency of the fight. In both cases, the temporalities in which the commitment takes place are not the same and they invite us to consider the political processes other than as identical data for everyone" (Siari Tengour, "Dites et Non Dites," 2006). The international legal environment was in the midst of shifting from wartime aspirations to postcolonial realities. After the plane took off from Palma, the French Air Force radioed the pilot to land at Algiers. Conflicting claims have been made regarding the legal status of this act, which this article addresses.

**Keywords:** President of Assize ; Havana Convention on Diplomatic Officers ; Convention on International Civil Aviation (ICAO) ; Act of Algeciras ; Geneva Convention on the High Seas ; France's Penal Code of 1810 ; United Nations Charter

الملخص:

"تعال وانزل في الجزائر العاصمة"

أحداث 22 أكتوبر 1956 في القانون الدولي

في 20 أكتوبر 1956، سافر الأمير مولاي حسن ابن سلطان

المغرب إلى تطوان التي كانت مؤخراً عاصمة للمغرب تحت الحماية

الإسبانية (على متن طائرته الخاصة ، وأعاد معه خمسة رجال إلى الرباط .

في نفس المساء، وصل الرجال الخمسة أحمد بن بلة ، ومحمد خضر ،  
وحسين أيت أحمد [يمثلون الاتحاد العام للطلبة المسلمين الجزائريين ،  
[UGEMA] ، ومحمد بوضياف ، ومصطفى الأشرف [UGEMA]  
مع مولاي حسن في العاصمة الجديدة للمغرب المستقل .

بعد يومين ، صعد نفس الرجال الجزائريين الخمسة مع خطط أن  
يعلن المغرب وتونس المستقلان اتحاداً لشمال إفريقيا ، ويعلنان استقلال  
دولة جزائرية على متن طائرة مغربية في الرباط .تقديم خطة طيران  
لتونس، تمت إعادة تزويد هذه الطائرة بالوقود في بالما دي مايوركا الأكبر  
بين جزر البليار الإسبانية.

بصفته مؤرخاً لـ UGEMA ، فإن Ouanassa Sidi Sengour  
يشجع الزملاء على التغلب على المانوية ، التي ليست  
ثمرة جداً للفهم التاريخي ، أفضل موقف للمؤرخ هو بلا شك محاولة  
قياس التوتر الذي يحيط بأي فعل التزام .يمكن أن يكون هذا ثمرة تجربة  
نضجت في كثير من الأحيان من خلال ممارسة عسكرية لأنها يمكن أن  
تنشأ بفضل إلهام القتال .في كلتا الحالتين ، تختلف الفترات الزمنية التي  
يتم فيها الالتزام وهي تدعونا إلى النظر في العمليات السياسية بخلاف  
البيانات المتطابقة للجميع (Siari Tengour) ، “Dites et Non”  
Dites ، (2006) .كانت البيئة القانونية الدولية في خضم التحول من  
تطلعات زمن الحرب إلى حقائق ما بعد الاستعمار .بعد إقلاع الطائرة من  
بالما ، أجرى سلاح الجو الفرنسي اتصالاً لاسلكياً مع الطيار للهبوط في

الجزائر العاصمة .تم إجراء مطالبات متضاربة فيما يتعلق بالوضع القانوني لهذا القانون ، الذي تتناوله هذه المقالة.  
الكلمات المفتاحية:

رئيس الجامعة .اتفاقية هافانا للموظفين الدبلوماسيين ؛ اتفاقية الطيران المدني الدولي (ICAO)؛ قانون الجزيرة الخضراء ؛ اتفاقية جنيف لأعالي البحار ؛ قانون العقوبات الفرنسي لعام 1810؛ ميثاق الأمم المتحدة

### Introduction

Five men (Ahmed Ben Bella, Mohammed Khider, Hocine Ait Ahmed representing *l'Union Generale des Etudiants Musulmans Algeriens*, UGEMA, Mohammed Boudiaf, Mustefa Lacheraf also of UGEMA) boarded an aircraft in Morocco, with a flight plan for Tunis; the plane was forced to land in Algeria, and all five men were arrested (Pierre Beyssade, *La Guerre D'Algérie*, 1968, p. 101). Diplomatic historian Irwin Wall presents “the crucial case of the arrest of the five leaders of the rebellion... by the French military, which in October 1956 forced down their airplane over international airspace, obliging the pilot to land in Algiers” (Wall, “The United States, Algeria, and the Fall of the Fourth French Republic”).

It has been claimed multiple times that Ben Bella told France Culture radio: “there was a change of program. We were told 'you will go on another plane';” the inference being that while he and his colleagues had arrived in Rabat on the personal aircraft of the Crown Prince (which enjoyed a clear status of diplomatic immunity), he and his colleagues left

Rabat on a chartered flight (which did not enjoy such a status). While any original France Culture radio broadcast has not been identified, this claim is repeated by “*Ahmed Ben Bella: le symbole et au-delà*”/Apr 12, 2012; “*Le détournement de l'avion des cinq*”/Oct 23, 2013; and “*Hocine Ait Ahmed: de l'enlèvement aux accords d'Evian*”/ Oct 16, 2013). This article addresses contesting assumptions. At the time, what were various arguments regarding the legality of the 22 October 1956 events?

### “Make a Personal Effort of his Own”

After France joined the U.N. during 1945, diplomats representing it consistently advanced an argument based on Article 2(7) of the U.N. Charter that Algeria was an integral part of France. Even though France's Constitution (1946) begins: “The French people once again proclaim that every human being, without distinction of race, religion or creed, has inalienable and sacred rights,” the legal status of the five men as *Musulmans français* turns any discussion of the 22 October 1956 events from abstract principles to technologies of governance.

During 1956, Robert Vouin observed of France's Ministry of Justice: “The President of Assize, like the examining magistrate or any other criminal judge in France, is not simply an arbitrator charged with supervising the hearing and then deciding between the conflicting claims of the parties. The President has control of the hearing and directs the proceedings, with power 'to reject anything which would tend to prolong the hearing without the hope of more certainty in the results' (arts. 267 and 270, C. instr. crim.). But above all, quite independently of the allegations and the evidence or

arguments of the parties, he must make a personal effort of his own to clarify all the circumstances of the crime, so as to lead the Court of Assize to the discovery of the truth. This duty is so precise that our Code declares the President of Assize to be 'invested with a discretionary power whereby he may take any step which he believes of value for discovering the truth.'

A state of emergency gave to the permanent courts of the armed forces competence to judge all acts committed after November 1, 1954, to be "crimes" without distinction (Albert Smadja, "*Le procès Iveton*" 2013). As Fabian Klose points out, "since Algeria 'was an integral part of the French Republic', [as] stated Prime Minister Pierre Mendes-France in his address to the National Assembly on 12 November 1954, criminal efforts to cut this connection would never be tolerated. [In the opinion of] his minister of the interior, Francois Mitterrand .. the only law, the only parliament, the only nation that existed from Flanders to the Congo was the French one" (Fabian Klose, "Human Rights in the Shadow of Colonial Violence," p. 85).

Nonetheless, the *Journal officiel de la République française* for 1956 contains 21 pages mentioning exemptions and special circumstances in Algeria.

While administration of justice in all French territories and dependencies depended on the ministry of Paris, police courts, correctional courts and assize courts rendered criminal justice (L. Neville Brown, "The Reform of the French Administrative Courts," 1959). Regarding the system of justice, Vouin acknowledges powers the system invested in the office of the President of Assize, granting this person (like the examining magistrate before him) "the appearance

of an inquisitor. But everything depends on the man who is charged with the function, for this discretionary power only exists in the higher interests of justice which govern equally the defence and the prosecution” (Robert Vouin, “The Protection of the Accused in French Criminal Procedure,” *International and Comparative Law Quarterly*, vol. 5, no. 2).

In Algiers, Jean-Baptiste Allemand (alias, “Colonel Germain”), was head of the *Service de Documentation Extérieure et de Contre-Espionnage* (SDECE, counterintelligence reporting directly to the prime minister). Allemand informed the Tenth Military Region and Général René Frandon of the flight plan for the plane which left Rabat. Since Frandon served as commander of the Fifth Air Region which covered the whole of North Africa (including Morocco and Tunisia), his commanding officer Secretary of State for the Armed Forces M. Max Lejeune had the authority to give a green light over any proposal that the Fifth Air Region (as advised by the Tenth Military Region) order a civilian aircraft to land.

General Frandon was accountable to the Governor General of Algeria. As Resident Minister and Governor General of Algeria, Socialist MP of the Dordogne Robert Lacoste replaced Général Georges Catroux during February 1956. Regarding the events of 22 October, is alleged that Lacoste (a civilian who had served as Minister for Industrial Production in the provisional government of General de Gaulle) telephoned General Frandon: “What is the air law, in such a case, to force a plane to land?” to which General Frandon: “I can give the order to fire on the right engine.”

Lacost's reply was: "Shoot if necessary," then immediately: "No, don't shoot " ("Arraïsonnement de l'Avion de Ben Bella").

With the ambiguity of the civilian Governor General's response to their initiative, it might be argued that these three military officers and a civilian Governor General collectively abrogated the injunction on a civilian President of Assize to "make a personal effort of his own to clarify all the circumstances of the 'crime'" under the extraordinary provisions of the declared emergency.

#### **"All Members of the Mission Freedom of Movement"**

It has been argued when the plane carrying leaders of the *Front de libération nationale* (FLN) between Rabat and Tunis, was forced to land on Algerian territory, such lie within the bounds of international aviation law. The argument hangs on a technical point: given Morocco had only become independent in March 1956, the Sultan's plane remained registered in France and thus subject to French law (Dónal Hassett via twitter (May 25, 2021); <https://twitter.com/donalhassett1/status/1397144286030860288>).

A hand-list for the relevant records group in the National Archives of France suggests the *Direction Generale de l'Aviation Civile Maroc* subsequently gained the authority to license aircraft during January 1959 (*Archives nationales de France*, cote 19840544/27), lending credence to such an argument. Let us delve deeper, because the plane was forced to land in order to arrest five men (the cabin crew and other passengers walked free).

For practical purposes, two of the men—Hocine Aït Ahmed, and Mostafa Lacheraf who taught at the Lycée de Mostaganem and at the Lycée Louis-le-Grand in Paris—were members of the executive committee of *l'Union Generale des Etudiants Musulmans Algeriens* (UGEMA); during May 1956, this organization called on students in secondary schools and universities to walk out on their examinations, thereby forfeiting stipends from France's Ministry of National Education. As Bob Ross reported to the University of Michigan, the strike "lasted until the Fall of 1957, when UGEMA decided that students had best return because independent Algeria would need educated cadres;" during which time UGEMA collected "substantial sums of money" ... "for scholarship aids to needy students" ("International Student Relations," 1961). By 1957, UGEMA stipends supported students in degree programs in East Germany, Egypt, Morocco, Poland, Switzerland, Tunisia, the United States, and the Soviet Union. For practical purposes, these two men might be considered "diplomats."

The Havana Convention on Diplomatic Officers (1928) was in effect at the time. While its Article 2 distinguished between "ordinary" and "extraordinary" officers; "Those entrusted with a special mission or those who are accredited to represent the Government in international conferences and congresses or other international bodies are extraordinary," its Articles 3 and 9 assured the same for both: "except as concerns precedence and etiquette, diplomatic officers, whatever their category, have the same rights, prerogatives and immunities."

The Havana Convention's Article 14 provides that: "Diplomatic officers shall be inviolate as to their persons, their residence, private or official, and their property," and Article 23: "Persons belonging to the mission shall also enjoy the same immunities and prerogatives in the States which they cross to arrive at their post or to return to their own country, or in a State where they may casually be during the exercise of their functions and to whose Government they have made known their position."

However, neither France, Morocco, nor Tunisia was a state-party to the Havana Convention. Of all pertinent jurisdictions addressed in this analysis, only the US was a signatory to the Havana Convention.

While not yet in effect, the Vienna Convention on Diplomatic Relations (1961) was being negotiated to foster "development of friendly relations" among governments by extending the access to Havana Convention rights among UN member nation-states (i.e. including those which had not signed Havana). The Vienna Convention offered a uniform set of practices and principles. Article 1 of the Convention defined "head of mission," "members of mission," "diplomatic agent," and "remises of the mission"; its Article 7 grants sending states the to "freely appoint the members of the staff of the mission."

The Vienna Convention's Article 22 specifies "the premises of the mission shall be inviolable," and its Article 22 "the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory." All U.N. member states discussed here—independent Algeria, France,

Morocco, and Tunisia—later became both states-parties to the Vienna Convention, and ratified the treaty.

However, its provisions had not yet come into force at the time of the events narrated here. It was not only the cabin crew of the civilian DC-3 aircraft who took a calculated risk. The French military authorities also risked diplomatic fallout from the capture of these five men (Dónal Hassett via twitter/ May 25, 2021; <https://twitter.com/donalhassett1/status/1397144286030860288>). The news of the 22 October 1956 events was reported late in the news cycle, after Paris daily newspapers had gone to press that Monday.

Only three newspapers added brief editorial notes. Editors of *l'Humanité* stated: “interception of the plane which carried the FLN leaders, official guests of two sovereign governments, is an act of the most serious gravity;” and editors of *Le Figaro* referred to Tunisia's President “Bourguiba... is recalling his Ambassador in France” (“Papers Comment on Arrest of Algerians,” 23 October 1956, FBIS-FRB-56-207).

In addition to brief mentions in daily newspapers, Pierre de Leusse, recently-appointed as France's Ambassador to Tunisia, announced his resignation (U.S. Department of State, Division of Biographic Intelligence, p. 25). All of this—the late release of news, the editors' use of terms “most serious gravity,” as well as the resignation—suggest various parties' positions regarding the legality of this use of state authority were contested at the time of the 22 October 1956 events.

**“To Follow Prescribed Routes, or to Obtain Special Permission”**

The Douglas DC-3 is a low-wing metal monoplane with conventional landing gear, powered by two 1,000-1,200 hp radial piston engines. Its ability to use grass or dirt runways makes it popular in developing countries or remote areas, where runways may be unpaved. After the war, thousands of cheap ex-military DC-3s became available for civilian use; the DC-3 has a capacity of 21 to 32 passengers, a cruising speed of 333 km/h, and a range of 2,400 km.

Radio operators on aircraft and ships on 22 October 1956 reported that they heard a voice self-identifying as Alger Dar El Beïda/Maison Blanche air traffic control radio the DC 3 pilot on a clear channel: "Come and land in Algiers." Reconstructed dialogue between the DC-3 pilot and air traffic control in Algiers suggests the flight team negotiated the plane's legal status on the basis of existing international agreements. Reports of communication between the flight crew and air traffic control suggest both parties were familiar with France's rights under the Convention on International Civil Aviation (ICAO), as well as the responsibilities ICAO placed on flight crew.

A reconstructed timeline for communications on 23 October 1956 includes the pilot's 3 pm query: "Who transmits the order?" to land, receiving a response from the control tower: "The Ministry of National Defense." Since 1944, Article 1 of ICAO was based on the principle "contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory," and its Article 2 defines "territory" as "the land areas and territorial waters adjacent thereto."

While France was an original signatory to the convention, Morocco had not yet signed it (would eventually sign November 1956). At 4:30 p.m., the pilot of the DC-3 is alleged to have postponed: “Wait. I'm going to land in Palma-de-Mallorca.” Palma is the capital and largest city of the autonomous community of the Balearic Islands in Spain. Recognizing Article 1 of the ICAO, Palma is external to the “complete and exclusive sovereignty over the airspace above its territory” claimed by France as an ICAO signatory.

After 90 minutes, the DC-3 took off again and the pilot conveyed an updated flight plan to his employers, the *Compagnie Chérifienne de Transport Aérien* (CCTA) in Rabat: “Arrival scheduled for Tunis at 9:25 p.m” (*Archives nationales de France*, cote 19760074/9). The *Dar El Beïda/Maison Blanche* air traffic control resumed communication, instructing the pilot: “Come and ask yourself in Algiers.” The pilot of the DC-3 countered: “In whose name do you speak?” to which air traffic control replied: “in the name of the French government.”

Article 3bis of the ICAO which France signed during 1944 assures “every State, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention; it may also give such aircraft any other instructions to put an end to such violations.” Allegedly, the pilot of the DC-3 countered: “We request details.”

Article 3c of the ICAO which France signed during 1944 requires: “every civil aircraft shall comply with an order given in conformity with paragraph b) of this Article. To this end each contracting State shall establish all necessary provisions in its national laws or regulations to make such compliance mandatory for any civil aircraft registered in that State or operated by an operator who has his principal place of business or permanent residence in that State. The captain reported to his employer, and this message was transmitted to the Moroccan authorities for “action to be given.”

Article 3c of the ICAO which France signed during 1944 further requires: “contracting State shall take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State or operated by an operator who has his principal place of business or permanent residence in that State for any purpose inconsistent with the aims of this Convention.” While the *Compagnie Chérifienne de Transport Aérien* (CCTA) attempted to order the flight’s immediate return to Spanish territory, French military communications intervened by stopping these messages.

Article 9b of the ICAO which France signed during 1944 grants: “Each contracting State ... the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory, on condition that such restriction or prohibition shall be applicable without distinction of nationality to aircraft of all other States.” Article 9b of the

ICAO which France signed during 1944 further grants: “each contracting State, under such regulations as it may prescribe, may require any aircraft entering the areas contemplated in subparagraphs (a) or (b) above to effect a landing as soon as practicable thereafter at some designated airport within its territory.”

Any legal environment requiring an airplane to land includes the 1944 ICAO. The pilot of the DC 3 requested permission to return to Morocco from Algiers; air traffic control replied: “Come to Algiers... Come to Algiers... Government order to land Algiers...Repeat: order given, order given...” At 7:30 p.m., for the second time the pilot of the DC 3 requests authorization to return to Morocco, and a half-hour later Algiers denied permission to return: “Negative for Morocco” (“Arraisionnement de l'Avion de Ben Bella -- 1956”).

### A Calculated Risk

Radio operators on aircraft and ships on 22 October 1956 reported that they heard a voice self-identifying as Alger Dar El Beida/Maison Blanche air traffic control radio the DC 3 pilot on a clear channel: “Come and land in Algiers. You are covered by the minister.” The pilot of the DC 3 is reported to have responded: “But we also carry other passengers, and in particular foreign journalists.” Air traffic control is alleged to have replied “don't worry” (“Arraisionnement de l'Avion de Ben Bella”).

Denying a rumor that Secretary of State for Tunisian and Moroccan Affairs Alain Savary had tendered his resignation, a French Foreign Ministry spokesman declared “arrests will be maintained” (“Arab World is Swept by

Unrest,” *Washington Post*, 23 October 1956). The *Chicago Tribune* reported a spokesman for the Algerian National Liberation Front (FLN) called the 22 October event “treachery and double cross unprecedented in history” (“Anti French Riots Erupt in North Africa, *Chicago Tribune*, 24 October 1956).

In an official statement of the after the flight was downed, FLN spokesman Ahmed Tawfiq al-Madani referred to these provisions in France's constitution: “the flagrant aggression against the dignity of man only increases our belief that these French imperialists do not respect a pledge or a convention and that the language of force is the only one which brings them to reason” (“Algerian Liberation Front Issues Appeal,” 25 October 1956, FBIS-FRB-56-210). This “aggression against the dignity of man” contained three elements: risk for the rulers of newly-independent Egypt and Morocco, for France’s North Atlantic Treaty Organization (NATO) ally the United States, as well as for France’s diplomatic representatives in the UN.

### **Egypt**

Two days after the event, *Agence France-Presse* (AFP) reproduced a photograph of the five men, with the caption: “after the illegal hijacking, by the French army, of the plane transporting them *to Cairo*” (AFP, 24 October 1956, emphasis added). An error, this was strangely telling. Egyptian “free officer” Anwar al-Sadat wrote in the official government newspaper *al-Jumhuriyah*: “if France believes that the abduction of the Algerian leaders shows courage, France should be reminded that it committed a similar action a few years ago when it abducted the Sultan of Morocco

[Mohammed V] from his Palace” (“Arab World is Swept by Unrest,” 23 October 1956).

Echoing the FLN’s “aggression against the dignity of man” language, Egypt’s semi-official daily newspaper *Al-Ahram* editorialized: “the French used to brag about liberty, equality, and fraternity; meanwhile their actions were most unbecoming of these principles” (Press Review, 24 October 1956, FBIS-FRB-56-208). The *Washington Post* reported that “French Premier Mollet announced the recall of the French Ambassador from Egypt as a gesture of displeasure with the Egyptian government” (“Arab World is Swept by Unrest,” 23 October 1956).

The “Voice of the Arabs” radio service broadcasting from Cairo hosted a delegate representing Algeria’s FLN, who referred to recent French Foreign Minister Christian Pineau’s statement to U.N. General Assembly Political Committee the preceding day (“[France] would like to promote the formation of a Eurafrikan whole”). The FLN representative then queried: “was it not France which was the first to act seriously against the sanctity of international agreements which France has asked other nations to respect?” (“National Liberation Front Issues Appeal,” 6 February 1957, FBIS-FRB-57-026).

### Morocco

In Tunis, the Moroccan Sultan's return to his capital was delayed “by lack of airline transportation; he refused to return on a French plane and tried to charter an American plane.” Immediately after official confirmation of the five men’s arrest, the government officially stated: “interception by the French authorities of the aircraft transporting Algerian leaders

constitute a grave attack on his Majesty's honor and the sovereignty of Morocco. The only possible solution is the Algerian leaders' liberation.”

Radio operators on nearby aircraft and ships on 22 October 1956 reported they heard the Dar El Beïda/Maison Blanche control instruct on a clear channel: “Come and land in Algiers. You are covered by the minister.” It is further reported that the pilot of the DC 3 on which the five men were passengers replied: “And our families who are in Morocco?” Algiers: “We take care of [them] immediately. We will put them in a safe place.” It is alleged that subsequently members of the flight crew were taken to a safe house where they found the Moroccan army had evacuated their wives and their children by plane (“Arraïsonnement de l'Avion de Ben Bella”).

It is claimed that during an *al-Jazeera* television program former editor-in-chief of the Cairo-based newspaper *al-Ahram* and confidante of President Gamal Abdul Nasser of the Republic of Egypt Mohamed Hassanein Heikal raised suspicions about Moulay Hassan's role in the hijacking. While this Jazeera interview with Heikal has not been conclusively identified, it is possible such a claim refers to “Al-Masir - Muhammad Hassanein Heikal” of 10 November 2007. Hocine Aït Ahmed, one of the five men, appears to have placed Moulay Hassan beyond responsibility for informing France's SDECE regarding the location of the five men (interview with Medi1-Sat television of May 26, 2008; also “*Hocine Aït Ahmed et détournement de l'avion marocain le 22 octobre 1956*” /28 July 2021).

Hocine Aït Ahmed offered clarification: “Mohamed V strongly denounced this act and offered Crown Prince of Morocco Moulay Hassan as a hostage in exchange for us” (*Pour la Fondation Hocine Ait-Ahmed Humanité et Droit de l'Homme*/October 22, 2017). While not denying the substance of allegations attributed to Heikal or confirming Aït Ahmed’s clarification, Egya Sangmuah claims France withheld economic aid to Morocco “in retaliation against Mohammed V's pro-FLN policy” (Sultan Mohammed ben Youssef's *American Strategy and the Diplomacy of North African Liberation, 1943-61*, p. 143).

### United States

Both Tunisia and Morocco complained of the French action to the State Department in Washington DC (*Chicago Tribune*, “Anti French Riots Erupt in North Africa, 24 October 1956). A commercial telegram from M’hammed Yazid representing the FLN at the UN in New York is reproduced in the *Foreign Relations of the United States*: “Mr President: five of my colleagues, including Mohammed Ben Bella who fought under your command during World War II, have been arrested yesterday while they were on their way to participate with the Sultan of Morocco and the Tunisian Premier Habib Bourguiba in a conference to seek a peaceful solution to the Algerian problem. The conference was called by the sovereigns of the two States with the specific knowledge of the French Government which had itself requested the mediation of the Sultan of Morocco and Premier Bourguiba of Tunisia” (*Foreign Relations of the United States*, no. 74, “Telegram from M’hammed Yazid of the National Liberation Front of Algeria to President

Eisenhower;” see also “White House Memoranda Series,” box 4, Meetings with the President August through December 1956 [4] in the John Foster Dulles Papers, 1956-1961, Dwight D. Eisenhower Presidential Library).

M’hammed Yazid’s telegram anticipates any argument based on Article 2(7) of the UN Charter, regarding Algeria as an integral part of France. Five days before 22 October, the US Department of State sent instructions regarding the upcoming Eleventh Regular Session of the UN General Assembly to certain diplomatic missions. These addressed Algeria: “The French position is that consideration of this question by the UN is precluded by Article 2(7) of the Charter on the ground that Algeria is an integral part of France and any Assembly discussion would constitute interference in its domestic affairs. The item appears on the provisional agenda for the coming session at the request of 15 Asian-African states who claim that the situation has worsened since last year and can no longer be ignored by the Assembly. “Although we have not yet been informed of the final lines of the action contemplated by the French, we would anticipate that France will again strongly protest inscription and that the vote is expected to be close” (*Foreign Relations of the United States*, no. 35 “Instruction from the Department of State to Certain Diplomatic Missions”).

According to Wall, NATO commander General Alfred Gruenther and civilian Premier of France Guy Mollet learned of the 22 October 1956 events in the setting of an official dinner. According to Wall, Secretary of State for Tunisian and Moroccan Affairs Alain Savary reported another version of how these events transpired to Washington DC: “The affair

was prearranged by French intelligence and the military five days in advance: several members of the cabinet were informed and favored it while Premier Guy Mollet and Savary were opposed,” thereby substantiating rumors of Savary’s resignation. According to Savary’s version, Mollet gave specific instructions that the operation not be carried out (recalling Lacost’s reputed “no, don’t shoot”). Further, Savary’s account can be understood to explain Mollet’s appearance of being ‘shaken’ when informed at dinner with the NATO commander General Alfred Gruenther (Wall, “The United States, Algeria, and the Fall of the Fourth French Republic,” pp. 493-494).

In the US, the 22 October 1956 events occurred in a context of contemporary legal issues. As Benjamin Rivlin observes, “the issue of Morocco’s juridical status had assumed considerable significance in the unfolding struggle between Moroccan nationalism and French rule” (“The US and Moroccan International Status, 1943-1956- A Contributory Factor in Morocco’s Reassertion of Independence from France,” p. 70). According to Wall, “Washington strongly disapproved of the arrests but reluctantly concluded that it had no ‘legal right’ to intervene” (Wall, “The US, Algeria, and the Fall of the Fourth French Republic,” p. 493).

Since 1937, the U.S retained privileged treaty rights in Morocco under the Act of Algeciras; the fact that the five men were in an aircraft with *Royal Air Maroc* livery took prominence. Rivlin argues that after World War II, French Protectorate authorities in Morocco “pursued a claim of discrimination and harassment which was technically based on currency control regulations” over U.S. citizens in import-

export; American businessmen appealed to Congress, and the Kickenlooper Amendment was attached to the French economic aid bill of 1951. The Amendment specified that economic aid would be withheld from France if it failed to comply with existing treaties (Rivlin, "The United States and Moroccan International Status, 1943-1956- A Contributory Factor in Morocco's Reassertion of Independence from France," p. 73).

France had pled before the International Court of Justice (ICJ) that the US's treaty privileges in Morocco were lapsed. In response the ICJ's decision appeared inconclusive: on the one hand, the Act of Algeciras granted France and the U.S. equivalent privileges with regard to Morocco's economic matters; on the other hand, the U.S. was denied any claim to enjoy extraterritorial privileges in Morocco (Rivlin, "The United States and Moroccan International Status, 1943-1956- A Contributory Factor in Morocco's Reassertion of Independence from France," p. 73). It's interesting to note that Mohammed V previously ignored existence of U.S. bases built under N.A.T.O. auspices in Morocco, until returning from Tunisia to his nation during October 1956. As an indication of his displeasure with France, on his return from Tunis Mohamed V chose to land at an American airbase (*The United States and Moroccan International Status, 1943-1956- A Contributory Factor in Morocco's Reassertion of Independence from France*, p. 75).

The following summer, Philip Murphy as Deputy Under Secretary of State for Political Affairs summoned Hervé Alphand as France's Ambassador to Washington: "In Algeria, [Alphand] said, the situation was different than in Morocco

and Tunisia in that there is no one to negotiate or deal with. Mr. Murphy asked about Ben Bella and his four Algerian colleagues now in a French jail and the Ambassador changed the subject” (*Foreign Relations of the United States*, no. 84). The issue remained in relations between Morocco, the U.S., and France: during 1961, U.S. President John F. Kennedy told President of France’s National Assembly Jacques Chaban-Delmas “it might be useful to free some of the anti-communist leaders of the FLN who are now prisoners of the French” (Presidential Papers, NSA files, box 4, folder 1, John F. Kennedy Presidential Library)

### United Nations

On 22 October 1956, the Arab League sent telegrams to the bey of Tunisia, the Sultan of Morocco, and the Secretary General as well as to delegations of Afro-Asian jurisdictions within the U.N. “with the request that urgent measures be taken to ensure the Algerian men’s release and safety” (“Arab League Protests Algerian Arrests,” 23 October 1956, Papers Comment on Arrest of Algerians, FBIS-FRB-56-207). In response, the 23-nation Afro-Asian group “was reported asking Secretary General Dag Hammarskold’s good offices in seeking release of the five” (“Anti French Riots Erupt in North Africa,” 24 October 1956).

In the People’s Republic of China, an editorial in the *People’s Daily* newspaper eschewed any language of legality, release and safety, and good offices: “The 11<sup>th</sup> session of the UN General Assembly is also confronted with the urgent task in other spheres of preserving peace and the independence and sovereignty of all countries. France is extending its dirty colonial war in Algeria; it has taken the vicious step of

kidnapping leaders of the Algerian National Liberation Front” (“Daily Comments on Opening of UN Session,” 13 November 1956, FBIS-FRB-56-221).

Finally, Moscow Radio responded to the U.N. General Assembly’s debate regarding the Algerian question. Vladimir Goncharov’s analysis was that: “Algerian patriots draw courage from the example of the neighboring Arab states—Morocco and Tunisia—which with their hard struggle recently obtained their objective: they acquired the right of self-determination” (“UN Intervention Necessary in Algeria,” 28 January 1957, FBIS-FRB-57-019).

No claims alleged any incident of ‘piracy’ occurred on the DC-3. Eventually, the Geneva Convention on the High Seas would permit: “in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board.” This had not yet come into effect (France and Tunisia signed 30 October 1958), and its provisions extended unevenly within the region (neither Algeria nor Morocco signed this convention).

### **Conclusion**

The five were transferred to Paris on September 28 and charged with participating in an enterprise to demoralize the army and the nation (art. 76, paragraph 3 of the Penal Code). Article 76 of France's Penal Code of 1810 (which remained in force until it was amended in 1959) provided: “Whoever shall have practiced any machinations, or kept up any understanding with foreign powers, or their agents, to induce them to commit hostilities, or undertake war against France ,

or to procure them the means of doing so, shall be punished with death, and his property shall be confiscated. "This disposition shall take place, even in the case where the above machinations or understanding, shall not have been followed by hostilities."

Commander Giraud, an investigating judge at the Paris Armed Forces Permanent Tribunal, tried Mohammed Ben Bella, Mohammed Khider, Mostapha Lecharaf, Mohammed Boudiaf and Ait Ahmed Hocine. Further charged with "undermining the morale of the army and the nation," questioning began at 2:30 p.m. and lasted until 9:30 p.m. Interrogations took place at the Santé prison, in the presence of legal counsel for the five accused: Maîtres Pierre and Renee Stibbe, and Maître Beumendjel, of the Paris Bar. Exceptionally, two Tunisian lawyers and a member of the Tangier bar were authorized to assist the accused (see also Sylvie Thénault, "Defending Algerian Nationalists," 2012).

This discussion takes a historical perspective on the task which faced these legal specialists. When Ahmed Ben Bella, Mohammed Khider, Hocine Ait Ahmed, Mohammed Boudiaf, and Mustefa Lacheraf boarded the aircraft of Morocco's Crown Prince Moualy Hassan on October 20, 1956, they could conceivably have claimed the status of diplomats. While the Vienna Convention on Diplomatic Relations entered into force during 1961, it built on the Havana Convention of 1928, as well as a draft convention drawn up by Harvard Research in International Law of 1932 (Eileen Denza, "Vienna Convention: Introductory Note," 2022).

This discussion hazards some observations regarding nations' transition between the extraordinary state of wartime,

and subsequent extension of legal powers to independent states during peacetime. Reconstructed dialogue between control tower and the pilot of the DC-3 aircraft carrying the five Algerian men suggests that all parties understood obligations under the ICAO. During World War II, sovereign jurisdictions negotiated a Convention on International Civil Aviation which granted them claims to a “complete and exclusive sovereignty over the airspace above its territory.” It’s ironic that diplomats representing France signed this convention at a time when Lille, Noisy-le-Sec, and Rouen were three of the cities in Metropolitan France experiencing Allied bombings.

Randall Law observes, by 1955, of the IV Republic: “While military rule might not be inherently abusive, what was aspirational for diplomats claiming to represent metropolitan France during 1944, provided opportunity for misuse of state authority by 1956 (Law, *The Routledge History of Terrorism*, 2015, p. 229). A draft text for the Geneva Convention on the High Sea, the Report of the International Law Commission (1956), includes “where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the state making the seizure shall be liable to the state the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure,” Art. 44); which may have given rise to the disingenuous argument that since the DC-3 was registered with French aviation authorities, France was not liable to itself for loss or damage.

On 22 October 1956, the Sherifian Ministry of Transport in Morocco's strategies to protect the integrity of

the flight plan (refuel in Spain, return to Morocco) were appropriate; only Algiers' abuse of authority (stopping messages, taking flight crew's family members as hostages, a threat to fire on one of the civilian aircraft's engines) succeeded in coercing the aircraft to land. As the pilot pointed out, the flight carried foreign journalists. One of these three, Tom Brady, subsequently outlined the flight path of the aircraft. The map which accompanied his article "France at a Turning Point in North Africa" (New York Times, 28 October 1956) clearly shows that a flight plan from Rabat to Majorca, and thence to Tunis, successfully avoiding French land areas and territorial waters adjacent thereto (as specified in ICAO article 1).

What then, of other states-parties: Egypt, Morocco, and the United States? With regard to Egypt, it is clear from the error in *Agence France-Presse* reporting ("the plane transporting them to Cairo") that Egypt's military rulers occupied an inordinate role in France's imagination of the Arab world. "First as tragedy, second as farce:" the political insight evident in Anwar al-Sadat's remarks and "Voice of the Arabs" coverage during 1956 is reflected dimly in *al-Ahram's* former editor's remarks to a new generation of journalists. With regard to Morocco's Sultan Mohammed V: his refusal to return on a plane registered in France (as does his sudden and unanticipated acknowledgement of a U.S. airbase in Morocco) suggests a concern for his well-being, which raises questions about threats to the well-being of both Crown Prince and the flight crew of the DC-3. With regard to the United States: the FLN's representative at the United Nations can be understood to have played upon President Eisenhower's loyalty to those

who had once served under his command, and showed insight into increasingly-strained relations between the two North Atlantic Treaty Organization member nation-states, as well as structural elements of Washington DC's relations with Rabat based on the under the Act of Algeciras (1906) which were favorable to local claims to self-government.

Finally, with regard to the United Nations which would appear to exemplify all Siari Tengour's concerns ("Dites et Non Dites," 2006), that this multi-lateral institution would become a key space for the struggle to obtain the release and safety of the five men. In this institution, the Peoples' Republic of China and the Union of Soviet Socialist Republics evidenced the beginnings of what would emerge as a new policy in support of Algeria's role in North African independence. Even as French diplomats may have been steering a new Geneva Convention on the High Seas towards language that would support their recent action, official responses from Beijing and Moscow suggest the success of the unrealized plan to declare a federation of independent states in North Africa.

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