

Mayotte under *de Facto* Sovereignty vs *de Jure* Sovereignty: The Franco-Comorian Territorial Dispute on Mayotte

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Abstract:

Comorian sovereign territory in one side and French department territory in the other side, the island of Mayotte is a territory of double claims, creating the “original sin” of the territorial dispute between the Union of Comoros and the Republic of France. Since the independence of the archipelago of Comoros in 1975, the island of Mayotte has been separated from the other three islands of the archipelago by the misinterpretation of the referendum of self-determination of Comoros by France, its former colonial power. The global result of the referendum shows that the whole archipelago voted in favour of independence; but taking account island by island, only the island of Mayotte voted against independence. Consequently, France decides to grant partial independence to the archipelago – recognising the independence over the three islands that voted in favour of independence, while keeping Mayotte under her sovereignty –

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creating in this context a controversial situation in the customary international law of decolonisation and also a controversial status of the island of Mayotte when it comes to its sovereignty. Today the island of Mayotte is claimed by both Comoros and France. The purpose of this article is to study and address the Franco-Comorian conflict over Mayotte in order to help Mayotte gains full sovereignty. The main question here will be how to end the Franco-Comorian territorial dispute?

Key words: Colonisation, Dispute settlement, Independence, Self-determination, Sovereignty, Uti possidetis juris

1. INTRODUCTION

The issue of the sovereignty of Mayotte becomes more complex day after day. In 2011, France has made this island a French Oversea Department, in defiance of all international law norms and principles, also ignoring the Comorian sovereignty on this island. Therefore, the exercise of the Comorian sovereignty over the island of Mayotte strongly depends on its integration into the Comorian State. Comoros is struggling to render effectiveness its sovereignty over the island of Mayotte by engaging diplomatic and political negotiations with France. The young Comorian State has been from its birth in a perpetual struggle to regain its lost territorial integrity before even being able to enjoy it. More than forty years of pursued negotiations between Comoros and France in vain, and the issue of Mayotte remains unresolved. When the archipelago of Comoros became independent and Member-State of the United Nations, the international community considered it as a State composed by four islands referring to its borders. But the French policy of the decolonisation of Comoros has made its independence a

complete failure and caused the balkanisation¹ of the archipelago Nation.

In theory, Comoros is a group of four islands, but in practice the sovereignty of Comoros still limited by its former colonial power which has granted a part of the territory independence and keep administrating the other. Therefore, the island of Mayotte is claimed by both Comoros – which is exercising a *de jure* sovereignty based on the international law principle – and France – which is exercising a *de facto* sovereignty based on her own constitutional law. It is in this perspective that we will focus our article to explain the concurrent sovereignties situation that exists on the island of Mayotte, which has been separated from the other islands of the archipelago by the virtue of the referendum of self-determination of Comoros. How the island of Mayotte has acceded in this position of confrontation between Comoros and France? What is the international opinion of the sovereignty of Mayotte? By which way this Franco-Comorian territorial dispute can be solved? These are the main question possible to better understand this particular topic.

2. HISTORICAL PERSPECTIVE OF THE FRANCO-COMORIAN DISPUTE OVER MAYOTTE: “THE ORIGINAL SIN”

To better understand the Franco-Comorian conflict over Mayotte, this section will briefly introduce the historical aspect of the relationship between Comoros and France, particularly in connection with the island of Mayotte. Far from giving a narration to the entire history of Comoros, we will focus on the events that successively led to the territorial dispute between Comoros and France concerning the island of Mayotte.

¹ Andrés Oraison (1983), “Quelques réflexions critiques sur la conception française du droit des peuples à disposer d’eux-mêmes à la lumière du différend franco-comorien sur l’île de Mayotte”, 17 RBDI.

2.1. The colonial period

Officially called the “Union of Comoros”, the archipelago of Comoros is a country of volcanic origin. Composed by four islands, Ngazidja (Grande Comore), Ndzuwani (Anjouan), Maore (Mayotte) and Mwali (Mohéli), which are located in the South-West of the Indian Ocean at the Northern entrance of the Mozambique Channel, in almost equal distance between the Eastern coast of Africa (300 km) and North-western Madagascar (260 km). The State of Comoros extends over an area of 2,236 square kilometres, with a total estimated population about 1 million inhabitants in 2016, reported by the World Bank.

Officially, the French presence in the archipelago of Comoros can be traced back in 1841 when she enters in possession of the island of Mayotte, although she was very active in the archipelago before that. But once in Mayotte, France manages to control the other islands of the archipelago also coveted by other Western powers such as England and Germany². To protect its interest in Mayotte, France ensures that the other islands will not fall under the domination of another colonial power. From 1841 to 1886, France puts forwards all efforts she could, sometimes alternating negotiations and violence in order to extend her authority throughout the whole archipelago³.

In 1886, France establishes in the whole archipelago by the virtue of protectorate regime. It is notable that this protectorate regime has been questioned because of the manner it took place. The protectorate regime established by France in Comoros was the opposite of the protectorate regime which is organized by the international law. The protectorate treaties were often signed under force or threat. Internal legal

² Said Mohamed S.H. (2006), *L'Etat des Comores et le droit international*, PhD. Thesis, *Université d'Orléans*.

³ Jean Martin (1983), *Comores : quatre îles entre pirates et planteurs. Razzias malgaches et rivalités internationales (fin XVIIIe - 1875)* Tome 1, L'Harmattan.

personality of the sultanates⁴ who were ruling the archipelago was not preserved and the sultans were practically dispossessed of their powers. The French protectorate regime in the archipelago of Comoros had for sole purpose to establish the colonisation in Comoros. This is why in 1912, France changes the status of the archipelago from protectorate regime to French colony. The French colonisation will last more than half century, in defiance of all contestations made by the Comorian people against the colonial authorities in their territory. This was showing that the Comorian people from the beginning were hostile to be submitted to a foreign domination. This justify what MONTESQUIEU said: “*the peoples of the islands are more inclined to liberty than the peoples of the continent*”.⁵

By the years, the French colony of Comoros has been changed from one status to another – firstly, attached to the French colony of Madagascar in 1914, then detached in 1946 and finally becoming a French Oversea Territory⁶ – showing the lack of France to administrate and understand the reality in the archipelago of Comoros. In 1958, the archipelago get an internal autonomy opening the way towards independence.

2.2. The unilateral declaration of the independence of the archipelago of Comoros

The problem here is why Comoros would declare unilaterally their independence? It is noteworthy to understand that when a colony declares unilaterally its independence, it means that the

⁴ It is notable that before the Western power come to know the Comoros' islands, and especially the arrival of French in the 19th century, Comorian were living in “City-States” called sultanates, and remained free to determine the rules of the political and social organization.

⁵ Charles de Secondat baron de Montesquieu (1862), *Esprit des lois par Montesquieu: avec les notes de l'auteur et un choix des observations de Dupin, Crevier, Voltaire, Mably, La Harpe, Servan, etc.*, Firmin Didot frères, p. 234.

⁶ French Overseas Territory, *territoire d'outre-mer* in French, consist of all territories located outside the European continent and administrating by France. From this status, the Comorian archipelago became in its whole a colonial entity composed by its four islands in the eyes of the French legislation. This remark is very important for the following section of our article.

relationship between the colony and the coloniser are not in good shape. This was exactly the situation in the Comorian archipelago during the period of its decolonisation process.

Traditionally, the decolonisation process of a colony necessitates a popular consultation, asking the concerned people to freely decide their future according to the right to self-determination, which is a consequence of independence. In the case of Comoros, the consultation was the final step to the independence of the archipelago. It is the law n° 74-965 of 23 November 1974 organizing a consultation of the people of Comoros which constitutes the legal basis of the referendum of self-determination of Comoros. December 22, 1974, one month after the adoption the law, took place the referendum of self-determination of the Comorian people. The archipelagic people of Comoros were therefore asked to answer yes or no to the question: “***Do you want that the territory of Comoros become independent?***” The results of this popular consultation have given more than 95% of votes in favour of independence for the territory of Comoros.⁷ Over 161,349 votes recorded in the whole territory of the archipelago of Comoros, there were 153,158 votes for independence and 8,191 votes against, whose 8,091 from the island of Mayotte.⁸ The “yes” collected only 4,299 votes (in Mayotte). These are the results of the referendum of self-determination of Comoros which we should now examine the consequences.

According to the article 2 of the Law of 23 November 1974, the French Parliament will approve the results of the popular consultation. By doing so, they adopt a position that will change the destiny of the new Comorian State. They decide to ignore the majority’s will to make the Comorian territory independent – as was the question of the referendum. Consequently, the Parliament absolutely insisted that the results are counted separately island by island even if their

⁷ Said Mohamed S.H. (2006), *L’Etat des Comores et le droit international*, op. cit.

⁸ *Ibid.*

proclamation should be done globally. This allowed the parliament to get acquainted with the accuracy of the voting population of Mayotte, which has indeed revealed a clear majority, over 63% against independence.

Previously, faced with the opposition of Parliament against the bill that included a consultation of the population of Comoros, STIRN Olivier, Secretary of State at the DOM-TOM, had invited the parliamentarians to perform on-site in the archipelago a parliamentary mission to help them to realize the decolonization of Comoros in the harmony of the four islands. Thus, after several days of very lively debates in the Assembly and Senate, Parliament finally adopted on July 3rd, 1975 the Law No. 75-560 on the independence of the territory of Comoros. The first article of this law provided that the territory of Comoros will become independent after meeting the conditions imposed by this law. These conditions are set out in article 2. Under the new law, despite the referendum of 22 December 1974, the territory of Comoros can gain independence only after the following conditions:

- Create within a period of six months after the promulgation of this present law, a Constitutional Committee composed of members of the Comorian Parliament, members of the Chamber of Deputies of the territory and representatives of political parties to draft a constitution that would guarantee political personality of the islands;

- The draft constitution prepared and would be submitted to a referendum before the proclamation of independence and approved island by island, and the island where a vote against the Constitutional Committee should propose a new draft within a period of three months;

- Finally, if the new project is not adopted by all the islands, then the constitution apply to those who have adopted and others, those who have rejected shall be consulted by the government about the status that they wish to adopt.

Furious, Comorian leaders accuse the French authorities of treason and decide to make themselves the consequences of their self-determination referendum and unilaterally declare their independence⁹. Deeply affected by the law of 3 July 1975, which provided independence under conditions, the Comorian representatives have described it as unacceptable and decided to act quickly. On the eve of the adoption of the law of 3 July 1975, AHMED ABDALLAH, President of the Governing Council of Comoros, talking with JACQUES CHIRAC, the French Prime Minister, warned him that Comorian would not follow the procedure required by the Parliament. It is true that AHMED ABDALLAH had personal reasons to be particularly angry against the reversal of France. He had already warned that “*the independence of Comoros will be done with or without France*”¹⁰.

Returned to Comoros after the adoption of the law, the President of the Governing Council of Comoros convened a special meeting of the Chamber of Deputies of Comoros. This latter held as soon adopted unanimously by its present members (5 members of Mayotte did not want to take part in this Congress)¹¹, on 5 July 1975, issue resolution which totally rejects the law adopted by the French Parliament on July 3rd which law accords independence under conditions. The next day, Sunday, July 6th, 1975, the Chamber of Deputies of Comoros is determined to take measure itself on the consequences of the referendum on self-determination and unilaterally declared by unanimity of its present members the independence of the archipelago of Comoros, concerning the four islands which composed it. The declaration of independence is based on the Joint Declaration of 15 June 1973,

⁹ Robert Aldrich, John Connell (1998), *The Last Colonies*, Cambridge University Press.

¹⁰ André Oraison, (1983), “Le droit à l’autodétermination des Mahorais”, [Saint-Denis]: Les dossiers du Centre d’Etudes Administratives, N° 16, mai 1983, *Centre Universitaire de la Réunion*.

¹¹ International Business Publications (2013), *Comoros Constitution and Citizenship Laws Handbook: Strategic Information and basic laws*, Washington DC, USA.

the law n° 74-965 of 23 November 1974 organizing the consultation of the people of Comoros which was a result the vote on 22 December 1974 by which 95% of Comorian have expressed their choice for the independence and finally the United Nations Declaration on the granting of Independence in particular paragraphs 2 and 6.

The same day a declaration from the *Palais de l'Élysée* says that the French government notes with serenity the motion of Deputies of the Chamber of Comoros proclaiming the independence of the territory and examines during the next week the consequences of this decision. Thus, on July 9th from the French Council of Ministers on Wednesday, the government in a brief declaration recognized the independence of the archipelago but only in the three islands (Anjouan, Grande Comore and Mohéli), “*With regard the island of Mayotte, whose representatives in the Chamber of Deputies of Comoros have shown their desire to follow the procedure established by the Parliament, the Government will take into account their willingness*”¹². By this declaration France confirms partially the secession of the territory of Comoros within the French Republic.

3. CONCURRENT SOVEREIGNTIES OVER MAYOTTE: *DE JURE* SOVEREIGNTY VS *DE FACTO* SOVEREIGNTY

Sovereignty is a complexity notion, with different aspects and meanings, depending from one interlocutor to another. In the context of this article, the simple purest idea of sovereignty is the supreme control that can have a State under its territory, exempt of any “governmental, executive, legislative, or judicial jurisdiction of a foreign State or to foreign law other than public

¹² Government press release about the unilateral declaration of independence of the territory of Comoros, *Le Monde*, 10 July 1975.

international law”.¹³ Starting from this point, we can easily understand that State sovereignty means that State is in complete and exclusive control of its own territory – in term of organisation and administration without any interference of other States. Let’s say it in another way: State sovereignty is apparent when the State fully exercises its sovereignty over and within its borders (supremacy of the State on its territory) and also has achieved independence (independence of the State in international relations). It is presumable that any deficiency regarding to these fundamental elements of State sovereignty cited above would probably have a negative impact to the State in question not only concerning its total disposal of its territory – if the deficiency is relating to its territory – but also creating difficulties in connection with other States in the international concert – if the deficiency is relating to its independence.

In our case study, the Comorian sovereignty over Mayotte is disputed by France, which exercises her control and administrates it. The existence of territorial dispute between Comoros and France, causes the situation of concurrent sovereignties that faces Mayotte today. Consequence: Mayotte has become an arena of dispute of sovereignties – *de jure* sovereignty vs *de facto* sovereignty.

3.1. *De jure* sovereignty exercises by Comoros over Mayotte

Comorian sovereignty over the island of Mayotte has been recognised by the entire international community when integrated the United Nations as an independence State. Comoros is admitted to the United Nations in 12 November 1975, as the 143rd State in the UN. It is remarkable that the admission of the archipelago of Comoros to the United Nations was followed by a Resolution known as the Resolution 3385 (XXX) of 12 November 1975, reaffirming that the new State of

¹³ Steinberger, Helmut, “Sovereignty”, in Bernhardt, R. (ed.), *Encyclopedia of Public International Law*, Vol. IV (Amsterdam, etc.: Elsevier, 2000)

Comoros is a group of four islands composed by “*Anjouan, Grande Comore, Mayotte and Mohéli*” – these islands constitute the territory of Comoros. One may ask why the admission of Comoros into the UN was followed by the Resolution cited above? Well! This shows that the territorial conflict between Comoros and France was born in pair with the creation of the State of Comoros. So it was for the General Assembly of the United Nations to adopt the Resolution in order to confirm and support the Comorian sovereignty over the island of Mayotte. The UN position remains strong when it comes to the territorial integrity of Comoros. Mayotte is a full part to the Comorian territory. From the General Assembly to the Security Council¹⁴ of the UN, Comoros is a State with a territory composed by the four islands of the archipelago that constitute it. All the Members-States of the UN voted the Resolution, except France which abstained to vote. Consequently, the State of Comoros has been fully recognised the exercise of sovereignty over the four islands of the Comorian archipelago including the island of Mayotte. This recognised sovereignty is what we identify as *de jure* sovereignty.

De jure sovereignty can be explained as a recognised right to exercise its sovereignty over a given territory. In other terms, *de jure* sovereignty is a “‘formal’ or ‘technical’ sovereignty in the sense of formal recognition of sovereignty by the government vis-à-vis to other governments”¹⁵. In this sense, *de jure* sovereignty is a political concept, therefore, difficult to

¹⁴ Relying on Article 2 § 4 of the Charter, Comoros seized on 30 January 1976 the Security Council of the United Nations in accordance with Article 24 of the Charter. The UNSC spent three days examining the complaint of the young Comorian State, reflecting in our view of the interest shown by the members of the international community to the Comorian claims. After three days of intense negotiations, three draft resolutions were presented. The adopted draft resolution asked France to abandon the referendum in Mayotte on February 8th 1976 and respect the territorial integrity of the Comorian State. So the UNSC issued the Resolution 376 (1975), but this Resolution could not be adopted because of the veto power that has France, a permanent member of the said Security Council.

¹⁵ Colangelo Anthony, J. (2009) “De facto Sovereignty: Boumediene and Beyond”, *The George Washington Law Review*, 77(3), pp. 623-676.

get an original essence of it. According to some opinions, the concept of *de jure* sovereignty is abstract and relative¹⁶, because of its dependence to the reference law – the legal corpus – which will be apply to identify it. To make it clear: the recognition of *de jure* sovereignty can be based either on the international law – which has in it different principles that can be used as legal corpus such as, the principle of *res nullius*, the principle of self-determination, the principle of *uti possidetis juris*, etc. – either national law, referring to the different disposition of the Constitution. Based on this understanding, the legal basis of the Comorian sovereignty on Mayotte can be found in both international law and national law.

From the principle of the right to self-determination of people to international recognition, passing by the principle of decolonisation and that of *uti possidetis juris*, all together strongly show the legitimacy and legality of the Comorian State' sovereignty over Mayotte. As for the principle of self-determination, the Comorian people widely express their desire to be independent from France (see section 2.2). It is completely out of sense to substitute the majority's decision to the minority's one. What we are trying to say here is that: the most important value of a popular referendum is the voice of the majority. It constitute the cornerstone of the referendum itself. Or, as we already showed it above, the question of the referendum of the self-determination of Comoros was "***Do you want that the territory of Comoros become independent?***" and the majority said yes in 95 %. So, whatever France's attitude – considering the voice of minority and provoking the dismemberment of the archipelago – does not change the impact and the effects of the majority's decision. It is worthy to explain the principle of *uti possidetis* and the decolonisation's one in connexion with the French constitutional law – the national law as legal corpus to justify the *de jure* sovereignty.

¹⁶ Kent McNeil (2016), '*The Relativity of de Jure Sovereignty in Canada, 1600-2016*', Osgoode Hall Law School, York University, Toronto, 12(8).

To better understand how the principle of *uti possidetis* and the French national law enter in connexion, we have to go back a little bit to the colonisation period, especially how France considered the archipelago when it comes to its territory. In 1946, when the archipelago was detached with Madagascar, France decides to transform it as a French Oversea Territory, which means that Comoros is a part of the French Republic as stated the article 60 of the French constitution of the fourth Republic¹⁷. This is the result of the law of 9th May 1946 and the decree of 24th September 1946 that issued after many years of the contestation of the reattachment of Comoros to Madagascar in 1912. It is important to consider these two legal instruments when it comes to the unity of the archipelago of Comoros. By these instruments, France always considered the territory of the archipelago as composed by its four islands. Many laws, decrees and regulations issued year after year concerning the reorganization of the archipelago, status after status, were general. Not a single time the French legislation has distinguished Mayotte and the other three islands of Comoros. The best example that we can show as evidence of this, is when all the populations of the French Overseas Territories were called to make a choice regarding their future within the new French Republic – the fifth Republic – in 28th September 1958. The choice was either to stay, either to leave the French Republic. This was the opened door towards independence for some colonies. As for Comoros, the majority of the Comorian voted for the *status quo*¹⁸, while the population of Mayotte opted for the status of French Oversea Department. Or France did not

¹⁷ Article 60 of the Constitution of 1946 of the fourth Republic: “The French Union is formed, on the one hand, of the French Republic, which includes metropolitan France, the overseas departments and territories and on the other hand territories and associated States”.

¹⁸ Despite the fact that the local elites were in favour of independence, they considered that Comoros was not ready for independence because it was economically non-self-sufficient, but this new constitution would nevertheless lead to a considerable autonomy. About 97% approve to postpone their independence.

consider this Mayotte's choice as a separated choice to that of the other three islands. Consequently, the four islands maintain their status of French Oversea Territory. The fact that France did not give to Mayotte the status of Department, shows the recognition by France of the Comorian archipelago's territorial unity composed by Ngazidja, Ndzواني, Maore and Mwali. Until the last colonial law n° 74-965 of 23 November 1974, instituting the referendum of the self-determination of the independence of the archipelago, Mayotte was an integrated part of Comorian territory. It can only be wrong to think that Mayotte could have another destiny other than the majority of the people of Comoros. What we try to say is that the population of Mayotte does not have the legitimacy to decide alone the fate of the Comorian territorial integrity, nor the other islands. In fact, it is a matter of popular consultation which always considers the choice of the majority. Or the case of Mayotte goes in violation of all kind – international law principles and French domestic law as well.

“May you continue to possess such as you do possess” is the literal translation of “*uti possidetis, ita possideatis*”, a principle from the Roman law that an interdict of *Prætor* prohibited any infringement to the *status quo* property. This principle was transposed during the independence of Latin America States in order to avoid territorial dispute¹⁹. Also during the decolonisation period in Africa, the principle of *uti possidetis* was used as the “golden solution” – access to the independence within the internal borders of the colonial administration – with the objective to prevent or deal with the territorial conflict that may occur because of the arbitrary

¹⁹ In the Latin American practice of *uti possidetis juris*, whereby the administrative divisions of the Spanish empire in South America were deemed to constitute the boundaries for the newly independent successor states, thus theoretically excluding any gaps in sovereignty which might precipitate hostilities and encourage foreign intervention. Note the essential application of this principle in Asia, see the *Temple case*, ICJ Reports (1962) 6, at 16.

division of the continent by the Western powers²⁰. In international law, this principle has received a preeminent value. From the Permanent Court of Justice to the International Court of Justice, the principle of *uti possidetis* was always put forwards to settle the territorial dispute between States. It is not an easy operation to delimit States frontiers. It can be a source of eternal peace and security, when the delimitation was made properly or a source of perpetual conflict and instability, when it was made in an inappropriate manner. Seeing in these different explanations, we can conclude that from all aspects France was failed to protect the integrity of the Comorian territory, which legality and legitimacy can be found either in French national law, either in international law norms and principles. Consequently, the Comorian sovereignty over the island of Mayotte is *de plein droit* recognised by the entire international community, except France which is administrating the island, exercising in this way a *de facto* sovereignty over Mayotte.

3.2. *De facto* sovereignty exercises by France over Mayotte

The easy meaning to understand the *de facto* sovereignty is when a territory is under the law and administration of a sovereign State by fact. In another words, *de facto sovereignty* is a practical control exercised on a territory²¹ – either on a sovereign territory of other State, or not – by another sovereign State or military group. The French administration over the island of Mayotte, a Comorian territory, can only be interpreted as a *de facto* sovereignty exercising by France over Mayotte. The effectiveness of this *de facto* sovereignty's control is based on the law and legal system of France in the island. Thus,

²⁰ Sorel Jean-Marc, Mehdi Rostane (1994), “*L’uti possidetis* entre la consécration juridique et la pratique : essai de réactualisation”. In: Annuaire français de droit international, volume 40, pp.11-40.

²¹ Colangelo Anthony, J. (2009) “‘*De facto* Sovereignty’: Boumediene and Beyond”, op.cit.

Mayotte is under France's jurisdiction and all the population of Mayotte is considered by the French legislation as French citizens. One may ask what is the legality or legitimacy of France' sovereignty on the island of Mayotte? This question can be answered by the French's legitimacy, if any, over Mayotte. So, to be able to give an objective answer, we need to put aside our Comorian argumentation, as a defender of Comoros' right on Mayotte, in relation to this particular question.

According to the history, we can divide into three different phases the exercise of French sovereignty on the island of Mayotte, each constitutes its own legitimacy and problematic. The first phase which goes from 1841 to 1912, is the period under which Mayotte was a "French possession" in virtues of the sales agreement between the Sultan ANDRIANTSOULI of Mayotte and Captain PASSOT, representing the French party. The second phase, from 1912 to 1975, which is the colonisation period under which Mayotte was changed its status to become a colony, all together with the rest of the islands of the archipelago. And the third phase, from 1975 to today, constitutes the occupation period of Mayotte by France, which Mayotte becomes a French Oversea Department by the virtue of self-determination. The first and the last phases are the most debated when it comes to the legitimacy of France' sovereignty over the island of Mayotte. Consequently, we will focus on these two phases, although there is too much to say in the second phase.

The majority of the population of Mayotte and most of those who support the legitimacy of France's presence in the Comorian island of Mayotte refer themselves the sales agreement of Mayotte to say that Mayotte is a "French possession"²² before the colonisation period of the archipelago. This thesis asserts that Mayotte is possessed differently to the

²² Ali MMadi (2005), *Mayotte un vrai tabou*, Editions Le Manuscrit ; Mahamoud Azihary (2016), *Mayotte en sous-France : Mensonges et manipulations d'Etat au service des intérêts des amis de l'entre-soi*, L'Harmattan.

others islands of the archipelago therefore it cannot be connected to them when it comes to their future or destiny. It is important for us to address the issue of the said sales agreement of Mayotte in order to understand the balance of arguments that exist between those who support the sovereignty of France in Mayotte based on that sales agreement and those who are against.

25 April 1841 was signed the sales agreement of Mayotte between the Sultan of Mayotte and the French Captain. The main content was that France takes possession of the island and in return, France pays an annually life annuity to the Sultan. Before we show the agreement, it is interesting to say something about the Sultan of Mayotte who sold the island to France. His name was ANDRIANTSOULI, a prince from Madagascar who sought refuge in Mayotte in 1832, where the Sultan BOANA COMBO II offered him hospitality and his men as well. ANDRIANTSOULI and the father of BOANA COMBO II were good friends in the sense that there was a protection agreement between them. It is by this agreement that the Malagasy Prince get refuge in Mayotte with all merit that he deserves. The Sultan of Mayotte was too generous to ANDRIANTSOULI in a manner that this latter will take advantage of the weakness of the Sultan's benefactor and will not hesitate few years later to dispossess him from his throne and proclaim himself as the Sultan of Mayotte²³. The point we want to rise here is that ANDRIANTSOULI who passed the sales agreement of Mayotte with France was not either a legitimate heritor of the throne or the successor of the Sultan BOANA COMBO II of Mayotte. Some people in Mayotte qualified him as a "*usurper of throne*"²⁴ to contest any argument that legitimate France' sovereignty over Mayotte based on this sale which makes Mayotte a "*French possession*". The terms of the sales agreement is an evident proof that ANDRIANTSOULI

²³ Foued Laroussi (2009), *Mayotte : Une île plurilingue en mutation*, Editions Baobab.

²⁴ *Ibid.*

had in so far any feelings or attachment to Mayotte. According to some of the terms of the contract, France will take possession by fulfilling the following conditions:

- The payment of ANDRIANTSOU LI of an annually life annuity of 10,000 piastre (5,000 fr at that time) without reversibility and ending of the day on his request he would be repatriated to Madagascar;

- The education of two of his children to the Bourbon Island at the expense of the French government;

- The conservation of the inviolability of its special properties recognized except when necessary for the defence of the island.

For a little analysis, we can see in the first stipulated condition that ANDRIANTSOU LI can be repatriated to Madagascar when he wishes. This clearly shows that ANDRIANTSOU LI is not from Mayotte and even after took possession the throne of the island he did not feel himself as *m' maore*²⁵. So the mention of “be repatriated to Madagascar” is for him a guaranty to return to his motherland in case of any menace. We may say that this menace that weighed on the “usurper Sultan” was real because the Sultan SALIM II of the island of Anjouan – whom the notables of Mayotte have signed a treaty of allegiance on November 19th, 1835²⁶ – challenged the sovereignty of ANDRIANTSOU LI on Mayotte and consequently he was preparing to remove him from the throne. Also as we already make mentioned that ANDRIANTSOU LI is from Madagascar, he could not stay in Mayotte as a Sultan for long. These two reasons – being a usurper Sultan and a stranger from Madagascar – make him hasten to sell the island to France. About two years after the sales agreement, the King LOUIS PHILIPPE of France decides to ratify the said treaty in

²⁵ *Said Mohamed S.H. (2006), *L'Etat des Comores et le droit international*, op. cit.

* Also the term *m' maore* means a person who is originally from Mayotte in the Comorian language.

²⁶ Ahmed Ali Abdallah (2014), *Le statut juridique de Mayotte. Concilier droit interne et droit international : Réconcilier la France et les Comores*, L'Harmattan.

10 February 1843²⁷. Why two years later? The reason of such long hesitation can be explain by the fact that the King of France knew the quality of ANDRIANTSOULI and also the contestations from the Sultan of Anjouan constituted blockade for France to easily enter in possession of Mayotte. To do so, France engages in negotiations with the Sultan of Anjouan to stop claiming a right of sovereignty over Mayotte. Succeeded, France becomes the new sovereign of Mayotte and the Captain PASSOT took possession the island in 13 June 1843. This is how France claims to be legitimate in one side, as the former French President NICOLAS SARKOZY, visiting the island of Mayotte in January 2010, said that: “*Mayotte is French since 1841 before Nice and Savoie*”, two of the metropolitan departments of France. The other side is related to the “right to self-determination” of the population of Mayotte regarding the future of their island.

It is a subject of huge debate whether the population of Mayotte can be considered as “people” under international law and whether they are entitled to the right to self-determination. Because of that we will not discuss the debate in this article, rather the French claims of sovereignty over Mayotte assuming that Mayotte have the right to self-determination. The right to self-determination of Mayotte constitutes in so far the argument by which France occupies the Comorian territory of Mayotte, therefore exercises her sovereignty over it. According to France, the population of Mayotte have freely expressed their will to be part of the French Republic, it is a duty for France to hear such a call. In 2011, Mayotte has become the 101st French Oversea Department, which means that for the French legislation, Mayotte is a full part of the French Republic governed by the article 73 of the Constitution. The questions are when did it start? And how did it happen?

²⁷ Philippe Boisadam (2009), *Mais que faire de Mayotte?: Analyse chronologique de l’Affaire de Mayotte, 1841-2000*, L’Harmattan.

December 22nd, 1974 about 95% of the population of Mayotte have voted against the independence of the archipelago. There are many reasons advanced of the why Mayotte refused the independence, but the foremost is the argument that Mayotte was afraid of the hegemony of the others islands namely Grande Comore and Anjouan, the main big islands of the archipelago. The population of Mayotte had the feelings that because these two islands are big in number when it comes to the representative issue, they will only be interested to the development of their islands to the detriment of the small island. It is not easy to refute such argument because of the transfer of the capital city from Dzaoudzi in the island of Mayotte to Moroni – the current capital city of the Comorian State – located in the island of Grande Comore. Let's note that this transfer took place between 1962 and 1968²⁸. Mayotte was devoid and deprived of the greatest influence that she had on the other islands. This capital made the direct connection between France and the archipelago, but more particularly between France and Mayotte. The financial contribution, officials both Comorian and Metropolitan, the services and institutions held by Mayotte, will be transferred at the impotent eyes of *wa maore*²⁹ to Moroni, the new capital. This fact will play a big role in the slowdown of development of island and gradually the feeling of fear for the hegemony of the other islands will be born in Mayotte. This is how Mayotte refuses to have any common destiny with the other islands of the archipelago of Comoros. Consequently, from the population of Mayotte, France appears as a liberator who saved Mayotte from the hegemony of the islands of Grande Comore and Anjouan. After the referendum of self-determination of Comoros, with the negative vote of Mayotte, France was divided. The French Parliament's policy was to create the

²⁸ Jean-Louis Guébourg (1994), *La Grande Comore : des sultans aux mercenaires*, Paris, L'Harmattan.

²⁹ The term *wa maore* means the population of Mayotte in the Comorian language.

balkanisation of the new State, while the French executive was in favour of preserving the unity of the archipelago. In such battle, the executive could not win because of the power position that had the Parliament regarding the appreciation of the self-determination of Comoros. In fact, the article 2 of the law n° 74-965 of 23 November 1974 organizing the consultation of the people of Comoros states that: *“Parliament will be called at the end of a period of six months after the proclamation of the results of the elections, to decide on the action it deems appropriate in response to this consultation”*. The decision of the parliament did not give too much manoeuvre to the French government other than to give a particular status of Mayotte – Territorial collectivity with Departmental character – while seeking a solution, a reconciliation between Mayotte and the rest of the archipelago. But no one can deny the determination of Mayotte to become part of the French Republic. This was their main objective to achieve. No reconciliation possible and no rapprochement. As years pass, the island of Mayotte becomes more and more important and plays a major role as electorate, which has facilitated the process to the departmentalisation of the island.

4. HOW TO END THE CONCURRENT SOVEREIGNTIES CONFLICT OVER THE ISLAND OF MAYOTTE?

There is more than four decades that France is exercising her sovereignty over the island of Mayotte, which island is claiming by the Comorian State. We can thus imagine how many solutions are proposed to settle this territorial dispute opposing Comoros and France. There are many works that propose enough directives to help both sides to find satisfaction. We can cite the remarkable oeuvre of Professor ANDRE ORAISON from the University of La Reunion (France), the estimated book of Dr. AHMED ALI ABDALLAH (2015), without forgetting the revolutionary solution proposed by the former president of

Comoros AHMED ABDALLAH MOHAMED SAMBI (2006-2011), with his doctrine “*one State two administrations*” – similarly to that one adopted by Deng Xiaoping “*one State two systems*” to help the reintegration of Hong-Kong within the People’s Republic of China. These are some few references among a greater number of works relating to this issue. Consequently, any solution from us would probably be posteriorly proposed. So the question is why the situation of Mayotte becomes worse as years pass? This question will lead us to consider a new angle of solution that we believe there is no literature on it yet. And that is the problem of each other’s recognition sovereignty.

The Union of Comoros do not recognise any legitimacy of France to exercise a *de facto* sovereignty over Mayotte and the Republic of France does not recognise the *de jure* sovereignty of Comoros over Mayotte. Both States have mentioned Mayotte in their respective Constitution to make this disputed island an integrated part of their territory. The article 1 § 1 of the current Constitution of the Union of Comoros is written as: “*The Union of Comoros is a Republic, composed of the autonomous Islands of Mwali (Mohéli), Maore (Mayotte), Ndzuwani (Anjouan), N’gazidja (Grande Comore)*”. And the current article 72 § 1 of the French Constitution is written: “*The territorial communities of the Republic [the French Republic] shall be the Communes, the Departments, the Regions, the Special-Status communities and the Overseas Territorial communities to which article 74 applies*”. Without this each other’s recognition, we strongly believe that Comoros and France will not be able to settle their dispute over the island of Mayotte. All efforts made by the two governments – creation of a high joint commission, inter-governmental dialogues and meetings – to find appropriate solution are all “spurious”. How to solve this problem, while both parties ignoring the sovereignty that may have the other over Mayotte?

For Comoros, France is occupying illegally its territory and must purely and simply restitute the island of Mayotte without any conditions. The Government of Comoros adopts this position based on the Resolution of the United Nations that condemn France for her presence in the Comorian island of Mayotte. For example when admitted as Member-State in the United Nations on 12 November 1975, Comoros are considered as a State consisted of four islands. Resolution 3385 (XXX) of the United Nations General Assembly of on the admission of Comoros expressly stated that Comoros consist of the islands of Anjouan, Grande Comore, Mayotte and Mohéli. We can cite numerous UN Resolutions affirming and reaffirming the Comorian sovereignty over Mayotte, which prayed France to organise without waiting the return of the island in its natural bosom. There are more than twenty Resolutions which ask France to respect the territorial integrity of Comoros and also to stop any kind of consultation in Mayotte³⁰.

But for France, things go into another direction. Mayotte is a part of the French Republic by the choice of *wa maore* and it is a choice to be respected. If the Comorian State founds its legitimacy on Mayotte based on the international law and the UN Resolutions; France bases herself on her own national law to justify her sovereignty over Mayotte. In fact, it is the French Constitution which qualify the French pretentiousness as legitimate. According to the article 53 § 3 of the French Constitution: “*No ceding, exchanging or acquiring of territory shall be valid without the consent of the population concerned*”. The main idea of this article is that no territory can become French territory or leave the French Republic without the consent of the population of that particularly territory. Or the

³⁰ After the declaration of France to partially recognise the independence of Comoros, France was preparing another referendum in 1976 to ask the population of Mayotte if they want to integrate the Republic or join the Comoros. This consultation was judged illegal by the international community and the UN to ask France to stop organising not only this referendum, but any future referendum in Mayotte will not be recognised by the UN.

question was posed to the French constitutional judges by some Parliament in order to know whether this article is in accordance with the case of Mayotte and their response became more problematic than contradictory. According to them, Mayotte voted in favour to integrate the French Republic, which is in parfait accordance with the Constitution. Therefore, Mayotte is a French territory. This judgment creates discords within the French Parliament itself. Some elected have shown misinterpretation by the constitutional judges. The article in question speaks about “*cede*” not “*secede*”; or the case of Mayotte is “*seceded*” not “*ceded*”. This is how the case of Mayotte was misinterpreted by the constitutional judges according to some parliament. Today the island has become a French Oversea Department, which means a complete territory of France governed by the article 73 of the French Constitution. Accordingly, Mayotte cannot leave the Republic without the consent of *wa maore*, which constitutes a *sine qua non* condition in the process to put an end to the Franco-Comorian dispute.

It is unimaginable that Comoros and France can find solution to this spiny question without including the population of Mayotte in any eventual process of resolution. A dialogue of three³¹ between Comoros, France and the population of Mayotte which detains, in our view, the “golden key” to end the territorial dispute opposing the archipelago State and its former colonial power. The current President of Comoros AZALI ASSOUMANI (2016-present) has even officially received in his palace a delegation composed of the Prefects of Mayotte in order to initiate and include Mayotte in the process of resolution – a recognition from the Comorian side of the position of Mayotte in this conflict. Or, except in bad faith, the arguments that Mayotte holds to refusal any membership with the Comorian State are somehow real. This in reference of the political

³¹ Official, the former President IKILILOU DHOININE (2011-2016) in the 66th Session 2012 of the United Nations, announces the necessity to engage a dialogue including the population of Mayotte to put an end to the Franco-Comorian territorial dispute.

instabilities and poverty which affect seriously the archipelago since its accession to independence.

As a matter of fact, Comoros has experienced chronic political instability since its independence. Marked by the *coups d'état* perpetrated by the French mercenary BOB DENARD³² and the immature game of the Comorian politicians, the new State was plunged into chaos and desolation. This unfortunate reality pushes some Comorian people of the other islands to go to Mayotte where life is desirable with the objective of fleeing the difficult conditions in the archipelago. With a budget nine times superior to that of the Comorian State and a health system to the Western model, Mayotte becomes the new “Eldorado” for some Comorian who consider the population of Mayotte living a life far from all the difficulties they are facing. For these reasons, Mayotte is not ready to exchange all the prestige she has and the advantages she is getting of being French Department for the independence at the price of misery and poverty.

It is therefore a challenge for the Comorian Government to orient and review the country's objectives towards a fairly acceptable development in order to improve the living conditions of its citizens and above all to show a political maturity. Without this, Mayotte will only be a “mirage” for the Comorian State. It must be admitted that since 2001 – with the presidential turning system between the islands – Comoros seems to have taken a step towards a policy of stability and

³² In 1975, few weeks after the unilateral declaration of independence of Comoros, BOB DENARD proceeds to his first *coup d'état* in the archipelago, reversing the President AHMED ABDALLAH by installing ALI SOILIH in the power. Three years later, he comes back to ALI SOILIH and reinstalling AHMED ABDALLAH who will be killed by the same mercenary in 1989. The new young Comorian State will suffer from this “virus” initiated by this French mercenary. More than 25 *coups d'état* will occurred from 1975 to 1997 in the archipelago – in average one *coup d'état* every year. For a new born State it is only the chaos which governs.

development³³, but there is still much to be done to charm Mayotte returning among hers.

5. CONCLUSION

With the failure of the independence of the archipelago of Comoros which has as result the secession of the island of Mayotte to the Comorian State, Mayotte will subsequently been administered by France and claimed by Comoros. This is what will make Mayotte an island of sovereignty battle – *de jure* sovereignty recognised to the Comorian State through the principles of international law and *de facto* sovereignty exercised by France based on her own laws. French Oversea Department on the one hand and the other, sovereign territory of the Comorian State, Mayotte is confronted to a choice that seems to have already been decided.

It is therefore in the interest of all three parties to sit down and find an agreement in order to put an end to this conflict which only further deteriorates relations between Comoros and France, two friends of long date. It is also for the Mayotte island away towards getting full sovereignty so that its population can be recognised as holder of sovereignty in the purest sense in international law, as said Inis Lothair Claude: “*sovereignty is possessed in full or not at all*”³⁴.

³³ According to the database of the World Bank available online published last year, the Union of Comoros is now under stable political context and the Government has introduced a series of structural and fiscal austerity reforms that are gradually being implemented. See the World Bank overview available at: <http://www.worldbank.org/en/country/comoros/overview> [Accessed on 15/05/2017].

³⁴ Inis L. Claude (1955), *National minorities: An international problem*. Harvard University Press.

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