

“Maore Farantsa”:

The Self-Determination of Mayotte
to Become a Département of France

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ABSTRACT

The small Indian Ocean island of Mayotte, a French colony since 1843, rejected independence as part of a four-island Comores in 1975. Instead, the island's people insisted upon a desire first voiced in 1958 to become a *département* of France, thus integrating into the erstwhile colonial power. This was considered by many, including the United Nations General Assembly, to be contrary to international law.

This thesis examines the causes, the circumstances and the relevant law, both international and French, and argues that the *départementalisation* of Mayotte was not, in all likelihood, illegal by the law of the time, and is now, correctly, not seen in these terms. The thesis argues that while previous discussion has centred upon the relations of France and the Republic (now Union) of Comores, an examination with Mayotte at its centre and with self-determination and small island theory as prime themes, will give a more nuanced view of the complex relationships and their standing in law.

The thesis emphasises the significance of the *Affaire Mayotte* to scholars and analysts of the Anglophone world, where it is largely unknown.

THESIS DECLARATION

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in my name, in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. In addition, I certify that no part of this work will, in the future, be used in a submission in my name, for any other degree or diploma in any university or other tertiary institution without the prior approval of the University of Adelaide and where applicable, any partner institution responsible for the joint-award of this degree.

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PREFACE AND ACKNOWLEDGEMENTS

Maore farantsa! At first sight this title may seem obscure. (This may be the first thesis at this university with a title in Shimaore). Say it out loud and the meaning will become clear: “Mayotte the French!”, the slogan of the movement (and particularly of the women) in favour of a *départemental* status for Mayotte.

This thesis grew out of an abiding interest in self-determination — put simply, the attempts of populations to define their own circumstances, usually but not always in the form of independence. My MA thesis was on Abkhazia and its attempts to define itself as separate from Georgia without being overwhelmed by Russia.

This thesis, as originally proposed, was to be a comparison of four case-studies: Abkhazia, Mayotte, Somaliland and South Sudan. Each has practised self-determination in its own way. The Somalilanders have made a relatively successful simulacrum of a state, but have failed to gain recognition for themselves or for this feat. The South Sudanese have achieved independence and recognition, but lack of unity is threatening their dream. The Abkhazians run the risk of being overwhelmed by the support they have received from Russia. They have achieved de facto separation from Georgia and some (minimal) recognition, but remain embroiled in what is really the aftermath of the Cold War, with many false assumptions being made about them. The Mahorais have achieved the status they aspired to for fifty years, but many problems remain to be resolved. Of the four populations, the Mahorais are the one that never included independence in their aspirations.

As is so often the case with such projects, the material became overwhelming. It has been difficult enough to provide a meaningful discussion of the one small island of Mayotte within a reasonable (and expected) number of words.

I have thoroughly enjoyed this study and am appreciative of the valuable contributions made by so many. First and foremost, I want to thank my principal supervisor, Professor Lisa Hill for her support, innumerable insights, forensic feedback on drafts and technical knowledge concerning thesis-writing (a topic on which I knew little). I would also like to thank my second supervisor, Dr Czes Tubilewicz for his interest, support and valuable criticism, even when I strayed from his more rigorous theoretical path. Thanks also to Associate Professor Felix Patrikeeff, who supervised my Abkhazian efforts and maintained a very real and encouraging interest in this subsequent writing. I have special thanks for David Olney for our weekly discussions over coffee. I have become as informed and enthused by his study of Camus and Existentialism as he has by mine of small Indian Ocean islands. I have really appreciated these regular discussions leading from one week to the next as a way of maintaining impetus and building a friendship. Thanks also to Colin Leaker, Rhoderick Miller, Dr Stephen Jenkins, Martin and Judy Bailey, and Dr Kim Sorensen for valuable discussion. I owe a huge debt and very special thanks to Kim for detailed proofreading, formatting and editing.

Thanks also to my brother John Crabtree and my daughter Alice Crabtree for helpful comments, and above all to Delia Morris for reading drafts seemingly without end, for insights, support and boosts to morale in the darker moments. Without her, this project would have crashed a long time ago.

In Adelaide, I would like to thank the two marvellous Margarets, Margaret Hosking of the Barr Smith Library and Margaret Priwer of the University Law Library. In Paris, thanks go to Mme Muriel Masson and her team at the Pôle de Documentation at the Ministère d'Outre-mer; indeed, to all at the Ministère who made the '*chercheur*

australien' so welcome on so many visits. Thanks also to Monsieur and Madame Boisadam for much helpful information and a memorable lunch in Poitiers.

To you all — and Kieran, Philip, Edson and Daniel, who put up with a roommate forever needing instruction in how computers work — thank you. However, despite these greatly appreciated inputs, the errors and omissions remain mine.

Robert Crabtree

January 2015

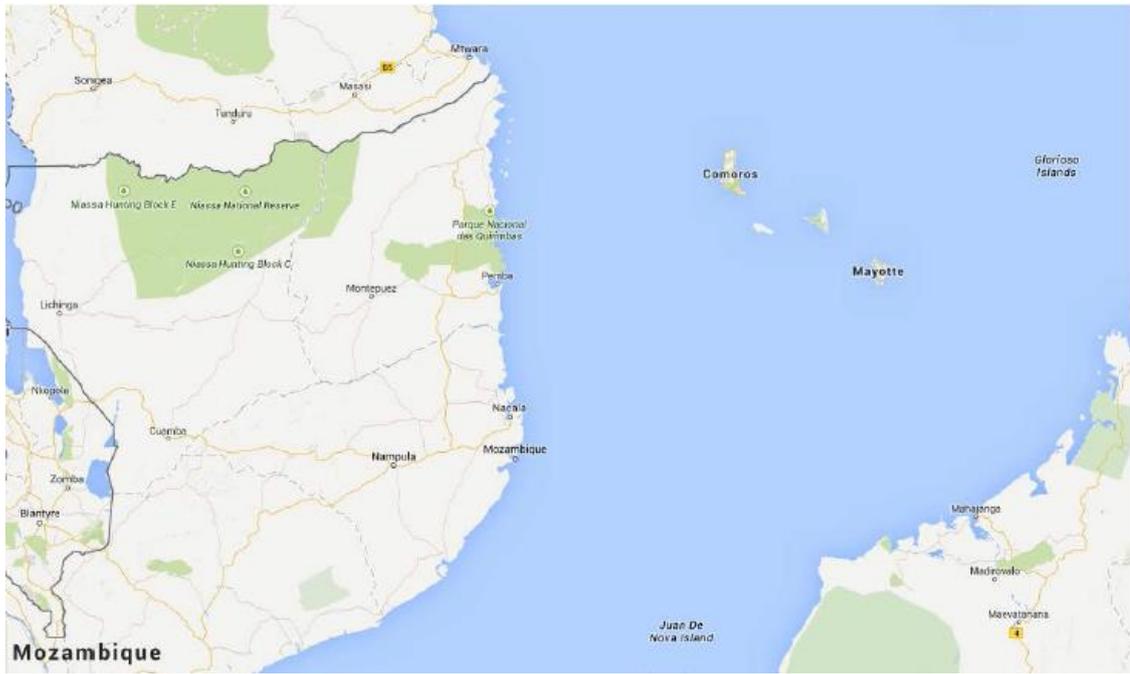
ABBREVIATIONS AND ACRONYMS

AJIL	American Journal of International Law
AMF	Association pour Mayotte française
AOSIS	Alliance of Small Island States
AU	African Union
BVI	British Virgin Islands
CAF	Confédération Africain de Football
CFA	Colonies/Communauté Français d’Afrique (franc: currency)
CGS	Contribution Sociale Généralisée (social security portion of income tax)
CHM	Centre Hospitalier de Mayotte
CJUE	Court of Justice of the European Union
CMU	Couverture complémentaire médical universel
COM	Collectivité d’Outre-mer
CPI	Committee on Public Information (USA)
CRDS	Contribution pour la Remboursement de la Dette Sociale (France: tax)
CREC	Commission de Révision de l’Etat Civil (Mayotte)
DEGEOM	Délégation Générale à l’Outre-mer
DOM	Département d’Outre-mer
DROM	Département Régionale d’Outre-mer
EJIL	European Journal of International Law
EU	European Union
FCO	Foreign and Colonial Office (UK)
FED	Fonds Européen pour Développement
FEDER	Fonds Européen de Développement Régional
FIDOM	Fonds d’Investissement pour les Départements d’outre-mer

FLPH	Foreign Languages Publishing House (Moscow)
HMSO	Her Majesty's Stationery Office
ICJ	International Court of Justice
ICNT	Informal Composite Negotiating Text (Law of the Sea)
IMF	International Monetary Fund
INSERM	Institut National de la Santé et de la Recherche Médicale
INSEE	Institut National de la Statistique et des Etudes Economiques
ISISA	International Small Islands Studies Association
LMS	London Missionary Society
MDM	Mouvement Départementale Mahorais
MIRAB	Migrant Remittance and Aid-Funded Bureaucracy
MPM	Mouvement Populaire Mahorais
NSGT	Non Self-Governing Territory
OAU	Organization of African Unity
OCT	Overseas Country or Territory (of the EU)
PACA	Provence Alpes Cote d'Azur
PCIJ	Permanent Court of International Justice
POSEIDOM	Programme d'Options Spécifiques a l'éloignement et a l'insularité des DOMs (EU); also, POSEICAN and POSEIMA (Canaries and Azores)
RESFIM	Réseau Education Sans Frontières Ile de Mayotte
RPR	Rassemblement pour la République
RSA	Revenu de Solidarité Actif
RUP	Region Ultrapériphérique (Outermost region)
SIDS	Small Island Developing States
SMIAM	Syndicat mixte d'Investissement et d'Aménagement de Mayotte

SMIC	Salaire Minimum Interprofessionnel de Croissance
SMIG	Salaire Minimum Interprofessionnel Garanti
TOM	Territoire Outre-mer
TRNC	Turkish Republic of North Cyprus
TVA	Taxe sur la Valeur Ajoutée (VAT)
UAFA	Union of Arab Football Associations
UDI	Unilateral Declaration of Independence
UMP	Union pour un Mouvement Populaire
UN	United Nations
UNGA	United Nations General Assembly
UNPO	Unrecognized Nations and Peoples Organization
UNWTO	United Nations World Tourism Organization
VI	Vulnerability Index
ZEE	Zone Economique Exclusive (EEZ)

MAPS



Mozambique Channel



Comoros



Mayotte

CHAPTER 1

INTRODUCTION

Mayotte is the southernmost of the four Comores¹ islands, the ‘Islands of the Moon’, in the west of the Indian Ocean. The four islands are, from southeast to northwest: Mayotte (*Maore*), Anjouan (*Nzuwani*), Moheli (*Mwali*) and Grande Comore (*Ngazidja*).

When, in 2011, Mayotte attained *département*² status within France it was in fact the culmination of a long process of self-determination. The circumstances of Mayotte’s quest and the fifty-year time-span of its move to *département* status provide a small-island case-study of self-determination that illuminates changes in international attitudes over this period. The much-desired outcome of *départementalisation* has been achieved within the framework of French constitutional law, but needs also to be seen through the perspective of international law as an example of self-determination.

Mayotte’s position, however, is more complex: it is currently named as a part of two sovereign states in their constitutions. By Art.1 of the Constitution of the Union of Comores, Mayotte is an Autonomous Island of the Union; by Art.72 of the Constitution of France, Mayotte is a *département Outre-mer* (DOM) of France.

¹ In French: Comores; in English: Comoros. Likewise, adjectivally, French: Comorien, Comorienne; in English Comorian. I have opted for the French spellings throughout to maintain a consistency with the frequently-occurring quotations in French. This is also how the people of the place would describe themselves in French, their principal written language. Likewise I have opted for the French *département*, *départementalisation* and *Outre-mer* throughout. They are specific technical words for which there is no exact translation.

² The *département* is the traditional administrative geographical entity of France. Its competencies are defined by the Constitution and emanating legislation. It has a democratically elected Conseil General and a *Préfet* who is appointed by and represents the State (the *République*). There are 95 in metropolitan France including Corsica and since 2011 six *départements Outre-mer*.

This story is little-known in the English-speaking world. Since Malyn Newitt's book on the Comores thirty years ago,³ there has been no more than a chapter on Mayotte or an occasional reference to it in English,⁴ and nothing on the legal aspects of the case, either in terms of French or international law.⁵ This thesis places the *départementalisation* of Mayotte in the context of international and French law and argues, furthermore, that it has significance for an increased understanding of pathways to political development post decolonisation. Thus, it places the story of Mayotte at the point of confluence of three disciplines: Politics, History and Law. The particularity of the French context needs to be understood, but the implications are wider. Mayotte should become better known to the Anglophone world and to members of the European Union, of which it is now a part.

Mayotte was previously a part of a French colony. Instead of seeking independence from France with the other islands of the Comores, it chose to become integrated into the former colonial power and was finally welcomed.⁶ The Mahorais⁷ described their aim in these terms: «*français pour rester libres*». ⁸ Their pursuit of a single objective, without awareness of the obstacles facing them, has borne fruit. Mayotte is now the 101st *Département* of France. In seeking this status, the Mahorais did not see themselves as pitting two mighty legal structures, the

³ Malyn Newitt, *The Comoro Islands: Struggle Against Dependency* (Boulder, Colorado: Westview Press; Aldershot: Gower Press, 1984).

⁴ Robert Gildea's detailed *France since 1945* gives the Comores one sentence, with no mention of Mayotte. Robert Gildea, *France Since 1945* (Oxford: Oxford University Press, 2002), p.270.

⁵ These words were written before the publication of Ahmed Ali Abdallah's book. This book will be discussed in detail shortly. Ali Ahmed Abdallah, *Le statut juridique de Mayotte* (Paris: L'Harmattan, 2014).

⁶ The complexities of this apparently simple statement are manifold and will be examined in detail.

⁷ This is the adjectival form, and the name of those who come from Mayotte.

⁸ (To be) "French to remain free". This slogan, taken from the banners of the *Mouvement Populaire Mahorais* (MPM), is quoted in Philippe Boisadam, *Mais que faire de Mayotte?* (Paris: L'Harmattan, 2009), p.100. Two minor points may be made here. First, there is a difference of usage regarding capitals in book titles between French and English. Second, French quotation marks are different: « ... ». I have employed these when the quotation is a French one.

constitutional law of France and the system of international law and the United Nations (UN) against each other. However, this is what they did.

1.1 Aims

This thesis has three aims which build upon each other. The first is to provide a concise political history, exploring and illuminating the origins, events and implications of the *départementalisation* of Mayotte. This has two purposes: first, to make the details of important events known to an English-speaking audience (there is no detailed account before now in English); and second, to provide the historical, political and cultural information required for subsequent discussion of the entry of Mayotte into the status of *département d'Outre-mer*, including a discussion of why Mayotte pursued *départementalisation* over independence as part of a four-island Comorien state.

The second is to analyse and interpret this series of events; to examine the application of certain principles of international law, namely self-determination, secession, territorial integrity and *uti possidetis*, and the relevant aspects of French constitutional law under which Mayotte was accepted into this new status. This interpretation will include an examination of the imperfect tessellation⁹ and potential conflicts between these two systems of law and will conclude that it is reasonable to describe the *départementalisation* in terms of self-determination.

It will be argued that, whereas the self-determination of Mayotte could be described as contrary to international law in the terms pertaining at a critical time (1974–75), this conclusion, which would effectively limit self-determination to the

⁹ An apt word for which I am indebted to Dr Mathew Davies.

Comores and deny it to Mayotte,¹⁰ is now archaic, excessively rigid and constraining in the light of subsequent re-evaluation and practice. The thesis will consider the position of the people of Mayotte in a wider context than the purely legal, for example viewing them through the prism of Small Island Studies. It will examine the capability of certain legally-defined concepts and principles, such as Boundaries, Archipelagos and *uti possidetis* to be applicable to small islands in the world of the twenty-first century. There has been inadequate consideration of these issues, particularly in the light of the on-going and inconclusive attempts to find a suitable status for a number of small islands, and the extension of RUP status to some of them. The thesis will show the continuing difficulty (not confined to, but exemplified by the case of Mayotte) inherent in the differing degrees of contextuality permitted for legal and political applications of concepts common to law and politics. The thinking and language of law is ill at ease with context, but political applications and solutions always require an awareness of it.

The third aim is to lay the groundwork for an understanding of the issues involved, in the event that, at some point in the future, an international resolution of the constitutional status of Mayotte is required.

¹⁰ This is the conclusion argued by Ahmed Ali Abdallah, whose important work *Le statut juridique de Mayotte* was published in 2014, after this thesis was written. His argument is that there was only one self-determination in the *Affaire Comores*, that of the Comores, from which illegitimate derogations were made. My argument is that there were two — of the Comores and of Mayotte. His argument develops from this initial premise, considers the relationship between the Comores and France only, and argues the case of the Comores. He does not consider the intentions and aspirations of the Mahorais. What he sees as two-sided, I see as triangular. I contend that his worldview has not developed beyond the 1960s and 1970s, and shows an over-rigid grip on certain legal concepts (in particular, *uti possidetis*) as they were then viewed, and on the sacrosanctity of United Nations General Assembly (UNGA) resolutions. I make greater argument for nuance, flexibility with the passage of time and the political context. However, these arguments were not developed to counter each other. They were developed separately, with the authors in ignorance of each other. We have covered much of the same ground and come to differing conclusions.

1.2 Methods

The research has conducted been in multiple disciplines. The thesis combines historical material and analysis, examination of the relevant law, both French and international, and political science concepts. There is no one specific methodology that has been applied. The thesis derives from a combination of literatures and data sources, each with its own characteristics, and is thus synthetic in nature. The strands that are drawn together towards this synthesis come from the political history of Mayotte and the other islands of the Comores, aspects of international law, such as secession, territorial integrity and the principle of *uti possidetis*, from French constitutional law, and from more recent theories pertaining to the nature of small islands. To this I have added analysis of concepts such as boundaries and archipelagos, central to an understanding of the application of *uti possidetis* in groups of islands. In doing so, I have questioned traditional presumptions concerning the nature and meaning of these concepts. In short, my primary aim has been to put material and arguments together in a different way and a more illuminating pattern, rather than to mine new sources of material. There are primary materials in two forms: first, in the form of statutes, judgements, reports and speeches; second, interviews and discussion which have been used to round out a picture and to give a more nuanced interpretation, rather than to source major raw data.

The literature in English on Mayotte and the Comores is very small. However, in French it is sizeable and growing. For this reason (the same is true of French constitutional law) much of my research was conducted in France, particularly at the *Bibliothèque Nationale de France* (BNF) and the *Pôle de Documentation* of the *Ministère d'Outre-mer*, during six periods over three years. French government publications have been an important source, both in the form of Reports and of the

Journal officiel de la République française (JORF), the official Gazette of all government legislation and announcements.

While in Australia I have had access to all new acquisitions to the *Pôle*, which has enabled me to keep up to date with publications and government papers. For current events, *Al Watwan*, the main newspaper published in Moroni, and *Mayotte Hebdo*, its rather more colourful counterpart in Mamadzou, have been invaluable. *Liberation* and *Le Monde* keep me in touch with French developments and events.

For researching this thesis, ethics clearance was sought and granted. However, in practice the research is more dependent on the written than the spoken word. I made one field trip to Mayotte, where I spent two weeks travelling throughout the two islands. I had interviews with elected members and officials of the *Conseil General*, but fewer, and fraught with more delays, than I had hoped.¹¹ I had numerous conversations with *W'zoungou*,¹² but found it much more difficult to interview or converse with Mahorais outside the *Conseil*, who I found to be generally reticent with outsiders. A second difficulty was that the surviving political leaders whose activities are discussed here are now very old. I met Adrien Giraud and shook his hand, but he was no longer prepared or able to undertake an interview. Likewise, Marcel Henry has retired into seclusion in his natal village.¹³

In general, the pattern was similar in France. On the one hand, I was, for example, able to speak at length with M. and Mme Boisadam, an opportunity I found to be of great value. They spent two periods in Mayotte, the second when M. Boisadam was the *Préfet*. He also chaired the discussion group and is the author of the

¹¹ My time there coincided with a particularly pressured time in the budgetary cycle.

¹² *W'zoungou* is the (non-pejorative) name given to white people in Mayotte, whether permanent or temporary residents. The singular form is *M'zoungou*.

¹³ Their roles will be discussed in subsequent chapters. Biographical details are provided in App.1.

most significant and authoritative book on the *départementalisation*.¹⁴ On the other hand, I had identified groups of Mahorais and Comoriens in Marseille to interview, but they were, without exception, unwilling to participate. These setbacks do not invalidate the arguments or the thrust of this thesis.

The literature on self-determination and connected topics is very large. However, the Comores and Mayotte have only been footnotes in Anglophone study of self-determination, with the exception of the small number of books and articles noted here. The literature on the French Constitution as it relates to DOMs and TOMs¹⁵ is (understandably) large in France, negligible elsewhere. I have used Guy Carcassonne's annotated edition of the Constitution.¹⁶ The literature on Small Islands is considerable and growing in English, but is miniscule in French.

I have not provided a consolidated literature review here for the reason that the topics and areas of expertise discussed in this thesis are so varied. Rather, the relevant literatures will reveal themselves and be discussed chapter by chapter.

1.3 Background: Differing Viewpoints

Whilst the Mahorais were speaking of *départementalisation* and thus further integration into France, the political aims of the Comores' other islands were directed very differently. In the capital Moroni, on the island of Grande Comore, the matter was seen as the prolonged struggle of a 'colonial' entity of four islands negotiating with the Metropole for independence, with the support of the independence movements and new governments of Africa. Active support was coming, particularly from Tanzania,¹⁷ for a new Republic of Comores (of four islands). Amongst commentators, France had

¹⁴ Boisadam, *Mais que faire de Mayotte?*

¹⁵ Territoires d'Outre-mer.

¹⁶ Guy Carcassonne, *La Constitution : Introduit et commentée par Guy Carcassonne*, 10^{me} édition (Paris: Seuil, 2011).

¹⁷ Comorien émigrés, among them students and activists, had long been established in Tanzania.

long been seen as a poor colonial master, with a tradition of miserly neglect.¹⁸ Just as the independence talks were coming to fruition, the colonial power was seen, in Moroni, to be paying heed to the voice of one island, Mayotte, asking for a different status.

Matters came to a head when, in 1975, a proposal for a plebiscite was put to the French Parliament. The Comorien negotiators thought that the proposal as presented, a global plebiscite, had been agreed with the French government. After a confused all-night debate, a very different proposal was written into French law: the vote was to be taken island by island. In the mind of Ahmed Abdallah, President (1970–75) of the *Conseil* of the Comores, the time was ripe for a decisive act: a Unilateral Declaration of Independence (UDI).¹⁹ There would be support at home, in Africa and support in world opinion amongst the non-aligned and the anti-colonialists. Moreover, a failure to act now would mean a loss of face personally in the Comores, and an almost certain defeat by political rivals. In Abdallah's view, the French had shown themselves in their true colours, intent on maintaining a colonial foothold.

In France, these negotiations were neither well-known nor seen as particularly significant. Mayotte was only an issue for a number of tiny minorities.²⁰ The words of these faraway people saying they wished “to be French to remain free” gave some in France a sense of reassurance and pride. Support for these little-known people grew, especially on the Right; the Left was more preoccupied with decolonisation.

In the French view, the matter was essentially domestic: all changes could only be made within the French Constitution, where overseas territories and *départements*

¹⁸ This view was widely held by commentators such as Newitt, historians such as Jean Martin and even functionaries on the ground, such as Boisadam. There has never been substantial contradiction. See Boisadam, *Mais que faire de Mayotte?*; Jean Martin, *Comore : Quatre Iles entre planteurs et pirates* (Paris: Editions L'Harmattan, 1983), 2 vols; Newitt, *The Comoro Islands*.

¹⁹ This acronym has more currency in English than in French, where it appears not yet to have achieved acronym status.

²⁰ Featuring among these were Royalists, Empire-loyalists and ex-residents.

are categorised by Article and (now) listed. The exit of a *Territoire d'Outre-mer* (TOM) from the Constitution towards independence was a matter for France to decide, as with any constitutional change. The « *sein de la République* »²¹ has a reality well beyond that of metaphor; one is in it or one is not. Colonies had left it before, but with an independence always agreed (if grudgingly), as in West Africa. The *République* had never been faced with such a unilateral declaration during on-going negotiations, and never had there been a geographical part of the departing 'colony' that wanted to stay on and be integrated into the *République*.

To those imbued with other — such as British — traditions, an integration of this kind is not easy to accommodate conceptually. The notion that an erstwhile 'colonial' territory is a part of the nation equally with the 'metropole' is alien to the British tradition, which Australia has largely inherited.²² There is a widespread misunderstanding that Mayotte is a French 'possession'; this is simply not the case. By the French Constitution, Mayotte is an integral part of France. In British law, the question of placing a geographical entity within one or another Article of the Constitution, or its excision, does not exist, whereas in French constitutional law, the placing of a territory in one or another of the specific Articles of the Constitution is all-important, in that it defines the status and powers of the entity and of all levels of government within it. A change of status requires a change of place in the Constitution. It is a full constitutional revision and is not lightly undertaken. Further, DOMs, including Mayotte, are now listed in the Constitution.

²¹ This translates as 'Bosom of the Republic'. In English it appears to be a metaphor; the French original is more like a real status. I use '*République*' throughout to denote the French state-as-a-whole, and 'Republic' to denote particular regimes, e.g., 'Fifth Republic'.

²² A DOM is a part of the government of the whole, with a legislative voice equal to that of any other *département*.

1.4 Background: Theoretical Perspectives

The issues and the viewpoints are complex and multifarious; to each there is a theoretical framework, where in the more general discussion Mayotte can be seen as an important example. Several bodies of theory can be seen to be relevant to different aspects of Mayotte's story. The principal underlying concept is 'self-determination' (in French, *autodétermination*), which falls on the boundaries of politics, political theory and law. The practical achievement of self-determination may involve secession, territorial integrity and *uti possidetis*, each a topic of major theoretical discussion, both in international law as a whole and in this thesis. In the world at large these are the main terms in which Mayotte's *départementalisation* has been seen, if it has been considered at all. Territorial integrity and *uti possidetis* are Abdallah's principal referents in his argument that the self-determination of Comores was legitimate, that of Mayotte not.²³ On the other hand, in France, as we shall see, the primary conceptual reference points have been those of French constitutional law.²⁴

The insights of 'Small Island Theory' also have particular relevance to an understanding of Mayotte and the other islands of the Comores. They also assist and are indicative of changes in international attitudes. Small Island Theory is centred on the insight that there is something significantly different about small islands and their populations. The leading figures in this body of theory and investigation are Godfrey Baldacchino²⁵ and Barry Bartmann,²⁶ at the Institute for Small Island Studies at the

²³ Abdallah, *Le statut juridique de Mayotte*, Ch.1.

²⁴ There is a stronger divide in French legal literature between the discussion of *autodétermination* within the boundaries of the *République* and that outside. The latter gets less attention.

²⁵ Especially relevant here is his "'Upside Down Decolonisation' in Sub-National Island Jurisdictions: Questioning the 'Post' in Postcolonialism," *Space and Culture*, vol.13, no.2 (2010), pp.188–202. He has written widely on topics related to small islands, including *Island Enclaves: Off-Shoring Strategies, Creative Governance and Sub-national Island Jurisdictions* (Montreal: McGill-Queens University Press, 2010).

²⁶ See, e.g., Barry Bartmann, "In or Out: Sub-National Island Jurisdictions and the Antechamber of Para-Diplomacy," *Round Table*, vol.95, no.386 (September 2006), pp.541–59. Bartmann is second only to Baldacchino in the production of salient articles on small islands.

University of Prince Edward Island, Canada. This study of the characteristics of small islands leads on to a consideration of the nature of ‘archipelagos’ and a discussion of their special qualities. There are three linked questions: first, that of the ‘social capital’ of small islands and its particular forms; second, the nature and definition of ‘archipelagos’; and third, the problems surrounding the concept of ‘boundaries’. It is argued here that the broad brush of international law as applied to continental territories does not fit well with islands and archipelagos, and that there has been an increasing realisation of this in international practice. An understanding of the word ‘archipelago’ is central to the application of the concept of territorial integrity to a number of islands. It may also be seen that there are particular qualities of small societies bounded by water that need to be examined when considering territorial integrity. The concept of social capital is helpful in this regard in that it helps define self-perception and the perception of ‘the Other’ in groups of islands, and is therefore significant for an understanding of the words ‘population’ and ‘populations’.

In a rather different direction, ‘path dependency theory’ is usefully applicable. This, despite having its origins in the very different discipline of Economics, has great resonance in the world of lengthy political process, of which the issue of Mayotte is most evidently a paradigm case. The insight here is that a path, once trod frequently enough to become a trail, may determine the political route to be taken. The route becomes determined by the starting point and the direction of the first steps²⁷ and the “dynamic process itself takes on an essentially historical character”.²⁸ The theory has

²⁷ Paul A David, “Clio and the Economics of QWERTY,” *American Economic Review*, vol.75, no.2 (May 1985), pp.332–37. This only holds good in the Anglophone world. A French keyboard, for example, looks quite different.

²⁸ *Ibid.*, p.332.

developed by way of Philosophy²⁹ into Management studies,³⁰ Political Science,³¹ Historical Sociology,³² The example given earlier of the call for *départementalisation* is a case in point. The path was formed in 1958; it may be seen to have become a given, a no-longer re-examined aim, until it was achieved in 2011. It becomes unthinkable, or simply too difficult, to form or go down another path. In this case, there was only one word in the demand; it was not to be changed, and the politics of the island were to be defined by this one word. It could be said that Territorial Integrity as a concept acted in a similar way on the Comorien mindset. The fixing of positions, the definition of paths, came early in the *Affaire Comores*.

In the only (so far) specific English-language discussion of Mayotte in recent times, Karis Muller places it within the framework developed by Rebecca Adler-Nissen and Ulrik Pram Gad named ‘Postcolonial Sovereignty Games’. This attempts to provide a descriptive theory of how “sovereignty actually works” and how “a group of postcolonial entities may strategically use their ambiguous status in relation to sovereignty”.³³ Muller does suggest that Mayotte may be the most complex of the case studies in the book and the fit never appears entirely comfortable.³⁴ The concept is, in its general terms, both interesting and provocative and all the chapter-authors are persuasive in their claim for the existence of increased flexibility and sophistication in the concept of sovereignty, which matches developments in other aspects of

²⁹ Jean-Philippe Vergne and Rodolphe Durand, “The Missing Link Between the Theory and Empirics of Path Dependence: Conceptual Clarification, Testability Issue, and Methodological Implications,” *Journal of Management Studies*, vol.47, no.4 (June 2010), pp 736–59.

³⁰ Raghu Garud, Arun Kumaraswamy and Peter Karnøe, “Path Dependence or Path Creation?” *Journal of Management Studies*, vol.47, no.4 (June 2010), pp.760–74.

³¹ Paul Pierson, *Dismantling the Welfare State?* (Cambridge: Cambridge University Press, 1994), Ch.2; Paul Pierson, “Increasing Returns, Path Dependence, and the Study of Politics,” *American Political Science Review*, vol.94, no.2 (June 2000), pp.251–67.

³² James Mahoney, “Path Dependence in Historical Sociology,” *Theory and Society*, vol.29, no.4 (August 2000), pp.507–48.

³³ Karis Muller, “Between Europe and Africa: Mayotte,” in Rebecca Adler-Nissen and Ulrik Pram Gad (eds), *European Integration and Postcolonial Sovereignty Games: The EU Countries and Territories* (Abingdon: Routledge, 2013), pp. 187–203. The quotation is taken from the book’s foreword.

³⁴ Muller, “Mayotte,” p.188.

international law, such as self-determination.³⁵ However, it is difficult to see Mayotte as a player of ‘postcolonial sovereignty games’ since the demand for the status of *département* was made 50 years ago and has remained unchanged. Moreover, a ‘game’, to be meaningful, surely demands some awareness or conscious intent to ‘play’ on the part of the supposed ‘player’. Here, it will be argued, none can be shown. The intentions of the inter-actors will be discussed at length in Chapter 3.

These, then, are the main theoretical concepts that will be discussed, the frameworks employed and the insights used as tools to approach the Self-determination of Mayotte in the form of *départementalisation*. For the most part, they straddle law and political thought, with forays into geography and sociology, in a discussion that is necessarily and frequently historical.

1.5 Language and Methodology: Constraints

If Mayotte is referred to in English-language political or legal writing, it will be found in a footnote list of ‘intractable’ cases of post-colonial³⁶ problems or boundary disputes. It has never been analysed in depth in English.³⁷

Of the very considerable literature in French, little is from Mayotte or from the Comores, and much more from the *metropole*. The last has traditionally provided most of the political and legal analysis, at the risk of overwhelming more local perspectives. Mahorais and Comoriens are required to frame their arguments in what is a second

³⁵ Baldacchino’s chapter is particularly significant. Godfrey Baldacchino, “The Micropolity Sovereignty Experience: Decolonizing but Not Disengaging,” in Rebecca Adler-Nissen and Ulrik Pram Gad (eds), *European Integration and Postcolonial Sovereignty Games: The EU Countries and Territories* (Abingdon: Routledge, 2013).

³⁶ I use the word here in a non-technical, simply temporal, sense.

³⁷ These words were written before the appearance of Karis Muller’s chapter on Mayotte. Muller, “Mayotte.” Muller gives a succinct account of Mayotte and its relationship with France. Her account is excellent but fits less than happily in the theoretical “postcolonial sovereignty games” framework proposed by Adler-Nissen and Gad. In large part, this results from her under-estimation of the demands of *départementalisation*, the very specific form of relationship with France sought by the Mahorais. The conceptual framework remains arguable in its broader context; in the narrower one of Mayotte, it largely fails to match the circumstances.

language, and, until recently, have lacked the academic status and equipment to engage with French writers writing about them. A Mahorais/e who would write in his/her own first language (Shimaore usually) would have had no readers and no publisher since a written form of the language is itself a recent development; what little writing there was, for the most part for ceremonial and religious purposes, was in Arabic. Until this century, the typical Mahorais/e did not write at all (widespread literacy has only developed in the twenty first century) and now s/he writes in French, as the French language has become more generally available through Mayotte's school system. The same is true in the Union of Comores. Now there are publishers in French in both Mamadzou and Moroni and more potential readers. The further difficulty is that a literature (political, legal or other) that is only in French often does not achieve circulation or understanding in the wider, non-Francophone, world.³⁸

In a discussion of Mayotte and *départementalisation*, there is a particular difficulty to be confronted: the lack of documentary evidence of what informed the original framers of the demand. In 1958 (and later) in Mayotte, there were no newspapers, no recording or broadcasting,³⁹ minimal French and minimal writing. The tradition was oral. Apart from Mahmoud Ibrahim's biography of Saïd Mohamed Cheikh⁴⁰ and Philippe Boisadam's book,⁴¹ there is no biography or autobiography, memoirs or published writings by any one of the principal actors in the Comores⁴² or Mayotte. Primary evidence, particularly of the earlier years, is hard-to-impossible to find; there is necessarily a greater than normal dependency on secondary accounts and

³⁸ Particularly in the world of legal publishing, where there is little systemic overlap, this outcome is mutual.

³⁹ The first broadcast was in February 1962 by the then-French-run Radio Comores, from Dzaoudzi. This was transferred to Moroni in 1967.

⁴⁰ Mahmoud Ibrahim, *Saïd Mohamed Cheikh (1904–1970) : Parcours d'un conservateur* (Moroni : KomEdit, 2008).

⁴¹ Boisadam, *Mais que faire de Mayotte?*

⁴² There is the exception of Bob Denard, the subject of an extensive biographical literature.

interpretation.⁴³ While this must be recognised as a constraint on the present analysis, the secondary sources are reliable and there is little dispute between them in their accounts. While, for example, there is no record of the actual speeches of Younoussa Bamana, given in Shimaore, there is no controversy as to the tenor of what was said. More recently, a thriving tradition of journalism⁴⁴ (and of polemic⁴⁵) has developed in the islands and has been drawn on here; occasional interest is shown by the metropolitan papers in the affairs of Mayotte.⁴⁶

Many of the works consulted for this thesis, especially the original documents cited, have been in French. Where I have quoted, three routes have been taken. Where the precise wording in French has seemed all-important, I have quoted in French with a translation following or in a footnote. Where the wording of the quotation has seemed significant but not all-important, I have put my translation in the text and the original French in a footnote. Where I have thought the sense was more important than the precise wording, I have merely provided my translation. The aim of this three-pronged system has been to minimise the breaks in flow for the Anglophone reader, while continuing to make available where necessary the precise original wording.

⁴³ A source for a description of on-going events in the islands is the series of reports by the *Hauts-Commissaires*. However, a number of caveats are necessary. The reports were written by French government officials for the French government and necessarily tend to a French perspective. The information available to these officials was sketchy, as inter-island communications and travel were minimal. There was also little risk of contradiction, a rapid turnover of these French officials and a high rate of disease and alcoholism. *Cartons « Haut-Commissariat »* Archives nationales (CAC) Fontainebleau, cited in Boisadam, *Mais que faire de Mayotte?*, and Martin, *Comore*.

⁴⁴ This is exemplified in Moroni by *Al-Watwan* and in Mamadzou by *Mayotte-Hebdo*.

⁴⁵ An example is Hamidani-Attoumani Ambririki, *Réponses à Monsieur Soihabbadine Ibrahim Sénateur de Mayotte : La dignité Mahoraise ou la guerre civile?* (8660 Fontaine: Editions THOT, 2010), where the *Sénateur*'s proposals get a fiery book-length response from an outraged citizen.

⁴⁶ This interest has itself been examined. Namira Nahouza studied four French newspapers, *Le Figaro*, *Le Monde*, *Humanité* and *France-Ouest* for all mentions and coverage of Mayotte and the Comores in the years 1974–78. She relates coverage and terminology to political stance. She concludes convincingly that the news the French metropolitan reader received from the Mozambique Channel depended on the paper s/he read. Namira Nahouza, *Indépendance et partition des Comores 1974–1978* (Moroni : KomEdit, 2005).

1.6 Overview and Structure

1.6.1 Contents of the chapters

Chapter 2, which is historical and geographical, provides the background necessary to an understanding of the *affaire Mayotte*, with an examination of events in three places: Mayotte, the other islands of the Comores and France. There are three interwoven narratives, sometimes complementary and sometimes contradictory, of narrators and actors often lacking in mutual comprehension. They peak with the events of 1974–75: the French Parliamentary vote; Ahmed Abdallah’s UDI, which made the breach irrevocable; and the French reaction, which accepted the independence of the Comores and offered a separate vote to Mayotte. I have given a degree of detail here as the history of these events is not readily available.

Chapter 3 examines the motives of the participants in these narratives. Three possible motives for the call for *départementalisation* are examined. The first is that it was principally instigated by France, in order to further French strategic or commercial interests. The second is that Mayotte was principally motivated by alienation from the other islands and a long-standing fear of being, and becoming further, politically, socially and economically an underdog in a four-island Republic. The third is that Mayotte could see economic advantage in *département* status.

Chapter 4 introduces and examines the relevant legal principles in international law: self-determination, secession, *uti possidetis* and territorial integrity. It examines the role of organizations such as the UN and the Organization for African Unity (OAU⁴⁷) in the formation and execution of legal rules. It considers the applicability of the rules formed and the relevant case-law; in short, the framework of international law. This is the prism through which the decolonisation of the Comores and the

⁴⁷ Later this was to become the African Union (AU).

various self-determinations were viewed internationally. These principles have not remained static, and the whole period of the *départementalisation* of Mayotte has seen much change in international law and its interpretation. These changes are central to this thesis, which will consider in detail the principle of *uti possidetis*, whereby the boundaries of newly-independent states are those of the colonies that preceded them. This is supposedly the ‘corner-stone of Sovereignty’, particularly in Africa.⁴⁸ I will suggest that it is a less robust principle than is sometimes thought, and further that it is of doubtful applicability here, in respect to a number of small islands.

Chapter 5 examines the French legal and constitutional position, with its insistence that the status of Mayotte is a matter for French domestic constitutional law. This is not merely a question of political insistence; it is the considered view of France’s *Conseil Constitutionnelle* (the arbiter of the Constitution). That judgement and the subsequent discussion are analysed, to see where and how the French view differs from the widely held international one.

Chapter 6 considers Mayotte as a ‘Small Island’. It examines the difficulties of definition and the complexities of the notions of small islands, boundaries and archipelagos in the context of the applicability of the principle of *uti possidetis*. It argues that attempts to apply *uti possidetis* to small islands and archipelagos are misconceived, and that this apparently strong pillar of the Comores’ claim to Mayotte does not carry well the weight that has been put upon it. In short, it is an illegitimate extension of a doubtful principle. The chapter examines different practices and solutions to similar problems elsewhere in the world, particularly in the Pacific and the Caribbean. It examines the characteristics of small island populations and places Mayotte in the context of on-going small island studies. It suggests that there is now a

⁴⁸ This will be discussed in Ch.4.

greater flexibility in attitude to the self-determination of smaller, particularly island, populations by comparison with the more rigid formulations of the 1960s and 1970s.

1.6.2 *Summary of the issues*

The original (now academic) question remains: was the *départementalisation* contrary to international law? My answer to this question is that, although there was some cause for thinking back in 1975 that it was indeed so (Abdallah certainly argues that it was so⁴⁹), it probably was not ‘illegal’ then, and would not be so now if these events were to occur at the present time. By 2015, much has changed in the world and the notion of what is contrary to law has altered. Legal principles do change over time; it is, perhaps, more a matter of them being balanced differently at different times, and this can amount effectively to a change.⁵⁰

In examining the *Affaire Comores*, I will suggest that the chronology of events is important, particularly of the French Parliamentary vote, the unilateral declaration of independence and the acceptance of it with conditions by France. At what point of this chain of events did the Comores become independent, and whether, if ever, and however momentarily, Mayotte ceased to be a part of France? Further, by what criteria was Mayotte, or the Comores, a ‘colony’ in the terms of the UN, given that the whole was a TOM within the French Constitution and never on the UN list of ‘reportable’ Non Self-Governing Territories (NSGTs)? If Mayotte did not leave France at any point, the French case is strengthened. If the UDI took Mayotte with it for a moment of independence, and the UDI was the point of independence, the Comorien case is

⁴⁹ Abdallah, *Le statut juridique de Mayotte*. Herein lies the Comores’ justification of the retention of Mayotte as an integral part of the state’s territory, as laid down in the Constitution.

⁵⁰ This is not exclusive to international law: domestic codes in many countries have undergone more change.

strengthened. The status of UDIs in international law is problematic, and will be discussed.

The flood-tide of decolonisation has passed. Since about 1975, the number of smaller entities that continue in relations with larger and formerly colonial states has increased. Should independence, as defined by the paradigms and parameters of the 1960s and 1970s, still be the objective? Can another form, that of integration by willing choice into the hitherto colonial State, be considered permissible? It would seem that this can be the case. Mayotte can then be seen not so much as a cause for condemnation of France, nor even as an exception to the international rule, but as the front-runner of a new approach to the self-determination of small populations.

This thesis does not argue that Mayotte has been particularly the cause of change in the international sphere.⁵¹ Rather, the case of Mayotte is an indicator of change, as the passion and dogma of one epoch has given way to a more sophisticated awareness that there is more than one path of decolonisation. There is increased awareness that the economic well-being of the 'people' is important. Independence per se no longer outweighs a viable economic future. Even sovereignty is now discussed as a more flexible concept.

I will contend that the international law, particularly concerning *uti possidetis* and aspects of self-determination, secession and territorial integrity have had to change and are changing. In comparable future circumstances, the law will not be argued again in its old form. What was considered desirable as a form of law in an epoch of decolonisation and the search for independence may not be applicable in a different century, where the 'selfs' of self-determination in decolonisation are smaller, and where economic security and the choice of the 'people' have become higher priorities

⁵¹ The lack of discussion suggests that it is not.

than independence per se. The tacit acceptance by the world at large⁵² of Mayotte's integration into France by *départementalisation* is part of that change. Is this structure — willingly, enthusiastically entered into by the inhabitants⁵³ and accepted in the *métropole* — a possible alternative model for other small island 'peoples' who have doubts about their viability in full-blown independence in the economic realities of the twenty-first century?

In the outside world, particularly the Anglophone one, the issues concerning Mayotte, its place within the Comores, its integration into France and its place as a *Région Ultrapériphérique* of the EU are little discussed and understood. In Africa, it once was a *cause célèbre* and seen as a failure of decolonisation. Now it seems there is less governmental interest, and the achievement of *départementalisation* in 2011 has caused little comment beyond Moroni. Here I am writing of 'the outside world'. The AU was certainly condemnatory and the UN was said to have expressed disquiet.⁵⁴ By comparison with the outrage and Resolutions of 1975, the response was small. At the popular level, attempts at migration have increased

The potential for future difficulties of a territory being enshrined in two constitutions is either not known or overlooked. One day there will be a need to confront this dilemma and to look again at the bases of the political and legal claims, and the history that lies behind them. This is a particular issue; more generally, Mayotte's important place in the history of post-colonial development and decolonisation remains unacknowledged, an oversight this thesis seeks to correct.

I have written here a considerable amount about law, in the belief that it provides a form of grammar for the political processes of international relations. Some

⁵² As evidenced by the acceptance of Mayotte as a RUP.

⁵³ As evidenced by the enthusiastic reception of President Francois Hollande in August 2014: see *Mayotte Hebdo*, 27 August 2014. It was noted how this differed from the dour reception given to him the day before in La Reunion: see *Liberation*, 26 August 2014.

⁵⁴ *Al-watwan*, 31 March 2009.

of the discussion is necessarily legal and, in Chapter 5, French legal. In an area such as this, politics must interface with law and the vocabulary and concepts of neither can be avoided. This may make demands on the reader, but I trust that working at this interface will make the thesis more useful and in the end more valuable. Self-determination may be at first sight a political activity, but the language in which it is now considered is legal. It is notable that those represented by the Unrecognized Nations and Peoples Organization (UNPO) frame their (political) claims in terms of history, human rights and, always, of law.⁵⁵ These are always and necessarily intertwined. I have likened elsewhere the intertwining of law and politics in self-determination to a double helix.⁵⁶ In this zone they are inseparable and work on each other; any useful analysis must take account of this. The case of Mayotte is a very particular — peculiar, even — example of self-determination, but it is one, all the same. It lies within the boundaries, political and legal, of self-determination, even if the Mahorais, with their quest for *département* status, have taken a different path to the majority of self-determiners. This is a prime reason why their case is so interesting and worthy of study.

⁵⁵ UNPO, *20 Years of Promoting Non-Violence, Human Rights and Self-Determination* (The Hague: UNPO, 2011).

⁵⁶ Robert Crabtree, *New Ways of Looking at an Intractable Problem: Minorities, the Displaced and the 'Frozen Conflict' in Abkhazia* (MA Thesis, University of Adelaide, 2010).

CHAPTER 2

HISTORICAL BACKGROUND: HOW A SMALL ISLAND BECAME A *DÉPARTEMENT* OF FRANCE

Mayotte is, by choice, a DOM of France. It might be said that this is a happy example of self-determination at work: the choice made; the chosen status achieved. Yet this is not the way that the matter has been seen, especially in Moroni, the capital of the Islamic Republic or Union of Comores. However viewed, this demand for *département* status did not come out of the blue. The story is more complex. To understand this self-determination and the set of relationships within which it was made, it is necessary to be aware of the geography, demography and especially the history of Mayotte and to an extent, of the other three islands of the Comores. I will argue that it was history and experience that led the Mahorais to a mistrust of the other islands and a strong desire not to be subordinated to them. An understanding of the history is essential to a comprehension of the relationships and the decisions made. This chapter, for the most part historical, provides the background necessary for an understanding of the *Affaire Mayotte*, with an examination of events in three places: Mayotte, the other islands of the Comores and France. There are three interwoven narratives, sometimes complementary and sometimes contradictory, of narrators and actors often lacking in mutual comprehension.

I am providing the background information in more detail than usual because it is not widely known and is not readily available to an Anglophone readership. In doing so, I am in large part relying on the French scholars, who have undertaken and provided the original research, and the increasing number of local writers. This chapter will, therefore, be largely narrative in nature; the next will examine the reasons for the particular form of self-determination.

2.1 Geography and Demography

Mayotte is made up of two islands — Grande Terre and Petite Terre — and numerous unpopulated islets. These have emerged from the sea as the result of volcanic activity. The rich volcanic landmass has, over time, been surrounded by a coral reef that encloses what is believed to be the largest coral lagoon in the world. The larger island has an area of 363 km², the smaller 15 km² and the lagoon 1100 km². The lagoon offers deep anchorage, but the entrances are narrow and difficult to navigate.

Mayotte is 300 km from Madagascar and 400 km from the coast of Africa and thus lies in the centre of one of the world's busiest waterways —the Mozambique Channel. To the north and west are the other Comores islands: Anjouan (the closest), Moheli (the smallest) and Grande Comore (the largest and furthest). Anjouan is some 70 km away; Moheli is 135 km distant and Grande Comore 200 km. These distances will be seen to be significant in the subsequent discussion. Mayotte is the closest of the islands to Madagascar and the furthest from the trade routes from the north. It has undergone more influence from the former and less from the latter (particularly Arab influence) than the other islands.

Both Grande Terre and Petite Terre have red volcanic soils. Dzaoudzi, which lies between them and is joined to Petite Terre by a causeway, is a rocky volcanic outcrop with minimal topsoil. A *barge* (ferry) links Dzaoudzi to Mamadzou, the largest town on Grande Terre. The volcanic eruption which created Mayotte is said to have happened approximately 8 million years ago.¹ Fontaine points out that Mayotte is not connected geologically to Anjouan, there being a trench 2000 m in depth between them.²

¹ Guy Fontaine, *Mayotte* (Paris: Editions Karthala, 1995), p.7.

² *Ibid.*, p.8.

The year is divided into two seasons: the wet, from October to March, with monsoonal winds and abundant rains and rare cyclones; and the dry, April to September, bringing southerly winds. Average rainfall is 1500–2000 mm in the north of the island, 1000–1500 mm in the south. Throughout, weather- and human-induced erosion is a major problem. With abundant rainfall and volcanic soils, the island produces a rich vegetative growth. However, the land is hilly and, apart from the coastal fringe (now heavily populated) and valley bottoms, does not lend itself to erosion-free cultivation. The shortage of flat land, suitable for cultivation or building, decreases Mayotte’s ability to accommodate major population growth.

These two islands have a rapidly growing population. In 1958 the first official census showed 23,364; the second, in 2002, 160,000. 186,000 were recorded in 2007. In 2012, the population was 212,600.³ The sources of this increase are a booming birth rate, a decline in infant and maternal mortality, a greater life expectancy and strong inward migration, especially from Anjouan. At the last count, 54% of the population was under 20 years old, compared to 25% in metropolitan France. Despite active and successful campaigns to lower the birth rate per mother and per family,⁴ this youthful population will continue to propel total population figures upwards for the foreseeable future. This, combined with a migration from the villages to the towns (effectively Mamadzou and suburbs) and inter-island migration, will continue to put pressure on the existing — and fairly minimal — infrastructure.

³ INSEE, *Institut national de la statistique et des études économique* (2014).

⁴ Polygamy is still practised, though declining.

2.2 The Pre-Colonial Epoch⁵

The first traces of human occupation are from the eighth century AD. It is suggested that the first inhabitants were Malayo-Polynesian or Malayo-Indonesian,⁶ arriving in Madagascar at much the same time. According to Jean-Claude Hébert, these trans-ocean travellers were followed by Arab merchants from the north and Bantu seafarers, up to about 1000 AD.⁷ It is, however, clear that today's population has its origins in Africa and Madagascar, with a strong cultural Arab influence.

By the fourteenth century, Islam had arrived. Ibn Battuta leaves no record of having visited the islands but travelled extensively in the region in 1331 and found Islam throughout.⁸ The timing of the arrival of Islam — or, more likely, its gradual adoption — remains undefined.

In 1488, Bartolommeo Diaz sailed nearby, and for the first time the Comores Islands appeared on European world maps. In 1506, Pedro Alvarez Cabral reconnoitred the islands in greater detail. By 1538, they were well mapped and it is probable that Portuguese had set foot on all four islands. In 1557, Balthazar Lobo da Souza had named the islands Angarica (Grande Comore), Anjoune, Mulale and Maoto. On Mayotte, he found 30 villages of maybe 400 inhabitants each, abundant provisions and supplies of pure water from springs in the hills.⁹ In 1601, Heemskeerck was shocked to find the inhabitants “perfidious” and naked except for a minimal covering of their “shameful parts”; nonetheless, he bought cattle and caught fish and made

⁵ The early history of Mayotte is well covered in Jean Martin, *Histoire de Mayotte, Département française* (Paris: Les Indes Savantes, 2010). His coverage of more recent events is more controversial. Definitive, encyclopaedic and dense is the same author's two-volume history: Martin, *Comores*.

⁶ Jean-François Hory, *Les Hommes qui ont fait Mayotte* (Mamadzou : Editions du Baobab, 2009).

⁷ Jean-Claude Hébert, *Analyse structural des géomancies comoriennes, malgaches et africaines* (Paris: CHEAM, 1957).

⁸ Ibn Battuta, *Travels in Asia and Africa 1325–1354*, trans. and ed. HAR Gibb ([London: Broadway House 1929] New York: Fordham University Press, 2001), pp.111–13.

⁹ Martin, *Histoire de Mayotte*.

exchanges of fruit for silverwork.¹⁰ He was followed by Houtman and other Dutch navigators. By 1614, the English were arriving, some even writing thank-you letters to the Sultan upon departure.¹¹

By the eighteenth century, Anjouan and Moheli were getting most of the visitors, as Grande Comore had a bad name for massacres and Mayotte for its near-impenetrable reef. Locally, a trade of slaves for cowries¹² was active between the islands, Madagascar and the African coast. Europeans had difficulty ascertaining who was Sultan of what. In 1790 the Sultan of Anjouan tried to buy or hire a French ship to launch an invasion of Mayotte, but that came to nothing, and the ship was used for piracy instead — an activity long- and well-established in the region.

In 1792, invasion fleets of pirogues from Madagascar started to appear. The ancient village of Tsingoni was part-destroyed in 1793, and Sultan Salim II decided to move his capital to Dzaoudzi. Salim died in 1806, and was briefly succeeded by his son Soilihi, who, as Martin says,¹³ had only a short time to make himself unpopular before being assassinated by a trusted counsellor, who became Sultan Ahmed and was in turn killed by his nephew. The society was suffering badly from Malagasy attacks, feuding at the top and the depredations of slave-hunters. Many died or left for overseas (particularly Zanzibar). By 1804, an estimated 1500 inhabitants were left on Mayotte. From 1792 to 1817, the attacks from Madagascar multiplied, and Sultan Boina Combo ruled over an almost depopulated island.

Meanwhile, in Madagascar, one Tse Levalou had come to the throne of the Malgache kingdom of Boina by devious means, converted to Islam and re-named himself Adriantsoli. In 1832, he appeared in Mayotte with a claim of blood-

¹⁰ Martin, *Histoire de Mayotte*, 26, quoting Alfred Gevrey, *Essai sur les Comores* ([Pondichéry: A Saligny, 1870] Mamadzou : Editions du Baobab, 1990).

¹¹ Martin, *Histoire de Mayotte*, p.26.

¹² Cowries were shells used as a form of currency.

¹³ Martin, *Histoire de Mayotte*, p.27.

brotherhood with Boina Combo's father. The Sultan welcomed him warmly, but he turned out to be a cuckoo in the nest, and took over Grande Terre by force. Boina Combo appealed for help, first to Anjouan then to Moheli but was rejected by both. Moheli invaded on its own account and took over a weakened Mayotte. Adriantsoli went to Anjouan to look for allies, and returned with the military aid of the Sultan Abdallah to take on the Moheli invaders. By 1835, they had succeeded and the Moheli garrison was massacred. Mayotte was virtually depopulated and greatly weakened by hosting so much fighting. It was also once again suffering the depredations of slavers from Madagascar. The last remaining Mahorais notables, including Boina Combo's daughter, appealed to Anjouan. The son of Abdallah sent Adriantsoli to Mayotte with the title of Governor. More fighting ensued. Adriantsoli proclaimed himself Sultan of Mayotte under the name Bomba Sadiki.¹⁴ This was the man who offered Mayotte first to the British and then to the French. It may be seen that the inter-island relations had long been of violence, invasion and razzia; in future times there would be no remembered 'golden past'. There was no tradition of empathy between the islands.

In 1837, Adriantsoli approached the British Admiralty, offering rights to the island in exchange for payment. He received a response a year later from Commander Craigie of HMS Scout, saying that Lord Palmerston had considered the offer but did not want to get involved in the affairs of the Archipelago as they were too confusing and tangled.¹⁵

¹⁴ Pierre Caminade suggests that Adriantsoli had a claim to a good title: « ...*Qu'il possède par droit de conquête et par convention...* » Pierre Caminade, *Comores–Mayotte : Une histoire néocoloniale* (Paris: Editions Agone, 2010), p.51.

¹⁵ Ibid. p.42. Martin comments that this was an understatement. It is interesting to speculate how things would have been different in Mayotte had Lord Palmerston taken up the offer.

In 1839, *Amiral* Anne Chretien de Hell, the Commandant in Ile Bourbon¹⁶ sent Commandant Passot to circumnavigate and map Madagascar. He was also to investigate whether there were possibilities for establishing a French influence in Moheli. He was accompanied by a Mme Droit, who had spent some time in Moheli and was a fluent speaker of Malgache. When his ship put in to Nosey Bé, off the northwest coast of Madagascar, the 12-year old Queen asked whether France would be prepared to take her island as a Protectorate. Passot returned to Ile Bourbon with this information, and was instructed by de Hell to go back and negotiate. Passot returned in 1840; the Queen accepted his terms, and the island was ceded to France. She also suggested that her great-uncle Adriantsoli might be interested in a similar arrangement for the island of which he had proclaimed himself Sultan, Mayotte.

In August 1840, Passot's *La Prévoyante* sailed to Mayotte, with two representatives of the Queen aboard. It was the first visit by a French navy ship to the island. Adriantsoli felt himself under threat of an invasion from Anjouan, and indicated that he would like a similar arrangement to the Nosey Bé agreement; his next request was for weapons. Passot replied that he had no authority to supply weapons, but would pass the request to de Hell in Ile Bourbon. All this was reported to de Hell, who sent Passot back in February 1841 after permission had been granted by the Minister in Paris. De Hell had emphasised the importance of keeping the British out, saying that possession of Mayotte was "indispensable".¹⁷ He also emphasised Mayotte's potential as a port and military base.¹⁸

¹⁶ Present day La Réunion. This was the main French naval base in the Indian Ocean following the loss of Mauritius to Britain in 1815. It suffered from having no good natural deep-water harbour. It has been suggested that this is the reason that Britain allowed France to remain there.

¹⁷ Thierry Flobert, *Les Comores : Evolution juridique et sociopolitique* (Thèse de Doctorat, Université d'Aix-en-Provence, CERSOI, 1974).

¹⁸ De Hell wrote: "The port of Mayotte is remarkable for its extent and its safety. According to the military and maritime reports the possession of Mayotte would almost make up for the loss of Mauritius." This was taken up in Paris, where a contributor to *Le National*, 7 October 1844 wrote: "Mayotte has the finest maritime position it is possible to see. What good luck for France, and what a

Meanwhile, Adriantsoli was feeling less threatened by the Anjouannais and his price had gone up: from 1000 to 2000 Spanish piastres to be paid annually and he would keep the title and prerogatives of ‘Governor’. Passot made a trip to Anjouan to ask Sultan Salim the nature of the Anjouannais claims over Mayotte; Salim replied courteously that it belonged to him, not Adriantsoli, but he would recognise the transfer to France in exchange for customs rights.¹⁹ Passot continued to negotiate with Adriantsoli; the Act of Cession was signed on 25 April 1841. It contained nine Articles and was written in French and Arabic, with three copies in each. The pension was 1000 Piastres. Two years passed before French possession was effected. Things went from bad to worse in Mayotte under the rule of Adriantsoli, who was a tyrant to the people and disliked by all except Sakalava loyalists from Madagascar who were permitted to enslave the Mahorais.²⁰

2.3 The Early Colonial Period: One Island

2.3.1 Administrative difficulties

On 27 May 1843, Passot was given his commission as Commandant of the new territory, and he took up his position on 18 June, with one company of marine infantry as garrison. Once France had acquired this new possession of Mayotte, it was necessary to decide where it would fit in, in the command and administrative structures

future is promised in time of war for our squadrons which had lost hope of marking a presence in these waters after the loss of Ile de France”. Quoted by Flobert, *Les Comores*, p.79 (my translations).

¹⁹ Martin, *Histoire de Mayotte*, p.49.

²⁰ Martin quotes the Reverend Griffith, an envoy from Mauritius who visited representing the British government: “I have great regret to inform you that I have received very bad reports of your behaviour as Chief, that you tyrannise your subjects and oppress them as much as you can. These reports ... all say that you are a very bad man, a tyrant, a traitor, that you take married women by force, that you reduce your subjects to slavery and sell them to the Europeans of Mozambique ... The Queen of England does not wish to maintain friendly relations with any man on the face of the earth who involves himself in the traffic of human beings and sells them like cattle, sheep or goats.” 21 November 1840. Others complained that he was drunk, aggressive, dirty and ill-dressed. Martin, *Histoire de Mayotte*, p.58.

of the French colonial empire.²¹ This was a recurring issue for more than one hundred years. From the agreement of 1841 until 1843, Mayotte was a dependency of La Réunion (Ile Bourbon). On 29 September 1843, an Ordinance was proclaimed giving administration to the *Commandant Supérieur* in Nosey Bé.²² On 10 November 1844, the seat of government was moved to Dzaoudzi, with the *Commandant Supérieur* installed there, with Nosey Bé inferior with a *Commandant Particulier*. In 1848, the *Commandant Supérieur* was given a new title: *Commissaire de la République*. At this time there was more commercial activity and development in Mayotte than in Nosey Bé, but whichever way the administrative orders flowed, there were difficulties and failures as travel was slow, communication difficult and rivalries could be intense. In 1877, there was an Inquiry, followed by a Decree: Mayotte and Nosey Bé were to be separated, each with a *Commandant* and a *Conseil d'Administration*. In 1887, by the Decree of 5 August, the *Commandant*, who had become a *Commissaire* became *Gouverneur*. By this time the three other Comores islands had become French 'Protectorates' under Sultans. Another lowlier, level of colonial administration, the *Chef de Service de l'Interieur*, was set up on each island. This system at least had France represented on each island, but it proved too expensive for the Treasury in Paris. There was another difficulty: if Dzaoudzi was a low-level posting for an aspiring officer of the colonial service, to be on another island reporting to Dzaoudzi was the lowest rank imaginable; the quality of the applicants was low, the occupation of the

²¹ This account of the colonial administrations draws heavily on Boisadam, *Mais que Faire de Mayotte?* Boisadam draws in turn on Martin's work and gives an admirably clear account of events unfolding. Boisadam was *Préfet* in Mayotte for two terms. His book's title translates as, *What is to be done with Mayotte?*

²² Frequently written 'Nossi Be' and in other forms.

position of *Résident* usually short²³ (loneliness, alcoholism and disease were endemic), and the success of the colonial regime minimal.

In 1896, there was another Inquiry and another Decree.²⁴ The colony of Mayotte + Protectorates was placed under the Governor of La Réunion. The Governor and *Chef de Service* positions disappeared, to be replaced by an *Administrateur* with a *Conseil d'Administration*. The line of command was to go through La Réunion, but in practice it was no more difficult to deal directly with Paris. The 1896 system was a failure, and in 1897, the Decree of 6 July 1897 allowed the structure to concur with the reality, giving Mayotte + Protectorates an independent administration, answerable to Paris, with a *Chancelier* in Grande Comore and Anjouan. In practice this gave semi-autonomy to Grande Comore and to Anjouan + Moheli. In 1899, this formation was upgraded to a full Colony, with a Governor + Secretary-General in Dzaoudzi and a functionary in each Protectorate with a *Conseil d'Administration*. Taxes were, however, to be fixed in Paris. In 1901, taxes could be determined locally, by the Governor. For seven years the Colony enjoyed this high level of self-administration, until in 1908 the Colony of Mayotte + Protectorates were attached to Madagascar,²⁵ to be administered from Antananarivo²⁶ as a province of the colony of Madagascar.²⁷ In 1914, all budgetary powers were centralised in Madagascar.²⁸ The *Conseils d'Administration* were abolished. Each island was to be a sub-division, under an *Administrateur des Colonies*, based in Dzaoudzi, answerable to the Governor-General

²³ Flobert reports that there were 13 *Résidents* between 1896–1904, post-Humblot, on Grande Comore alone. Flobert, *Les Comores*, p.128.

²⁴ Decree of 23 January 1896.

²⁵ Decree of 9 April 1908.

²⁶ In terms of command structures, this might have made some minimal sense. In terms of active administration, it made none. Antananarivo is inland, in central southern Madagascar, hard to reach even from Nosey Bé. An incumbent there would have no concept of life in, and the problems of, the Comores.

²⁷ The one thing the four islands could agree on was a dislike of being attached to Madagascar. Martin, *Histoire de Mayotte*, p.104.

²⁸ Decree of 23 February 1914.

in Antananarivo. For the first time under French rule, all four Comorien islands were on an equal basis, even if the chain of administration went through Dzaoudzi. This is a point of major significance for future developments.

1925 brought another Inquiry and another decree.²⁹ The difficulties of rule from Antananarivo were acknowledged. Distance and religious differences were shown to be among the problems. The solution was to be something of a return to the pre-1914 position, with an *Administrateur Supérieur* in Dzaoudzi with a *Conseil Consultatif*. His decisions needed to be approved by the Governor-General in Madagascar. The administration may have been in Dzaoudzi (which continued as a French enclave, well insulated from the day-to-day life of Mayotte), but the other islands were not returned to a position of inferiority to Mayotte. This form of administration lasted until 1928,³⁰ when the *Administrateur* became a Lieutenant-Governor and the Comores islands effectively an autonomous province, with a *Chef de subdivision* in each island. In 1946, the re-organization was major: by the Law of 9 May 1946, the Comores — the four islands together — gained total financial and administrative autonomy, answerable directly to Paris and no longer through Antananarivo, as a TOM.³¹ A *Conseil-General* of 24 members, elected by universal suffrage was created.³² 20 members were to be elected by autochthones, with 10 seats for Grande Comore, 5 for Anjouan, 3 for Mayotte and 2 for Moheli. This effectively changed the position of Mayotte vis-à-vis the others and could be said to be the beginning of the modern era. The colony of the Comores, as four equal islands under

²⁹ Decree of 27 January 1925.

³⁰ Decree of 9 November 1928.

³¹ Caminade insists that this was the moment at which all inhabitants of all four islands became French at the same time. He says that it is a “lie” (« mensonge ») to claim that the Mahorais became French before the others: « C’est seulement à ce moment (1946) que les indigènes de l’archipel accèdent à un statut français, contrairement à un mensonge répété à l’envie selon lequel les Mahorais seraient devenus Français bien avant les Comoriens des autres îles ». Caminade, *Comores–Mayotte*, p.52. If ‘becoming French’ means ‘acquiring French status’, he is correct. This definition ignores 105 years of French rule as a colony. Mayotte was a colony 50 years before the other islands became Protectorates.

³² Decree of 25 October 1946.

French control, dates back de facto to 1914. It was developed by the changes of 1928 and made explicit in 1946. A separate colonial entity of the Comores dates back only to 1946, the year it became a TOM.

This detailed account of changes of administrative structure has had two purposes. One is to show the difficulties France found in administering effectively its new possession. No system or structure seemed to work; change was constant. If there had been value in Mayotte, it was not developed to any great extent. Periodically, administrators sent glowing reports to Paris, emphasising the potential of Mayotte, both economic and strategic. Beyond this, little was done — Mayotte did not become the “Gibraltar”³³ of the Mozambique Channel, the naval base that La Réunion could never be,³⁴ nor was any economic potential fulfilled. The administrative failure was both a cause and evidence of the wider failure to do anything with or for the island. France had bought a possession that it neither needed nor knew what to do with. The strategic virtue of having kept the British out³⁵ was not a sufficient reason for buying this island and acquiring the others.

The second reason is to show the gradual stages by which Mayotte went from being the only French possession in the Comores to being the predominant one, to being one among four equals, to being a junior partner by weight of population numbers in a general suffrage. In this history lies the key to subsequent developments. The markers were administrative alterations; the changes, in reality, went far deeper.

³³ Sir John Marshall of HMS Isis, in conversation with Passot. Quoted by Martin, *Histoire de Mayotte*, p.60. Consul Vincent Noel was another booster of Mayotte’s potential: “The fortunate situation of Mayotte between Madagascar, the east coast of Africa, the Red Sea, the Persian Gulf and India would seem to give it the destiny of becoming a significant trading centre. But Mayotte is more than a commercial port; it is a sure refuge of safety for our ships, an impregnable citadel on the high seas — another Malta in the Indian Ocean”. Quoted by Martin, *Histoire de Mayotte*, p.59 (my translation).

³⁴ La Réunion’s coast is of cliffs arising from the ocean, with no natural anchorage or harbour.

³⁵ Boisadam suggests that if the French had not made the agreement with Adriantsoli, it would at least have been offered again to the British, who were in friendly contact with the Sultan of Anjouan. Boisadam, *Mais que faire de Mayotte?*, p.22.

So far, the history of the administration under the French has been considered. It is time to turn to the wider social history.

2.3.2 Colonial development

When Passot travelled around what was to become his new domain, he was struck by the lack of population.³⁶ Wars, razzia and slaving had taken an immense toll. Adriantsoli was bequeathing him an island at a low ebb.³⁷ Passot, the enthusiast for Mayotte, was quickly removed from his post as a result of intrigues in France. Others came and went before Passot was reappointed, taking up his post in January 1846, still with dreams for the future of the island. He was there for slightly more than three years, during which time French colonists were encouraged.

The arrival of French colonists, for the most part from Nantes, in western France, and from La Réunion overlapped with the abolition of slavery.³⁸ The earliest estates were set up on the basis of slave labour, both local and introduced. Slavery was nothing new to the island — the Sakalavan landlords who had come with Adriantsoli both used slaves and sold them overseas.³⁹ However, Passot was strongly anti-slavery and the influence of Adriantsoli's Sakalavans was waning; moreover, as Martin points out,⁴⁰ the number of slaves in Mayotte was too small to provide a useful workforce. The workforce for the new plantations would have to take the form of 'free' men from elsewhere. Slavery was abolished in Mayotte two years before the other French colonies.

³⁶ Gevrey lists the population in 1843 as being: 600 Sakalaves, 700 Arabs, 500 Mahorais and 1500 slaves. Total: 3300. Gevrey, *Essai sur les Comores*. The count of 1846 produced 5286 inhabitants of which 1439 were autochthones. Bonfils' more methodical census of 1851 had 6191, of which 1196 were Mahorais and 2036 from Mozambique. Men outnumbered women by 2956 to 2300, difficult figures for a polygamous society. Martin, *Histoire de Mayotte*, p.73. By 1866 the population had doubled.

³⁷ Boisadam suggests a population of 3000. Most of these were clustered on Dzaoudzi, with Grande Terre almost deserted. Boisadam, *Mais que faire de Mayotte?*, p.24.

³⁸ This was also a time of revolutionary change in France.

³⁹ The Sakalavan landlords came from northern Madagascar.

⁴⁰ Martin, *Histoire de Mayotte*, p.64.

‘Vacant’ land was to be considered part of the public domain, and could be granted to a planter who requested it, if he could show sufficient guarantees of funds. This was effectively a concession, which could be annulled if the grantee took no action to increase the value of the land. Such annulments occurred quite frequently. A holding was supposedly limited to 500 hectares, but this limit was evaded by the use of dummy-names. Such arrangements excluded the Mahorais, who were considered to be the holders of the non-vacant lands, small in quantity and least valuable in quality. Many Réunionnais applicants were excluded by the guarantee requirements. The *Société des Comores*, made up of Nantais investors, became the biggest landholder with more than 3000 Ha.⁴¹ The law was changed in 1864 to recognize proprietorial rights in place of concessions. By this time the sugar properties were well established.

Several crops were planted, but the main emphasis was on sugar-cane, the backbone of many French colonial enterprises. After difficult beginnings, the sugar plantations were established in all the richer soils of Grande Terre wherever the slopes were not too steep. Establishment was hard enough — excessive rain, erosion, disease and drought took their toll. The factories were hard to build, harder to equip and harder still to operate successfully. When at last they were producing, the product had to compete in world markets. This became progressively more difficult as the world glut of sugar increased. In Mayotte, production was always relatively small scale, late-established and far distant from the market-place.⁴² It was not all gloom — between the beginning and the end there were some good years; however, as a long-term monoculture, it was not the best choice of crop to bring Mayotte out of poverty and obscurity. The collapse came finally in the 1890s. In the early days three things

⁴¹ Ibid., p.66.

⁴² Vincent Forest, *Mayotte et la canne à sucre au 19ème siècle : Un espoir déçu* (Mamoudzou: Direction Territoriale des Affaires Culturelles de Mayotte, 1996). The first crop was of 5 tonnes in 1850, 143 t in 1852; it passed 1000 t in 1859, 3000 t in 1867 and peaked at 4235 t in 1890. Prices were dropping from 1870 onwards.

became apparent: that there was not the labour to work the plantations, that the surviving Mahorais were unwilling to do it and that *paludisme* (malaria) was rampant. The response of the colonists was to import ‘free’ workers from Madagascar and East Africa,⁴³ who were to live on the plantations (in conditions that were said to be no better, and often worse, than those of the slaves) and work from dawn to dusk for minimal survival wages.⁴⁴ The Mahorais were to remain, subsistence-farming and fishing, in their villages and on the lands that could not be used for plantations; the new migrants lived and worked on the plantations, alongside their (better-housed) employers and overseers; the administrators and military lived on the outcrop that is Dzaoudzi. The four parts of the population lived largely separate lives.

This pattern was to change over the course of time, as the new migrants (whether from East Africa, Madagascar or the other islands) and the autochthone population increasingly intermingled and intermarried. This was facilitated by the incomers turning to Islam. The populations fused. At the end of the century, when the sugar industry collapsed, those who lived on the plantations either migrated to existing villages or started new ones, with all the accumulated cultural complexity that has been the hallmark of Mayotte ever since.

On the French side, life was centred on Dzaoudzi and Petite Terre. In 1868, Gevrey noted a total French population of 127, of whom 76 lived on Dzaoudzi; 39 were in the administration and 37 in the military.⁴⁵ To attend to their needs there were

⁴³ The majority were from Mozambique. By 1867, there were 2245 migrants from Mozambique, 268 Malgaches, 274 from the other Comorien islands and 184 Mahorais working on the plantations. Those from Mozambique were considered the hardest workers, with some immunity to Malaria. Gevrey, *Essai sur les Comores*. Gevrey considers it beneficial that at the end of their contract they stayed in Mayotte and augmented the working population.

⁴⁴ The wages frequently returned to the landowner by way of charges for provisions. The monthly salary was 8 francs, with 2.50 francs taken out for food (and usually more for shelter) for 10 hours a day, 7 days a week, cutting a minimum of 5 m³ of cane per day. There was an attempted insurrection in 1856, and strikes in 1866 and 1876. Forest, *Mayotte*, pp.21–3.

⁴⁵ Gevrey, *Essai sur les Comores*.

five taverns; drunkenness and malaria ruled.⁴⁶ By 1883, the white population was 218. A hospital, a school and European style houses were built from materials shipped from France. There was only marginal contact with Grande Terre, where the small number of planters ruled their domains with little interference. In general their rule was harsh, sometimes cruel. The *Corvée* was widely enforced.⁴⁷ Administrators could come and go without having much effect on the lives of the majority across the two kilometres of water.

Two languages came to co-exist: Kibushi and Shimaore. The former has a degree of communality with Malgache languages of northern Madagascar; the latter has common roots with Bantu languages or Swahili.⁴⁸ Shimaore is now probably advancing at the expense of Kibushi, and conversation may be in a melange of the two (bilingualism is the norm)⁴⁹ with elements of Arabic and French. There are extensive linguistic crossovers with the other islands of Grande Comore, Anjouan and Moheli, which had differing migrations from similar sources, so that there is a possibility of mutual understanding but not one commonly held language.

2.4 The Late Colonial Period: Four Islands

On all the other three islands, the role of an Arab elite was significant and was to continue. Moheli's Sultan ruled under the protectorate of the Sultan of Zanzibar

⁴⁶ Martin wrote most scathingly of the army unit: the unemployed of Paris press-ganged in the wake of the 1848 uprising. Bonfils described them as: « *Triste débris...ces hommes sont reconnaissables à la teint jaunâtre, à leur caducité précoce, à l'air dépravé qui leur ont affligé la fièvre et l'abus des spiritueux.* »

⁴⁷ The *Corvée* was a form of enforced labour for communal infrastructural projects, such as the building of roads. For all Comoriens, six days per annum, increased to eight in 1917.

⁴⁸ This is the subject of argument; however, the links with an African language are not disputed.

⁴⁹ In general, where there is a norm of bilingualism, the major will increase its predominance in usage over the minor. Here, both languages are essentially unwritten — although there may be a transcribed form. Both are in some competition with French, the language of written record and official usage, actively taught in schools.

until the 1860s, when the French adventurer Lambert⁵⁰ gained a concession from the Queen.⁵¹ Anjouan was the richest and most densely populated of the islands, ruled by the Sultan Salim. He signed a treaty with Britain in 1849, having had friendly relations for several years. A Concession was agreed with two adventurers, Napier and Sunley, to develop a sugar industry.⁵² Napier died soon after; Sunley went on to be the British Consul and virtual ruler of Anjouan, and after 1881, of Moheli as well. When Lambert died, the next Queen re-negotiated his concession with Sunley.⁵³ In 1886, Sunley died and Germany was thought to be circling the region in search of colonies and influence. France offered (with a gunboat) Protectorate status to Anjouan⁵⁴ and Moheli. This was accepted at first in Moheli; in Anjouan there was resistance from the beginning from the old Arab ruling class, but this was more concerned with the emancipation of their slaves than with Protection from France.⁵⁵ Britain, in a period of *entente cordiale*, was prepared to allow France to pre-empt any German bid in the region.

In Grande Comore circumstances were more complicated with twelve Sultanates. The dominant Sultans were those of Itsandra and Bambao, constantly at war. All were members of the Arab elite. In 1883, Said Ali of Itsandra granted a Concession to Leon Humblot to develop the whole island of Grande Comore and in particular its forestry, regardless of the other Sultans. Said Ali was to receive a

⁵⁰ Lambert travelled as the self-ennobled 'Duc d'Emirne'. Flobert, *Les Comores*, p.97.

⁵¹ Newitt, *The Comoro Islands*, p.29. The Treaty was to last for sixty years and was to allow Lambert ownership of any land that he might like. The Queen was to provide the workers, and was entitled to 5% of the profits. Lambert in exchange was to "help the Queen in her efforts to civilize the country and make it moral".

⁵² Newitt notes this was more successful and profitable than that of their French rivals on Mayotte. Newitt, *The Comoro Islands*, p.32. Flobert emphasises slavery as their basis. David Livingstone visited, was shocked, and complained to London. Sunley was obliged to resign as British Consul, but continued to run his estates as before. Flobert, *Les Comores*, p.79.

⁵³ Newitt, *The Comoro Islands*, p.35.

⁵⁴ This is Newitt's account. Flobert insists that there was no mention of the word 'Protectorate; the Treaty was to ensure 'the preponderance of France' in Anjouan. Sultan Salim signed it as a Treaty of alliance, not protection. Flobert, *Les Comores*, p.78.

⁵⁵ The abolition of slavery was the point at which France became unpopular. By 1889, the call was: « *Nous voulons les Anglais* ». It took 1000 troops from Diego Suarez and the imprisonment of the Sultan to put down the 1891 uprising. Flobert, *Les Comores*, p.89.

percentage. Humblot, at first sight a mild-mannered botanist, turned out to be the most rapacious of all the adventurer/concessionaires.⁵⁶ In 1886, the visiting Karl Schmidt hoisted a German flag. This caused a French intervention and the installation of a Protectorate. Humblot continued to rule until 1906 “as a despot” through his *Société Anonyme Grande Comore*.⁵⁷

Thus it was that in 1886 French power was expanded, with Mayotte as a colony and Anjouan, Moheli and Grande Comore as ‘Protectorates’. Both Arab elites⁵⁸ and European adventurers had in theory submitted; in practice, life went on. As we have seen, there were administrative changes, of centralisation⁵⁹ and de-centralisation. The years passed. The sugar industry collapsed and no truly viable alternative was found. The islands slumbered under French neglect.⁶⁰ Two World Wars passed by; some Comoriens were engaged in French colonial regiments based in Diego Suarez (WWI) and Djibouti (WWII) and saw service in many theatres of war.⁶¹ There was a British landing on Anjouan, and an occupation of Mayotte from 1942–46, which left surprisingly little trace.

⁵⁶ Newitt. *The Comoro Islands*, p.30.

⁵⁷ Ibid., p.32. In general, Newitt is critical of France and the French. He comments (at p.37): “Repeatedly the French showed their willingness to enforce contracts with gunboats and to maintain the Francophile rulers in power. This French dominance through client-rulers and French companies had already set a pattern that France was to resume after the formal dismantling of the Empire in the 1960’s. It was neo-colonialism before colonialism had even arrived.” In 1896, Humblot was stripped of his official position, but kept his plantations, his power and his pattern of behaviour; the Sultan went into exile in La Réunion. Flobert, *Les Comores*, p.126.

⁵⁸ There were forced abdications of the ruling Sultans: Anjouan in 1909, Grande Comore in 1910 and Moheli in 1912.

⁵⁹ One particular victim was the justice system. Rudimentary as it was, it was pulled back to Madagascar and therefore became more French/Christian. On the Islands, this had the effect of giving more everyday influence to the pre-existing Muslim courts.

⁶⁰ Pierre Vérin writes of an era « *de stagnation et de torpeur* ». Pierre Vérin, *Les Comores* (Paris: Editions Karthala, 1994), p.221. To be sent to the Comores as an administrator was seen as a form of punishment in Madagascar. Alternatively, it was a dumping ground for the alcoholic or incapable. The language barrier was complete, joined with lack of comprehension of Islam. Martin, *Histoire de Mayotte*, p.110.

⁶¹ A number went to the Western Front. Martin points out that on their return, the veterans were held in high esteem in their villages. Martin, *Histoire de Mayotte*, p.111.

2.5 From Colony to *'Territoire'*

Major changes occurred in 1946 as the French Empire attempted to adapt to postwar conditions. The Comoriens of four islands became French citizens and the Comores as an entity became a TOM, with a *Conseil General* and the right to elect a *Sénateur*⁶² and first one, then two, *Députés* to represent the territory in Paris. At first the *Conseil* remained in Dzaoudzi, then, under pressure from the man who was to become its President, *Député* Saïd Mohamed Cheikh,*⁶³ it moved to Moroni on Grande Comore. The four representatives of Mayotte were Georges Nahouda, a mixed-race minor plantation-owner, Mohamed Toufail, Ibrahim Ramadan, and the ethnic-French Louis Foucault to represent the voters with metropolitan status.⁶⁴ Nahouda brought his great-nephew Marcel Henry* with him to Moroni to act as secretary and interpreter. For the moment, the administration remained in Dzaoudzi, separate from the *Conseil*.

One of the issues to confront the new *Conseil General* was that of land-holding in Mayotte. From 1911, the Torrens system of registration had applied to the plantations, but not to the holdings of the villages. With the collapse of the sugar industry and the bankruptcies of the operators, large swathes of the island remained untended. It was decided that these properties should be subdivided and sold off by lots (without Torrens titles). However, the unit size chosen, 5 hectares, put its cost beyond the ability of any local Mahorais to buy. The purchasers were merchants and politicians from Anjouan, headed by Ahmed Abdallah,* the richest man in the islands. Many of the units were promptly re-aggregated into major holdings, where the

⁶² The first was Jacques Grimaldi, a colon from Anjouan.

⁶³ Please turn to App.1 for biographical notes on all marked with an asterisk.

⁶⁴ There were two colleges of voters: one the metropolitan, the other the citizens of local status. There were four seats for the first, 20 for the second, in the archipelago-wide body.

Mahorais refused to work for the new owners.⁶⁵ The Anjouannais landlords then imported impoverished fellow-islanders to work on their properties.⁶⁶ Effectively one set of *colons* had been replaced by another, and no more land was available to the Mahorais than before.⁶⁷ One more cause of inter-island friction was established; one more reason for the Mahorais to think that the influence of the other islands was nefarious.

The 1956 *Deferre Loi-Cadre* and the subsequent Decree of 22-7-56 gave further powers to a *Conseil de Gouvernement*, with Ministers and an Executive under the Presidency of a *Chef du Territoire*. 1958 brought the referendum on acceptance of the Fifth Republic, which gained a huge ‘yes’ and brought voting to the mass of the population for the first time (the 1946 votes had been by very restricted *collèges*). The Comores, as a TOM, supported de Gaulle with enthusiasm.

On 14 May 1958, the Territorial Assembly, which had already moved, decided to relocate the *chef-lieu* (effectively the administration plus the jobs and status that went with it) to Moroni, the capital of Grande Comore and the home of Saïd Mohamed Cheikh, the Assembly President. Many, including the French, took the view that it would increase administrative efficiency and reduce costs to have the seat of government and the administration in the same place;⁶⁸ moreover, Dzaoudzi was a

⁶⁵ This attitude was partly particular to Anjouannais landlords/employers and was also part of a general Mahorais dislike of working on the land of others for wages. This is discussed by many commentators, not least Flobert, who is mildly critical of what he describes as their ‘*farniente*’ approach: “Each pushes himself to the minimum effort to be able to feed himself and to produce a little surplus”. Flobert, *Les Comores*, p.191.

⁶⁶ Anjouan had chronic problems of shortage of land for the population.

⁶⁷ With the exception of the conversion of the de facto villages set up by landless workers on the largest properties into de iure villages with land rights for the residents. Martin, *Histoire de Mayotte*, p.122.

⁶⁸ France contributed funds for this purpose. In Comores, it was widely believed that the move was instigated by France. Damir Ben Ali, Comorien historian, is an example. Damir Ben Ali, « *L’implantation de la capitale a Moroni, l’instrumentalisation politique* », *La Revue Tarehi* (Moroni), 2004. Mahamoud takes this as a device for increasing the discord, to divide and rule: “Moreover, Cheikh did not act alone. On the contrary, he was provided with special funds by the French authorities to effect the removal in 1963. Is this not just another case of ‘Divide and Rule’?” Ahmed Wadaane Mahamoud, *Mayotte : Le Contentieux entre la France et les Comores* (Paris: L’Harmattan, 1992), p.25.

very small, cramped and waterless island.⁶⁹ This move was bitterly opposed in Mayotte, where jobs and status were lost and all government activity was removed to the furthest point in the islands.⁷⁰ Moreover, the Mahorais were expected to contribute to the considerable cost of the transfer. There were also shortages of food and consumer goods. This was the point at which an opposition movement started to form in Mayotte, a political expression of a lack of faith in the concept of a united Comores.⁷¹ The first public manifestation was in the vote of 11-12-1958 on the status of the Territory, a question put, as we shall see in the next chapter, to all TOMs and DOMs. The Assembly decided to maintain the status of TOM, with the four representatives of Mayotte voting for DOM status.⁷² The difference of opinion was there for all to see.

The actual moving of the *chef-lieu* only started in 1962, but long before that, relations had worsened. Attempts were made to remove the bulldozer, the gaslights and the barge (all critical to the well-being and self-esteem of Mayotte) to Moroni. Popular demonstrations ensued. In 1958, the *Congrès des Notables de Mayotte*⁷³ was set up, as an outcome of the meeting of more than 100 notables at Tzoundzou⁷⁴ on November 2, with Georges Nahouda as President and Marcel Henry as Secretary, and in 1959 the *Union pour la Défense des Intérêts de Mayotte* (UDIM), the first local

⁶⁹ Moroni's water supply was only marginally better, as the Mahorais were quick to point out.

⁷⁰ The Anjouannais argued that the capital should be on their island, emphasising its centrality. Martin, *Comore*, p.124.

⁷¹ Caminade agrees on this point: "This is the origin of Separatism, due in the main part to the transfer of the Capital" Caminade, *Comores-Mayotte*, p.52. I discuss this further in Ch.3.

⁷² TOM suggests a looser relationship with France; DOM stands for integration into France. I examine this distinction in detail in Ch.5. This aspiration of Mahorais legislators, first publicly uttered in 1958, was what was achieved in March 2011, 53 years later. The four other small *Territoires* — St Pierre et Miquelon, Djibouti, Nouvelle Calédonie and Polynésie — all voted for the TOM status quo.

⁷³ It was said by some to be with finance from the French Secret Service. Thierry Michalon, *Mayotte et les Comores: Le dépit de la fille aînée* (Ajaccio: Université de Corse, 1984).

⁷⁴ There is no written record or account of the meeting. Rémi Carayol, « *L'histoire de Mayotte de 1946 à 2000* », *Jana Na Leo*, no.49 (1996). Jean Charpentier emphasised the importance of gaining the support of the notables and the elders of the villages, where the decisions were always made by unanimity and the deliberations were guided by the elders. Jean Charpentier, « *Referendums mahorais, lois françaises et hégémonie politique comorienne* », *Revue française d'études politiques africaines*, Juin 1976.

political movement, was formed. The organizers were a politically literate minority, *métis* rather than autochthone,⁷⁵ with a command of French and accustomed to dealing with the French. They were, however, attempting to broaden the base. The *Mouvement Populaire Mahorais* (MPM) developed out of UDIM in 1966 to become the dominant political movement on the island. In 1959, Georges Nahouda went to Paris to plead the Mahorais cause with the Minister, Jacques Soustelle. He died while on the return journey, mourned by all and considered « *le père de départementalisation* ».

In 1966, Saïd Mohamed Cheikh, in a conciliatory gesture, made a visit to Mayotte. On his arrival and during his meeting with Mahorais notables, demonstrators surrounded him and he was the object of stone-throwing by the women of Mayotte, the ‘*chatouilleuses*’.⁷⁶ Cheikh left, humiliated, vowing never to return and to minimise any government assistance to the island. Another attack by the ‘*chatouilleuses*’ followed in 1967, this time on the local radio station after a broadcast by Cheikh. In retaliation, all Mahorais in ministerial positions were dismissed from office. Relations continued to deteriorate. When, in 1969, a group of Mahorais notables were leaving to go to Moroni to ask the government: « *de considérer Mayotte comme partie intégrante du territoire et de normaliser les relations avec cette île* », ⁷⁷ they were physically opposed by the

⁷⁵ They came from a few families established in Pamendzi, many with their origins in Ste Marie, off the coast of Madagascar. Martin, *Histoire de Mayotte*, p.125.

⁷⁶ This translates as ‘the ticklers’. The women developed an important political role. Flobert suggests that when the capital was moved to Moroni, the ‘wives mistresses and concubines’ were left behind, but provides no evidence for this, or detail. Flobert, *Les Comores*, p.372. In general, the women did not participate in the men’s organizations such as MPM, but maintained their own unnamed, unformalised but tightly bonded movement. Caminade describes them as a militia: « *Une milice féminine qui attaquent les forces de l’ordre sous commandement de Moroni* ». Caminade, *Comores–Mayotte*, p.56. Whereas the MPM had a leadership that was largely *métis*, the women’s movement was for the most part autochthone. Flobert sees them as being used as a tool by the MPM/UDIM leaders, but provides no evidence for this. Zena M’dere, their leader, came from Madagascar but was of Mahorais origins. Flobert has her as ‘expelled’ and says, probably correctly, that she was totally illiterate and spoke not a word of French. Flobert, *Les Comores*, p.372. But this is insufficient reason to portray her as a tool of the men. All commentators agree that ‘she galvanized the women’ (p.373). Mayotte had always been more matriarchal than the other islands, particularly Grande Comore, and women had more freedom and more influence.

⁷⁷ “To consider Mayotte as being a fully integrated part of the territory and to normalise relations with this island.”

women, a fight ensued and Zakia Madi, one of the leaders of the women, met her death and became a popular martyr. There was to be no compromise.

2.6 Four Islands or 3 + 1?

In 1970, Saïd Mohamed Cheikh died in office and was succeeded by Prince Saïd Ibrahim*⁷⁸ who attempted to repair relations between Mayotte and the other islands. He appointed Dr Martial Henry⁷⁹ as Minister of Health, returned the barge to Mayotte and visited the island. However, this attempt at mending fences came too late as the MPM was gaining strength in Mayotte and the supporters of union — the *Serrez la Main*⁸⁰ — were isolated and under pressure. In January 1972, Pierre Messmer, the *Secrétaire d'Outre-mer*,⁸¹ visited the islands, to an enthusiastic reception in Mayotte and a cooler one in Moroni. By this time, Saïd Ibrahim had been ejected.⁸² Messmer's was the first visit by a French Minister, and indeed a rare sign of interest from Paris. In Mayotte he suggested that the island had been French for 130 years and could remain

⁷⁸ Of aristocratic Grande Comore lineage, he might be described as a peacemaker where no peace could be made. Mahamoud, *Mayotte*, p.37.

⁷⁹ Martial Henry was the cousin of Marcel Henry. He was at the time the only medically qualified doctor in the archipelago. According to Boisadam, he was, compared to his cousin, more moderate and nuanced in his views. Boisadam, *Mais que faire de Mayotte?*, p.106. Newitt has them as brothers, and presents a more monolithic 'Henry family' than can be justified. Newitt, *The Comoro Islands*, p.55.

⁸⁰ *Serrez-la-main* (literally 'hand-shakers') was the name given to Mahorais supporters of union with Comores, and as such were the opponents/victims of the MPM, at this stage the first and only political party. It is uncertain how numerous they were.

⁸¹ This ministry was a lowly one in French governments, with a high turnover of ministers. Its office is in the Rue Oudinot, at some distance both geographically and philosophically from the Quai d'Orsay — the more powerful Foreign Ministry. Within the ministry, the Comores were small, faraway, and generally insignificant among all the other DOMs and TOMs. DOMs and TOMs often became significant during French election campaigns when margins were narrow: their votes, *Sénateurs*, and *Députés* could make a difference.

⁸² He was followed by Saïd Mahomed Jaffar, another Prince-President, with Dr Martial Henry still in the government and some inter-island and regional equilibrium maintained. This lasted six months, during which a coalition Congress was held, including MPM, which agreed: "That the leaders of the three political parties have committed themselves solemnly to the accession of the Comorien archipelago to independence, in friendship and cooperation with France. The unity, single and indivisible, of the archipelago cannot be re-submitted to questioning". Quoted in Mahamoud, *Mayotte*, p.43. This statement was the closest MPM came to a compromise with the Comorien position. It was an agreement made in far-off Moroni, not in Mayotte. The Jaffar Government then fell and elections were held in December 1972, bringing Abdallah to power. There were no Mahorais (or Mohéliens) in his government.

so as long as it wished, giving a strong implied message of the possibility of separation from the other islands. Messmer's visit and speeches will be discussed in detail in the next chapter. Meanwhile, in New York, the UN had included Comoros (as four islands) on its list of territories to which the 'Declaration on the Gaining of Independence' was applicable, under Art.73.⁸³

In Moroni, Ali Abdallah was elected as President of the *Conseil* in December 1972. His mandate was to: « *négocier l'accession des Comores à l'indépendance dans l'amitié et la coopération avec la France* ». ⁸⁴ Messmer had effectively rendered this impossible. The combination of Messmer's speech and the election of Abdallah, ⁸⁵ coming in the same year, made a big impression in Mayotte. The one suggested a positive path, the other a grim alternative. Bernard Stasi, Messmer's successor, ⁸⁶ was the next visitor from Paris. He went only to Moroni and made an agreement with Abdallah that there should be consultation on self-determination for the Comores after a period of five years. Implicit in this was an understanding that Mayotte would be included and that one of the main tasks for the five year period was to win the Mahorais over. This was very different to what Messmer had said in Mayotte in 1972. However, as happened not infrequently in this long saga, the process was interrupted by a death, a change of government and ministers and further loss of coherency of policy. This time the death was of President Pompidou. In the ensuing 1974 election, Valéry Giscard d'Estaing became President, with Jacques Chirac as Prime Minister and Olivier Stirn in the *Outre-mer* portfolio. All were in no doubt: Stirn guaranteed

⁸³ Resolution 2878 (XXVI) 1971. Re-affirmed by Resolution 3291 13/12/1974.

⁸⁴ "Negotiate the accession of the Comores to independence in friendship and cooperation with France". Abdallah was considered to be a friend of France. He visited regularly and was on close terms with both Giscard d'Estaing and Jacques Foccart, the central figure in 'Françafrique'. The role of Foccart is discussed in the next chapter. See Jacques Foccart, *Foccart Parle* (Paris: Fayard/Jeune Afrique, 1995/1997), 2 vols.; Pierre Péan, *L'Homme de l'Ombre* (Paris: Fayard, 1990).

⁸⁵ Abdallah was cordially disliked in Mayotte.

⁸⁶ Messmer had become Prime Minister.

« *l'unité de l'archipel* ». ⁸⁷ Giscard d'Estaing strongly agreed and Jacques Chirac took a similar, if more legalistic view. ⁸⁸

The process of consultation began with the discussion of a draft *loi*, outlining the processes to be undertaken. This debate began on 10 November 1974 in the *Assemblée Nationale*. In the original draft, as proposed by Minister Stirn, the counting of votes was to be global. An amendment that the count be made island-by-island was rejected. The draft then went to the *Sénat*. On 23 November, the final text, as amended in the *Sénat*, read: « *Les populations des Comores seront consultées sur la question de savoir si elles veulent choisir l'indépendance ou demeurer au sein de la République* » (“The populations of the Comores will be consulted on the question of knowing whether they wish to choose independence or remain within the *République*.”)

The significant change is that from singular to plural: from ‘the population’ to ‘the populations’. The *Sénat* amendment was accepted in the *Assemblée* and by the government. The *Loi* authorised a consultation with results counted island-by-island, with the *Parlement* committed to respond after six months. The vote of consultation was held on 22 December 1974 and the results showed a virtually unanimous desire for independence in the three islands of Grande Comore, Anjouan and Mohéli and a vote of 63.82% against independence in Mayotte.

These results were received in France with mixed reactions. Just as there had been confusion as to how the consultation was to be conducted, so also there was dispute as to the status of the result. Was it a referendum or a consultation? Was a decision being made, or was information being given to the French government for them to base their decision on? Although many believed it was the former, it was in

⁸⁷ 3 October 1974 Press conference, quoted in Boisadam, *Mais que faire de Mayotte?*, p.125

⁸⁸ Their speeches will be examined in the next chapter, where there will be a discussion of the underlying causes of the *départementalisation* of Mayotte.

fact the latter.⁸⁹ In January 1975, Ahmed Abdallah visited Paris. Minister Stirn still hoped for a rapprochement between the islands and conducted his talks on this basis. Stirn was trying to postpone a definitive act of independence in the belief that it might be possible to persuade the Mahorais to be a part of it.

The chronology of events is complex and important. It is as if they were taking place in two parallel universes. There was no alignment between the activities of the government and the *Parlement*. At this point the *Parlement* decided to send a Commission of Inquiry made up of parliamentarians of both houses to all the islands, including Mayotte. This visit occurred from 10–17 March 1975. The visitors were welcomed warmly in Mayotte, and returned saying: “It would appear difficult to ignore the feelings expressed by the inhabitants of Mayotte.”⁹⁰ The matter returned to the *Assemblée* in June 1975, after a period in which the French-based Committee for the support of Mayotte had been active and opposition to Abdallah had increased. Most notably, *Liberation* had run a series of articles emphasising his dictatorial tendencies.⁹¹ Meanwhile the six months the *Parlement* had given itself were running out. On 10 June, the government published a draft proposal for a *Loi* concerning “the independence of the territory”. The debate began on 27 June, when the Communists led the attack on Ahmed Abdallah, accusing him of corruption.⁹² In the end the *Loi* of 3 July 1975 set up a period of six months during which a constitutional conference would be held. Once a Constitution was agreed, there would be a vote for its adoption island-by-island.

The new legislation was rejected by Ahmed Abdallah, who on 6 July in Moroni made a unilateral declaration of independence, claimed to be for all four islands. It was

⁸⁹ Caminade, *Comores–Mayotte*, p.55; Martin, *Histoire de Mayotte*, p.134.

⁹⁰ Rapport d’information. Doc Senat 388 : 31.

⁹¹ Martin, *Histoire de Mayotte*, p.136.

⁹² *Ibid.*, p.137.

supported by all of the *Conseil* except the Mahorais legislators, who were not present.⁹³ The Comorien opposition supported the move, but with reservation, saying: « *Nous, opposition, sommes indépendantistes. Mais Monsieur le Président, ce n'est pas le moment. Vous*⁹⁴ *engagez donc votre responsabilité.* »⁹⁵

Two days later, Ahmed Abdallah was voted in as Head of the new State and a government was formed.⁹⁶ In Mayotte, there were huge celebrations on 14 July, ostensibly for Bastille Day, in reality for the split with the other islands, to considerable French embarrassment.⁹⁷ The MPM became the effective rulers of the island, with Younoussa Bamana* designated Préfet. All Comorien functionaries were put on a boat to Anjouan, followed by 216 Anjouannais residents of Mayotte. In France, the Quai d'Orsay opposed the split, preferring to consider the new state as consisting of four islands. The Rue Oudinot was silent. Within a month Ahmed Abdallah was ousted by a coup, led by Ali Soihili*, which installed a National Revolutionary Committee.⁹⁸ This coup was to be the first of many, and introduced to the Comores the notorious figure of Bob Denard,* offering help and support to the coup leaders.

⁹³ Boisadam suggests that Abdallah had already made known to President Chirac that this would be the response in the event of an unfavourable decision by the *Parlement*. This remains, as Boisadam admits, unconfirmed. Boisadam, *Mais que faire de Mayotte?*, p.130.

⁹⁴ This was addressed to Ahmed Abdallah.

⁹⁵ Boisadam, *Mais que faire de Mayotte?*, p.131: "We, the Opposition are for independence. But Mr President, this is not the moment. You must take responsibility."

⁹⁶ This government had members from the other islands, but was dominated by the personalities and politics of Grande Comore. Mahamoud, *Mayotte*, pp.30–3.

⁹⁷ Boisadam, *Mais que faire de Mayotte?*, p.132.

⁹⁸ This coup can be viewed in a number of ways. There was the issue of personalities. Abdallah represented the rich merchant class with ties to the Arab elite. Ali Soihili was an agronomist with a French education, including Marxism. He was strongly influenced by the political movements of Africa, especially Nyerere's Tanzania. Abdallah was Anjouannais, Ali Soihili Grande-Comorien. In short, there were differences of origin, outlook and generation, at least. Martin approves of Soihili's advent (as did many); then he asks: when did it all go wrong? Martin, *Histoire de Mayotte*, p.141. Newitt is more equivocal. He suggests, "events pushed Soihili[i] and his followers into more extreme and radical posture". Newitt, *The Comoro Islands*, p.62.

The new government seized and nationalised all French colonial goods within its reach. The *Lycée* was closed and all French functionaries expelled.⁹⁹ The government aligned itself more closely with the post-colonial regimes of Africa, and received support in return, particularly from Madagascar. On 12-11-1975, Comores was admitted to membership of the UN,¹⁰⁰ where it was considered to consist of four islands.¹⁰¹

2.7 The Road to *Département* Status

In Paris on 10 December 1975, the Assemblée debated a *loi* on the consequences of the self-determination of the Comores. The Left opposed a motion that would be in favour of the partition of a foreign country, but the *loi* was passed, still using the terminology of « *des populations* », effectively accepting the self-determination, but implicitly permitting one island to take a different path to the other three. In February, the Mahorais were consulted again. The question was put:

Désirez-vous que Mayotte demeure au sein de la république Française ou devienne partie de l'état Comorien?

Is it your wish that Mayotte remains within the French République or becomes part of the Comorien state?

« *Au sein* » did not denote a specific status; otherwise the question was clear. It did, however, have the disadvantages of being in written form, and in French, addressed to voters who could not read and did not, for the most part, understand French. There was French oversight of voting lists, along with two notables and a Cadi¹⁰² attesting to the

⁹⁹ Boisadam considers this to have been a mistake. Boisadam, *Mais que faire de Mayotte?*, p.174. He suggests that the Mahorais objection to the UDI was largely *ad hominem* — Ahmed Abdallah was detested. If offered major autonomy in a Comores not led by him, they might have accepted. Caminade suggests that the promotion of Abdallah was orchestrated from France, particularly by Jacques Foccart, while the diabolisation of him was consciously planned by the MPM; moreover Ali Soilihi was actively supported by the Debré faction. Caminade, *Comores–Mayotte*, p.109. His evidence is tenuous, at best.

¹⁰⁰ Resolution 3385 (XXX) 12 November 1975.

¹⁰¹ This view remained unchanged for more than 20 years, with regular motions condemning France.

¹⁰² The Cadi was learned in Islamic law and acted as a village Notary.

population of each village. The outcome was 99% in favour of the first alternative.¹⁰³

The MPM were satisfied.

On 11 April 1976, the voters went to the polls again. This time the question was:

Souhaitez-vous que Mayotte conserve ou abandonne le statut de territoire d'outre-mer?

Would you like Mayotte to keep or abandon the status of *territoire d'outre-mer*?

Now the question was no longer of whether to be in France, but of status within France, without providing *départementalisation* as an alternative. The MPM put in a third (informal) alternative of *départementalisation* which received a huge (but informal) majority. The vote was 13,857 informal; 3457 'Yes, conserve'; 90 'No, abandon'. The French response was to delay, with talk of meetings to plan for future developments. The reality, according to Boisadam, was a disagreement between Giscard D'Estaing, the President and Chirac, the Prime Minister.¹⁰⁴ As things turned out, Chirac resigned and was replaced by Raymond Barre, no friend of Mayotte. The delay continued.

At the end of 1976, a new proposal came before the French parliament, to give Mayotte the status of *Collectivité Territoriale*; effectively that it should be more than a *territoire* and less than a *département*. This was passed by both *Assemblée* and *Sénat* and provided for a further consultation on status in three years (1979); it was also exceptional to the French hierarchy of territories and sat awkwardly with the Constitution. To Mayotte it brought a *Conseil* with members elected from cantons, who could discuss issues, and a *Préfet* with executive powers. The division of the island into cantons brought Mayotte into line with the French system, but the

¹⁰³ Boisadam remarks that it was not an election campaign to favour free expression.

¹⁰⁴ Giscard was always closer to the Quai d'Orsay view and aware of the opinions of the UN and the OAU. Chirac was closer to the Mahorais leaders. He visited Mayotte twice and appeared to find the Island and the Islanders congenial.

boundaries were locally considered arbitrary and brought on inter-village disputes. All 17 of the first *élus*¹⁰⁵ were MPM members. It was the first step towards a French local-political structure. The proposal, with its combination of compromise and delay, was accepted, but pleased almost no-one except the French legislators. Those who wanted Mayotte integrated in some way into the Comores (including the President and the Quai d'Orsay, the OAU and the UN, and, of course, the Republic of Comores) saw it as a creeping French acquiescence towards *départementalisation* and a rejection of the internationally accepted post-colonial model; those who wanted *départementalisation* saw an inferior status and further delay; locally, all experienced an unsatisfactory division of power, arbitrary boundaries, one party rule, more delay and stagnation.¹⁰⁶

While Mayotte was coming to terms with these new arrangements, Bob Denard carried out his next coup in the Comores, removing Ali Soilihi (who died in mysterious circumstances) and re-installing Ahmed Abdallah. There has been much speculation about the extent of French involvement, by government, secret services or shadowy, politically powerful individuals, and doubt as to whether Denard could have acted alone.¹⁰⁷

In 1981, François Mitterrand became President. He was of the Left, traditionally opposed to imperial continuations, and had been friendly with Ahmed Abdallah. In Mayotte, delay and stagnation continued. In Paris, Ministers came and went. In 1986, the *Association pour Mayotte Française* (AMF) was set up in Paris, with connections to LePen and the Far Right.¹⁰⁸ Jacques Chirac became Prime

¹⁰⁵ Elected members.

¹⁰⁶ Boisadam, *Mais que faire de Mayotte?*, pp.177–9.

¹⁰⁷ The literature on Denard's coups is extensive; the conspiracy theories abound. Opposition to Ali Soilihi had increased with the impoverishment of the three islands, attributed by many to his doctrinaire policies. One theory of a reason for French support — that the replacement of Ali Soilihi with Ahmed Abdallah would make a re-integration of Mayotte more possible — ignores the animosity towards Ahmed Abdallah in Mayotte. Boisadam, *Mais que faire de Mayotte?*, p.172.

¹⁰⁸ Also involved were Pierre Pujo, the royalist, old Gaullists from the circle of Jacques Foccart, and a former head of the OAS, Pierre Sergent. Boisadam, *Mais que faire de Mayotte?*, p.199. Caminade

Minister. Towards the end of the year, Chirac made his first visit to Mayotte, to the usual warm and orchestrated welcome. In his speech announcing a 5-year development plan worth 750 million francs for the period 1987–91, during which there would be no change of status, he used the phrase « *Le Chombo avant le Zébu* ». ¹⁰⁹ This was laying down another five years of delay, even if there was money promised and some encouragement.

Mitterrand was re-elected in 1988. Mayotte had voted for Raymond Barre in the first round, as instructed by the MPM, ¹¹⁰ and split almost evenly between Mitterrand and Chirac in the second. The *Assemblée Nationale* passed a law reforming Mahorais law on many topics including the Penal Code and criminal procedure, bringing them in line with French practice, and limiting but not abolishing the role of the *Fundi*. ¹¹¹ During 1990–91 there were 23 such ‘*ordonnances*’. As Boisadam points out: “It is useful to remember that it was not the Right who moved the Mayotte case forward; it was certainly the Left, on two occasions, and in the absence of enthusiasm from the Head of State and from the Socialist majority.” ¹¹²

Although the Left was in power whilst these *ordonnances* were being passed, *départementalisation* was not Left policy. While the *Assemblée Nationale* and the *Ministre d’Outre-mer* were tending in one direction, the President, the government and the Quai d’Orsay were tending in another. Some could interpret this as an example of

describes this body: « *Le monarchisme y flirte avec le gaullisme* » and says: « *Ce lobby va obtenir l’arrachement de Mayotte* ». He makes much of this organization and its attempts to influence mainstream Gaullism through Michel Debré. Caminade, *Comores–Mayotte*, pp.70–1. While it was important for the ‘*départementalistes*’ of Mayotte to have a support base in France, this group, seemingly the flotsam and jetsam of the ultra-right was perhaps not the best choice.

¹⁰⁹ Translates, in meaning if not precisely, as “The Cart before the Horse” or “First things first”. There had to be development before there could be *départementalisation*. This attempt to put a French catchphrase into a local setting was particularly mystifying to the Mahorais, who, although breeders of ‘*zebus*’ (oxen), never employed them for the pulling of carts.

¹¹⁰ Supporters as usual of the Right.

¹¹¹ Islamic law scholars and judges.

¹¹² Boisadam, *Mais que faire de Mayotte?*, p.225. He emphasises the importance of two Ministers during this period: Louis lePensec and Jean-Jack Queyranne and describes them thus: “Having a keen political sensitivity, they knew how to be respectful, with tact and dignity, to their Mahorais partners.”

the curiousness of the French political process and the influence of particular personalities at particular times; others saw it clearly as duplicity, Machiavellianism and bad faith on the part of the French taken as a whole. Boisadam comments that Paris was deaf, blind and mean, but probably not Machiavellian.¹¹³

In 1990, Mitterrand went to Moroni. Saïd Mahommed Djohar, in power largely thanks to Bob Denard, asked for additional aid and a “positive and definitive outcome” on Mayotte. He received little of either. Another bout of political instability, attempted coups and changes of constitution overtook Comores. By the end of 1993, when a visiting delegation commended the Comores for multi-party democracy, Djohar was back in power, with his popularly mistrusted son-in-law as Prime Minister, and 40 political parties for a House of 42 members and a population of 500,000. At least 80% of the budget was going to finance the parliament and its members.¹¹⁴ Abdelaziz Riziki Mohamed gives a detailed account of the economy of the Comores under Djohar, its effective bankruptcy and the negotiations undertaken with financiers from Macao and South Africa as well as the IMF.¹¹⁵

Stability was also lacking in France. While Mitterrand remained President, the Prime Ministership went from Rocard to Cresson to Bérégovoy to Balladur. In the *Outre-mer* portfolio, LePensec, popular in the DOMs and TOMS, weathered many storms, but was removed by Balladur. In Mayotte, frustration grew, culminating in a general strike with demonstrations and the burning of buildings in February 1993. In 1994, Balladur visited Mayotte, promising another referendum before the year 2000, and that any *départementalisation* would only come thereafter, after a period of transition. Effectively this was more ‘*Chombo*’ and ‘*Zébu*’ but without the money.

¹¹³ Ibid., p.130.

¹¹⁴ Boisadam, *Mais que faire de Mayotte?*, p.256.

¹¹⁵ Abdelaziz Riziki Mohamed, *Comores : Les Institutions d'un Etat mort-né* (Paris : L'Harmattan, 2001), pp.246–57.

Events of 1994 brought the Republic of the Comores close to economic collapse. They still had the CFA as currency,¹¹⁶ whereas Mayotte was using the French franc. The International Monetary Fund (IMF) imposed 50% devaluation on the CFA, supposedly to help the competitiveness of the CFA economies. In practice, this was a huge impost on the cost of living in some of the weakest economies in the world, including the Comores, and widened the gap in standard of living between Mayotte and the Republic. The people of Anjouan took to their boats. The trickle of ‘*clandestins*’ became a torrent, despite the new requirement of a visa, dubbed the ‘Balladur visa’¹¹⁷ for entry to Mayotte from the Republic of Comores. The visa inhibited legitimate travel¹¹⁸ and caused worse relations, but did not stop the ‘*clandestins*’.¹¹⁹

In 1996, Jacques Chirac visited La Réunion where he met a delegation of Mahorais *élus*. He avoided the term *départementalisation*, but promised consultations in 2000. The delegation returned, ‘enchanted’ by Chirac, but having heard nothing new. However, two discussion groups were set up to consider Mayotte’s future, one in Paris, the other in Mayotte. By now the ground had changed considerably. The Minister stated in his preamble to the Paris meeting:

Je tiens à affirmer avec force que la question de l'appartenance de Mayotte à la République ne se pose pas. Mayotte est française et le restera aussi longtemps que les Mahorais le voudront.

¹¹⁶ Franc of the (then) Colonies Françaises d’Afrique, (now) Communauté Financière Africaine. The Comorien franc was pegged to this; it is now pegged to the euro. The Banque Centrale des Comores still has a Banque de France official as its Deputy Director with responsibility for monetary policy.

¹¹⁷ Despite Charles Pasqua being the instigator.

¹¹⁸ The temporary visa was hard, nearly impossible, to get. It is suggested by Caminade that this difficulty turned would-be temporary visitors into permanent ‘*clandestins*’. It prevented, for example, family reunions, medical treatment or schooling. It was dubbed by many a ‘Berlin Wall’. Many, counting in thousands, have drowned attempting to make the crossing. Caminade, *Comores–Mayotte*, p.81. This will be discussed further in subsequent chapters.

¹¹⁹ *Sénat Rapport*, N° 675: *Rapport d’information fait à la suite d’une mission effectuée à Mayotte 11–15 Mars 2012*, Jean-Pierre Sueur, Christian Cointat and Felix Desplan, *Sénateurs*.

I am here to affirm emphatically that the question of Mayotte's being part of the *République* is not in issue. Mayotte is French and will remain so as long as the Mahorais wish it.

No longer was it a question of 'whether'; it was 'when' and 'how'. The Paris Group met behind closed doors, and included Bamana, Henry, Giraud and Jean-Baptiste. The Mayotte sessions were open, chaired by the *Préfet* (Boisadam), and more boisterous.¹²⁰ The local politics were no longer monolithic. The *Mouvement Populaire Mahorais* (MPM) now had a rival in the shape of the new *Rassemblement pour la République* (RPR).¹²¹ The *Front Démocratique*, a grouping of those favouring unity with Comores, also demanded to be heard. Youssouf Moussa, its leader, was against *départementalisation* in that it closed doors forever, rather than being for an immediate unity with Comores. He was prepared to vote with RPR. What can be seen here is that over time the MPM had lost its hegemony¹²²; the parties and movements were heavily based on the personalities that led them, and the old guard, particularly Marcel Henry and Giraud, were under challenge. Younger¹²³ and more autochthone personalities were coming to the fore.

On 4 April 1997, Chirac dissolved the *Assemblée Nationale*. This brought elections, with a major swing to the Left. The new ministry was Left/Green, led by Lionel Jospin, with Jean-Jack Queyranne holding the *Outre-mer* portfolio. He persuaded Jospin to allow the discussion groups to continue their work despite Jospin's lack of enthusiasm for bringing Mayotte closer to France. The Groups' Final Reports

¹²⁰ Boisadam, *Mais que faire de Mayotte?*, p.343.

¹²¹ The name came from the French political party. In Mayotte, it was the group led by Mansour Kamardine.

¹²² Bamana had first distanced himself from the MPM in 1994; Giraud lost his seat to an independent (but not his influence as Henry's key supporter and organization man). The Cantonal elections of 1997 give further evidence: the MPM lost four seats, and with them the absolute majority. A Socialist was elected for the first time.

¹²³ As Jean Fasquel wrote: "What might become of the island is presently a matter for the men and women who are 40 years old and more, whose common outlook has been shaped by the experience of relations of conflict with the Comores. The young think all that is like a discussion between old soldiers." Jean Fasquel, *Mayotte, les Comores et la France* (Paris: L'Harmattan, 1991) (my translation).

were delivered to Queyranne in January 1998. They provided three alternative hypothetical outcomes. These were: (i) staying for the moment as a *collectivité territoriale*, with a view to *département* status at some unspecified time (thereby staying within Art.72 of the French Constitution); (ii) *départementalisation* (moving Mayotte to Art.73 of the Constitution) and adopting a regime of administration similar to that of metropolitan *départements*; or (iii) returning to pre-1974 status as a TOM. The majority appeared to lean towards the first of these alternatives: « *collectivité territoriale à vocation départementale* ». ¹²⁴ A Note was added by Henry and Giraud that TOM status was not in their view a possible alternative; what they wanted (as they had always made clear) was DOM status immediately; « *statut évolutif* » had a long history as an excuse for delay, with always a risk of the possible return of Mayotte to the Comores.

In short, nearly two years of discussions and group meetings had changed nothing, even if the participants had identified some of the problems ahead, if there were to be change. More delay was guaranteed. The Jospin cabinet decided to adopt the model of Nouvelle Calédonie and *Collectivité Territoriale*, to be reviewed in 10 years. One day the move would be made from Art.72 to Art.73, ¹²⁵ but not now and not for 10 years at least. When the mission headed by Axel Urgan arrived from Paris to announce this, it was (grudgingly) accepted by Younoussa Bamana, Mansour Kamardine (leader of the RPR) and Ibrahim Abouboucar (Socialist). Marcel Henry and Henri Jean-Baptiste refused to sign. ¹²⁶ The rest of the leadership of the MPM this time followed Bamana; Henry reacted by founding a new party, *Mouvement Départemental*

¹²⁴ As usual, the time was not ripe for definitive change. This new and hybrid formulation was permitted under the 2003 Constitutional changes. See Ch.5.

¹²⁵ This question and its significance will be discussed in Ch.5.

¹²⁶ There are various interpretations that could be made here: that it was a split between the *métis* and the autochthones; between the older and the younger generations; between those who knew Paris better and those who did not; or more simply a difference of opinion and approach.

Mahorais (MDM). After the *Conseil General* had met and the text had been circulated to all the municipal councils, Queyranne was able to report to the Jospin government that the three parties presently represented on the *Conseil General* had signed their acceptance. MDM protested that they had never signed.

In January 2001, the *Sénat* legal committee arrived to see at first hand the legal issues, many and complex, that *départementalisation* would bring.¹²⁷ They were followed by Minister Queyranne, who was a popular figure in Mayotte. France appeared committed, but nothing was to change for at least ten years. Was this period for preparation, or simply a moratorium? Boisadam asks whether “this ‘*Collectivité Départementale*’ offered to (or rather imposed on) the Mahorais: is it the waiting-room for *départementalisation* or will it be a diabolical trap?”¹²⁸ Lionel Jospin appeared to lay these doubts to rest when he said:

*Désormais les dernières incertitudes sont levées. Mayotte sait qu'elle fait partie intégrante de la France.*¹²⁹

Henceforth the last doubts are lifted. Mayotte knows that she will be an integral part of France.

In the Comores, they had problems of their own. In 1997, there was a general strike as state employees had not been paid for ten months. The tenuous relationships between the three islands were breaking down. Separatists flew French flags in Anjouan and sent a letter to Moroni saying that Anjouan was officially « *rattachée à la République française* » This was followed by a declaration of independence.¹³⁰ This was repeated in Moheli.¹³¹ The OAU sent Pierre Yère, an Ivoirien, to mediate; observers were sent; talks took place in Addis Ababa. The crisis continued through

¹²⁷ Not least of personal status, land-holding and the judicial system.

¹²⁸ Boisadam, *Mais que faire de Mayotte?*, p.166.

¹²⁹ 27 January 2001, quoted in Martin, *Histoire de Mayotte*, p.174.

¹³⁰ Boisadam, *Mais que faire de Mayotte?*, p.317.

¹³¹ From the early days, it could be seen that two fault-lines bedevilled Comorien politics: that the populations of the islands did not willingly submit to government from other islands; that the populations at large thought better of the French, or simply less about them, than did the ruling class. Possibly, the people, in these very traditional societies saw less merit in a rupture with the past.

1998 with further and increasingly bitter fighting, until in December the OAU engineered a cease-fire, but not before all three islands had been damaged. A new Constitution was agreed with greatly increased devolution and a revolving Presidency. The economy was all but destroyed; the population was growing rapidly; the costs of government were large and growing; poverty was ubiquitous.¹³²

The fighting in the other islands affected Mayotte in several ways: the increase in *clandestins*, the wounded seeking treatment in the Mamadzou hospital, and more generally with the question of complicity. Was there a complicity (French, Mahorais or Réunionnais) in the independence movements in Anjouan or Moheli? Boisadam says ‘no’ but seems to allow the possibility of a few far-right adventurers.¹³³ Caminade gives an emphatic ‘yes’.¹³⁴ In any case, the already bad relations between Moroni and Mayotte were worsened.

In 2009, the Mahorais were questioned again on their wish for *départementalisation*. This was after more than 40 meetings and the Report of the Committee for *Départementalisation*.¹³⁵ All political parties had agreed to work for a ‘yes’ vote, and it was easily achieved. Of those voting, 95% said ‘yes’. However, 39% of those eligible to vote abstained.¹³⁶ This level of abstention can be explained in at least two ways. First, those now voting were too young to remember the struggles of the past. 50% of the population were under the age of 20.¹³⁷ Second, there was a greater understanding of the possible disadvantages of *départementalisation*, and perhaps a more balanced presentation. Denis Robin, the *Préfet*, had visited every

¹³² Mohamed, *Comores*, p.32.

¹³³ Boisadam, *Mais que faire de Mayotte?*, p.317.

¹³⁴ Caminade, *Comores–Mayotte*, p.140.

¹³⁵ Madi Abdou N'tro, *Mayotte : Le 101 Département français : Et après ?* (Paris: L'Harmattan, 2011), Ch.2.

¹³⁶ Martin, *Histoire de Mayotte*, p.173.

¹³⁷ *Ibid.*

commune to “provide, in a measured discussion a balanced account of the advantages and the imposts, most notably fiscal, of *départementalisation*.”¹³⁸

This 2009 ‘yes’ vote finally provided the catalyst. Nicolas Sarkozy arrived on 18 January 2010 in Mayotte to announce a date for *départementalisation* in March 2011. It was almost the final act of a struggle that had lasted for 53 years. The status was about to be achieved. However, difficulties, both new and unresolved from the past, were just becoming apparent. These will be examined in subsequent chapters, where the so-far dominant tone of narrative will give way to analysis. I do not wish to pre-empt this discussion, but from this history there are four threads that need to be drawn out and kept in mind.

The first thread is the conspicuous lack of empathy or solidarity between the four islands, either at a level of populations or of rulers. There may have been traffic between the islands, but it was minimal. The construct of a unified Comores pre-1975 was a French administrative one, brief and undeveloped. Second, the lack of French penetration into the local way of life is notable; this was, with the exception of the relatively short-lived sugar plantations, colonialism at its most minimal. Third, there is on the part of the Mahorais the single-minded and continuous belief in *départementalisation*. This endured more than fifty years of changing circumstances, without a substantial politics of opposition or domestic examination. I will suggest that the Mahorais lacked clarity as to what they were asking for, and to its implications; however, there is no question that it was genuinely sought. The fourth thread to emerge from this history is the ambiguity of the French position — the fluctuation between saying ‘No’ and saying ‘Yes’. These threads should be carried with us when, having considered here the ‘How’, we turn, in the next chapter, to the ‘Why’.

¹³⁸ Ibid.

CHAPTER 3

WHY DID IT HAPPEN?

In the previous chapter, we examined what happened: the events and the path by which the island of Mayotte became the 101st *Département* of France. In this chapter we will consider the question of why it happened, including the motivations of the protagonists and the three main current theories of the causation of this event. Why did Mayotte's self-determination take the shape it did? In the presumption that there was an act of self-determination by Mayotte, I will acknowledge, but leave on one side for the moment, Dr Ahmed Ali Abdallah's contention that there was only one self-determination in the Comores — that of the Comores, and that there never was a self-determination by Mayotte, only an illegal act carried out in conjunction with France. I will discuss the nature of and the criteria for self-determination in the next chapter. The question here is: why did Mayotte want (and in the end, get) what it said it wanted? It was, in those days, a most unusual objective. Fifty years later, it is less unusual; others have gone more readily down a similar path.¹

In any examination of causes and motives there will be an element of conjecture and this is increased when there is a paucity of primary documentation. However it is important to try to understand the aims and beliefs of the actors in the prolonged claim for *départemental* status. The outcome may be described in legal terms: a change in legal status and one legal status rather than another. The process, the discussion and the motives were, however, political.

In relation to the question of causation, the three principal contending theories are the following. First, that France was the prime mover, either overtly or clandestinely; in this view, *départementalisation* was not really a Mahorais claim,

¹ Baldacchino, "Micropolity Sovereignty," p.53.

rather a strategy engineered in France for French objectives. Second, that the motivation was primarily a political one, namely, for the Mahorais to avoid unification with, and potential subordination to, the three other islands. Third, that the Mahorais saw that *départementalisation* was to their economic advantage and moved accordingly.

In political history there is rarely one cause for an event or outcome; here I am looking for the predominant and most persuasive cause. Each suggested possible cause will be examined in detail in this chapter. The first and second theories have over the years been the two most argued positions. The first theory is in general the view that has been articulated by the Comoriens and their supporters who have seen the crisis as being one between Comores and France; the second theory is put forward by those who have Mayotte more fully in focus. The third theory is included as a subsidiary possibility, prevalent in the thoughts of more recent commentators. I use the descriptor ‘subsidiary’ purposely and will argue that the third theory is ahistorical — it describes the intentions of 1958 in terms of the outcomes of 2011–14. Despite being perhaps more a generalised belief, an attitude or an atmosphere, than an argued political position,² it must still be considered.

On the first theory I will argue, first, that during the period of reassessment of colonies and of decolonisation (the decades of the 1950s and 1960s), France was pre-occupied elsewhere and was almost oblivious to the Comores; second, that once independence and *départementalisation* had become issues, France and its governments, ministers and spokesmen were confused, ignorant and, above all,

² IRIN Africa newsagency’s 2009 comment provides an example: “Mayotte’s status as a French department, should citizens endorse it by a 50 percent majority — an outcome widely expected — provides the islanders with such benefits as pensions, unemployment benefits and a US\$400 monthly minimum wage.” “Comores: Reforming ‘the Coup-Coup Islands’”, *IRIN News*, 25 February 2009, <http://www.irinnews.org/report/83144/comoros-reforming-the-coup-coup-islands>. While this is not incorrect, except possibly for the size of the minimum wage, it gives the strong suggestion that this was what the demand for *départementalisation* was about. It is a long way from the congress of Tzoundzou in 1958.

reactive. Thus, the theory of France as the prime mover is unconvincing, as there is no evidence of a coherent policy.

On the second, the avoidance of unification, I will argue that herein lies the reason for the call for *départementalisation*: a fear of unification, life as a four island archipelago, leading to subordination and domination by the larger islands. This question of relationships between the islands will also be considered further in Chapter 6.

On the third I will show that at the outset of the demand for *départementalisation* the Mahorais had (unselfconsciously) a simple subsistence economy; indeed, it was only marginally a money economy. There was nothing to indicate that their initial calls were motivated by a vision that *départementalisation* was to their economic advantage, beyond perception of the fact that the removal of the *chef-lieu* would cause economic loss.³ Decades later, *départementalisation* was to require large injections of money from France. This may have been the outcome; it was not the cause. At the end of this chapter, I will discuss the Mahorais attachment to the particular word *départementalisation* and the seeming impossibility of entertaining any other word or status.

3.1 The ‘France as Prime Mover’ Theory

This seemingly simple thesis is in fact full of complexities, and can easily be confused with other issues. To examine it, at least three aspects need to be defined more clearly: the time of which we speak; what or who in these terms is ‘France’; and who, and in what context and with what aim, is promoting the ‘France as prime mover’ thesis? Moreover, is the argument that France was the instigator, or merely that France

³ Boisadam, *Mais que faire de Mayotte?*, p.93; Martin, *Histoire de Mayotte*, p.124.

should take the responsibility? Is it, as Marchetti puts it, « *la France de mauvaise foi* »⁴? Can it be said that despite protestations to the contrary, France always intended that the outcome should be a French Mayotte, and dealt with the rest of the Comores in bad faith? Or is it a France that failed in a responsibility and a duty, a France that had an obligation to ensure a decolonisation in proper form and failed to meet that obligation? Is it intent or negligence? I will argue that while negligence is readily proved, intent is difficult to show. The decolonisation of the Comores was always low on France's agenda. It was inadequately planned for. It was inadequately provided for. There was a lack of interest, forethought, infrastructure and money. The French plea in mitigation would be that the decolonisation was inadequately prepared for because it was pre-empted by a unilateral declaration of independence. We will discuss France's presumed failures further, but they do not alone form the basis for saying that France intended the separation and *départementalisation*, the self-determination of Mayotte.

The 'France as instigator' theory is exemplified by Simon Massey and Bruce Baker, who ask rhetorically, "Why has France sought to consolidate its control of Maore?" They then provide their answer: "The key motivation is the islands perceived strategic importance in a part of the world where Iran is seeking to extend its influence".⁵ Their question presumes a positive answer to the question I am asking here: "Did France seek to consolidate its control of Maore?"

There is no doubt that at certain times in its history, France had imperial ambitions, including in the Indian Ocean. At certain times, Mayotte formed a part of

⁴ Pascal Marchetti, « *Mayotte devant le processus de la Décolonisation* » (Aix en Provence: APOI XII 1990–91), p.355.

⁵ Simon Massey and Bruce Baker, "Comoros: External Involvement in a Small Island State" (Chatham House, Programme Paper AFP 2009/1, July 2009), p.8. They are, in general, keen to implicate France beyond what the evidence will bear. The reference to Iran begs the question of what period they are referring to, that of 1958–75, that of 1975–2001 or 2001–11. Whereas it could possibly be argued that Iran was trying to expand its influence in the region in this last period, there is no evidence at all for the earlier periods, when *départementalisation* was being formulated.

those ambitions, at least in a small way, over a long period, between long bouts of amnesia. François Guizot formulated, at its apogee, the imperial aspiration:

What is appropriate for France, what is indispensable, is to possess at points on the globe which are destined to become great centres of commerce, sure and strong maritime stations to serve as a support for our commerce, where the fleet can obtain provisions and find a safe harbour.⁶

Occasionally Mayotte was promoted as a site for helping to fulfil this plan. It may have had more potential as a ‘strong maritime station’ than as a ‘great centre of commerce’. These were the sorts of term used constantly, usually with comparisons to Gibraltar (or Hong Kong or Malta), by the island’s promoters, from Passot onwards.⁷ With the exception of Alfred Gevrey, who came from the outside world of Pondichéry to cast considerable doubts,⁸ the reports from the Comores in the nineteenth and early twentieth centuries were positive, emphasising potential and seeking investment.

These imperial thoughts were revived briefly by some commentators in the later twentieth century when France, having lost its base at Diego Suarez with the independence of Madagascar, was facing the independence of Djibouti⁹ and the potential loss of military facilities there. Pierre Caminade lists the possible French interests: the actual existence of, and future potential for, a military base and an

⁶ Quoted in Martin, *Histoire de Mayotte*, p.44.

⁷ Thierry Flobert quotes another enthusiastic commentator who likens Mayotte to Singapore, and claims it is “the finest maritime position that it would be possible to see; What good fortune for France, and what a future it promises in time of war for our squadrons which have otherwise lost the hope of ever showing themselves in these waters since we lost Ile de France (Mauritius)”: *Le National* (Paris), 7 October 1844. Captain Bevard of the frigate Uranie was as enthusiastic: “It is only necessary to cast an eye over a general map to understand that it is a natural military position” (ANSOM Madagascar Doss: 224 476). Some comments are more doubtful (or realistic), e.g., “As a military port, or as a port of refuge or re-victualling, Mayotte as it stands is an illusion” (1850 ANSOM Mad. Doss. 227 482). Flobert, *Les Comores*, p.249.

⁸ Gevrey, *Essai sur les Comores*. Gevrey, for example, drew attention to the number of deaths on the island from disease, particularly malaria (p.241). A separate issue is that the anchorage and harbour would never be suitable for a fleet. There are two narrow and twisty passages through the reef (personal observation: 2011). It is at most suitable as a station for small warships, a base for patrolling the islands and the Mozambique Channel, not for geostrategic naval activities. Moreover, it would be easy enough for any opponent to blockade the two entrances and prevent a fleet putting to sea. Philippe Boisadam, personal communication, 2012. Gevrey was an early example of the ‘consulting expert’.

⁹ Olivier Gohin, who analysed Mayotte’s strategic position and suggested it should be used more. Olivier Gohin, *Mayotte Française : Aspects internationaux, constitutionnels et militaires* (Aix-en-Provence: APOI XXII, 1990–91), pp.115–38.

arsenal, the possibilities for military communications and surveillance (not least the Badamiers satellite listening post installed on Petite Terre in the 1990s) and the pivotal position for a naval force in the Mozambique Channel.¹⁰ He also cites Olivier Gohin¹¹ suggesting the potential for an air base and a missile station, and the ‘*Zone Economique Exclusive*’ (ZEE), stretching out 370 kms around the island with rights of fishing, minerals and potential oil reserves. This is incontrovertible, but currently the ZEE is almost totally unexploited and unexplored.¹² France, with all its DOMs, has accumulated world-wide a colossal ZEE,¹³ more than it has the capability at present to deal with. While certainly it is a gain (and keeps others out), it is one that for the moment lies with geo-theoreticians.¹⁴

Ahmed Wadaane Mahamoud, a leading Comorien scholar, writes of France’s interest in “occupying” Mayotte after the independence of the other islands “because this Comorien island offers even the biggest ships and in all seasons an excellent moorage and constitutes a strategic position”.¹⁵ He exemplifies the Comorien belief, widely held but unexamined, that Mayotte has a strategic value for France. In doing so, he ignores the geography: the one port facility at Longoni can accommodate only smaller ships that can penetrate the reef with cargoes that have already been transhipped elsewhere, and small cruise-ships. Plans for lengthening the airport runway are still plans. Generally, if France had a strategic plan for Mayotte, there might by now be rather more evidence of it. In 2011, there was a Foreign Legion

¹⁰ Caminade, *Comores–Mayotte*, p.21.

¹¹ Olivier Gohin, *Les DOM-TOM dans la politique de défense de la France* (Paris: Dunod, 1992), p.48.

¹² There is some activity by large metropolitan tuna fishing boats.

¹³ It is approximately 11 times the ZEE of Australia.

¹⁴ The importance of ‘sea-ownership’ has been revived recently with Minister Yves Jégo’s statement that “the Overseas make France the world’s second maritime power. The Overseas’ trump cards are also France’s trump cards”. Quoted and translated by Ulla Holm, “French concepts of State: Nation, Patrie and the Overseas” in Rebecca Adler-Nissen and Ulrik Pram Gad (eds), *European Integration and Post-Colonial Sovereignty Games: The EU Countries and Territories* (Abingdon, UK: Routledge, 2013), p.148.

¹⁵ Mahamoud, *Mayotte*, p.19.

*Escadron de commandement et de soutien unit*¹⁶ and approximately 100 men on rapid-turnover training in small-boat and tropical training.¹⁷ There is also a navy patrol-boat moored near the ‘*barge*’ terminal at Dzaoudzi¹⁸ and the ‘listening centre’ at *Les Badamiers*, whose activities are unknown.¹⁹ The theory of France’s strategic interest has been voiced for forty years. It is notable that nothing (apart from the mysterious *Les Badamiers* site) has occurred to further it during this period.

Nineteenth century statements about empire have lost their relevance. It is more useful to look at the epoch of imperial revision and deconstruction. The Brazzaville Conference of 1944, called by General de Gaulle to bring together the high-ranking colonial officers²⁰ of all the French African colonies and Free French representatives,²¹ can be taken as a marker point of a French re-assessment of Empire. It was, however, less a re-examination of the status of the colonies and territories and more a discussion of their views on the development of post-war France. In short, de Gaulle was looking for support, not talking about decolonisation. Evolution was seen in terms of integration, not independence. As Robert Aldrich and John Connell show, the tone at Brazzaville was conservative and self-government was excluded.²²

Within a short time, however, a sort of decolonisation was under way. Under the ensuing Fourth Republic and its new Constitution, circumstances did change for the colonies.²³ The populations of autochthones (no longer described as ‘*indigenes*’)

¹⁶ Control and support Squadron.

¹⁷ Bruno de Villeneuve, *Mayotte de A à Z* (Mamadzou : Editions Ylang Images, 2011), p.162.

¹⁸ Personal observation (2011).

¹⁹ Caminade, *Comores–Mayotte*, p.25.

²⁰ Many of whom were to gain positions as Ambassadors of their countries to France when they became independent. Gildea, *France Since 1945*, p.20.

²¹ *Ibid.*

²² Robert Aldrich and John Connell, *France’s Overseas Frontier: Départements et Territoires D’Outre-mer* (Cambridge: Cambridge University Press, 1992), pp.64–5.

²³ The Constitution stated: “Faithful to its traditional mission, France intends to enable the people of which it has taken charge to achieve the freedom to govern themselves and to manage their own affairs democratically; excluding any system of colonisation based on arbitrariness, it guarantees to all equal access to public office and the individual or collective exercise of the rights and liberties proclaimed and confirmed above.” Quoted in Aldrich and Connell, *France’s Overseas Frontier*, p.66 (their translation).

gained French citizenship,²⁴ a step described by de Gaulle as towards “the management of their own affairs”,²⁵ but without granting them the « *Union française négociée* » that the overseas *députés* wanted. The ‘old colonies’ (Martinique, Guadeloupe, Guyane and La Réunion) became *départements*.

Boisadam remarks on the gap between French declarations of intent, which were tinged with generosity, and the reality of the political practices. He suggests that this disjuncture characterised the Fourth Republic during the last ten years of its life.²⁶ As Edward Mortimer shows, France responded to crises in South-east Asia and North Africa as a priority, and only subsidiarily to the demands of developments in West and Equatorial Africa;²⁷ the Comores were, at most, in the slipstream of events elsewhere.

The crisis in Algeria brought de Gaulle to the Presidency of a new Republic with a new Constitution, written in less than three months,²⁸ and containing much borrowed from its predecessor. The new text allowed de Gaulle to interpret the role of President as more central and more active, as Gaffney shows.²⁹ The DOMs and TOMs were called upon to participate in the introduction of this Fifth Republic. De Gaulle was emphatic on the need to bring all these territories into the discussion, and more importantly for them to endorse overtly the Republic, the Constitution and himself as President.³⁰ This was part of a generalised endorsement and not an examination of

²⁴ *Loi Lamine-Gueye*, 7 May 1946. The idea was not a new one. As Edward Mortimer says: “In February 1794 Danton and Delacroix succeeded in persuading the Convention to vote not only the abolition of slavery, but at the same time that ‘all men without distinction of colour, who live in the colonies, are French citizens and enjoy all the rights guaranteed by the Constitution’.” Edward Mortimer, *France and the Africans 1944–1960: A Political History* (London: Faber and Faber, 1969), p.32.

²⁵ Quoted in Boisadam, *Mais que faire de Mayotte?*, p.84.

²⁶ *Ibid.*

²⁷ Mortimer, *France and the Africans 1944–1960*.

²⁸ John Gaffney, *Political Leadership in France: From de Gaulle to Sarkozy* (Basingstoke, UK: Palgrave Macmillan, 2010), p.30.

²⁹ *Ibid.*, p.33.

³⁰ Singer and Landon point out: “De Gaulle insisted on ratification by all of France’s overseas possessions; that in itself was revolutionary.” Barnett Singer and John Landon, *Cultured Force: Makers and Defenders of the French Colonial Empire* (Madison, Wisconsin: University of Wisconsin Press, 2004), p.346.

each territory's relationship with France. The territories were part of what Gaffney describes as the “mythical legitimacy” of the Fifth Republic.³¹ The focus was Algeria; the issue was de Gaulle's legitimacy. The TOMs and DOMs were being called upon to be a part of the project of the new Republic. The reality was that the consultation was not about them, but for the first time the new citizens of 1946 were in 1958 being asked to vote about important events in Paris. In faraway Comores, this was indeed novel and would have provoked much thought, at least among the small voting class.³²

These were the two points at which France was proactive in its relationship with its territories and colonies — Brazzaville and its aftermath, and the 1958 constitutional change. Otherwise, the evidence is that France was, at most, reactive to events in particular DOMs, TOMs and colonies. The categories were in place; the inhabitants would be reacted to as needed. The *Ministère d'Outre-mer* was not a high-status portfolio. The briefly aspired-to French equivalent of a Commonwealth was rapidly adopted, adapted and allowed to deflate, as the African colonies opted for independence — the lead of Guinea was followed by the Saharan and sub-Saharan colonies — until only the DOMs, TOMs and a ‘confetti’ of small and sparsely-populated islands were left, along with the Antarctic territory.

These two moments had something in common: the dominating figure of de Gaulle, whose views on colonialism and decolonisation and the status of the erstwhile overseas territories need to be examined. The General believed in a greater France with territories around the world, but this did not mean that he was a colonialist of the “scramble for Africa” type. The colonies were a part of the measure of France;

³¹ Gaffney, *Political Leadership in France*, p.30.

³² It was still small, although considerably expanded from the 1946 franchise. In Comoros, the registered voters numbered 71,099. Of these 92.72% voted. The vote ‘for’ was 97.33%. It may be noted that this was less than Cote d'Ivoire where the vote for was 99.99%. Dieter Nohlen and Philip Stover, *Elections in Europe: A Data Handbook* (Baden Baden: Nomos, 2010). In 1958, the population of Comores was 183,133. Census 9 July 1958.

moreover, they were owed a debt for the stance they took in World War II,³³ and they were also the worldwide extensions of French culture. The imperialist theories of Guizot were not expressly excluded, but they were not paramount. De Gaulle's view was that France had something to offer its overseas territories.³⁴ His beliefs and stated motivations were lofty; too often the outcomes fell short, resulting in subjugation and exploitation. In his view, the DOMs and TOMs were a part of France — and fortunate to be so. Representatives from the colonies had a place as much as any other French citizen in French governments.

If this was the expression of de Gaulle's beliefs, the everyday and less lofty practice regarding the colonies was left in the hands of the government of the day and de Gaulle's underlings, specifically Jacques Foccart*. Foccart was a figure of some mystery and extreme pragmatism; he was de Gaulle's fixer, ubiquitous, unloved and feared, the only man able to see de Gaulle any and every day.³⁵ This was the presidential background, on the one hand relatively high-minded, on the other extremely pragmatic. The government's notable law-making contribution was the *Loi-Cadre Deferre* of 1956,³⁶ a 'framework' law which enabled the government to legislate by decree in order (as its preamble stated):

to associate the overseas populations more closely with the management of their own interests, measures of administrative decentralisation and

³³ 100,000 Africans fought in the Free French armies. Mortimer, *France and the Africans 1944–1960*, p.48.

³⁴ Helen Hintjens describes de Gaulle as paternal and sentimental: "France to do all she can for her children". Hintjens' prescription for all the DOMs, independence and standing on their own feet, might be described as 'tough love'. Helen M Hintjens, "France's Love Children? The French Overseas Departements," in Helen M Hintjens and Malyn DD Newitt (eds), *The Political Economy of Small Tropical Islands: The Importance of Being Small* (Exeter: University of Exeter Press, 1992), pp.70, 73.

³⁵ Foccart, *Foccart Parle*; Péan, *L'homme de l'ombre*. Foccart's role in Africa and African policy-making was sometimes official, sometimes unofficial, but constant. The extent of Foccart's *réseaux* (networks) is much debated, but there is no doubt that they were extensive. His own view was that "the secession of Mayotte is a non-sense": Foccart, *Foccart parle*, vol.2, p.269.

³⁶ A *Loi-Cadre* is a framework law, which enables subsequent detailed legislation to be put into law by the government by decree.

deconcentration will be introduced within the framework of the territories, and central services, controlled by the Ministry of France d'Outre-mer.³⁷

This *Loi-Cadre* affected the Comores, as it did any DOM or TOM, and decrees concerning the islands were made under it. However, its main focus was on Africa, as Mortimer shows.³⁸ Defferre wanted to offer a French alternative to the British moves towards granting independence in the Gold Coast (Ghana). Once again the Comores, including Mayotte, were the incidental beneficiaries of events on the other side of the African continent. It cannot be said that the *Loi-Cadre Defferre* was a part of French policy in the Comores.

By the time de Gaulle was back in power, the issue in West and Equatorial Africa was: 'Federal republic or confederal commonwealth?' This would not continue as the debate. The Bamako Congress of 1957 and then the Cotonou Congress of 1958 saw the older, more integrationist leaders such as Houphouet-Boigny and Senghor left behind. At Bamako, the federal solution was losing ground to the confederal. By Cotonou, the issue was independence. Mamadou Dia of Senegal was clear: "In colonial matters, France is always one reform behind."³⁹ Djibo Bakary of Niger spoke for the majority: "You can only associate when you are already independent; national independence first, the rest later."⁴⁰ De Gaulle's project of a French *Communauté* was over. It was all, as Dia said, essentially too late.

Algeria continued to dominate the national policy-making stage. Problems of independence were dealt with as they arose in West and Equatorial Africa. Ministers came and went in the Rue Oudinot,⁴¹ and the Comores were thought to have gone back to sleep. Foccart, ever the pragmatist, could fix the problems, even be approached by

³⁷ Quoted by Mortimer, *France and the Africans 1944–1960*, p.235 (his translation).

³⁸ *Ibid.*, pp.233–46.

³⁹ Quoted in *ibid.*, p.307.

⁴⁰ Quoted in *ibid.* (his translations).

⁴¹ Boisadam lists 15 between 1958 and 1976. Boisadam, *Mais que faire de Mayotte?*, p.503.

those with particular views,⁴² but could not and did not make a coherent policy. There was the occasional pragmatic response, but no forward thinking.⁴³ Only when Djibouti⁴⁴ started to seek independence were the Comores ever spoken of in the context of France's interests; only when Nahouda visited Paris was there even minor interest in Mayotte.

It was against this background of a France pre-occupied elsewhere that Pierre Messmer, the Minister responsible for *Outre-mer*, visited Mayotte and made his never-to-be-forgotten⁴⁵ speech on 31 January 1972. To an enthusiastic welcoming crowd he declared:

Si un jour, certaines îles de Comores exprimaient le désir d'un changement de statut et voulaient se séparer de la France, ce jour-là rien ne pourrait être fait sans un referendum, et ce referendum aurait bien lieu île par île. C'est-à-dire que ce sont les Mahorais eux-mêmes qui décideront de leur avenir.

If, one day, certain islands of the Comores were to express the desire for a change of status and wish to separate themselves from France, on that day nothing can be done without a referendum, and this referendum will take place island-by-island. That is to say that it is the Mahorais themselves who will decide their future.

He continued (the part of his speech more frequently quoted):

*Mayotte, française depuis 130 ans, peut le rester autant d'années qu'elle désire. Les populations seront consultées dans ce but et il sera procédé à cette occasion à un referendum île par île ... Si vous ne souhaitez pas vous séparer de la France, la France ne souhaite pas se séparer de vous.*⁴⁶

⁴² Notable among these was the *Sénateur* from the Comores, Ahmed Abdallah, who saw Foccart (correctly) as a conduit to de Gaulle. Boisadam, *Mais que faire de Mayotte?*, p.132. See generally Foccart, *Foccart parle*.

⁴³ An example is the French acceptance without analysis of the proposal to move the *chef-lieu* from Dzaoudzi to Moroni. As Boisadam remarks, "Since 1946, and even more after the putting into operation of the *Loi-cadre*, the future of Mayotte was relegated to a second level of preoccupation, both in France and the Comores". He goes on to emphasise that the first level, in France, concerned Indochina and Algeria. Boisadam, *Mais que faire de Mayotte?*, p.86.

⁴⁴ Djibouti was an important navy base and the main military station in the region. It remains so with the US Camp Lemonnier. Referenda were held in 1960 (yes to France as French Somali Coast), 1967 (yes to France on a different basis as Territoire des Afars et Issas) and 1977 (independence as Djibouti).

⁴⁵ This was certainly the case in Mayotte. The visit, by the Minister of state charged with the responsibility for DOMs and TOMs, was a rare (if not unique) event.

⁴⁶ Quoted in Boisadam, *Mais que faire de Mayotte?*, p.116 (my translation) and in many other places. The first two sentences were painted on a wall at the airport by MPM enthusiasts. Martin, *Histoire de Mayotte*, p.131.

Mayotte, French for 130 years, can remain so as long as it wishes. The populations will be consulted about this, and when it happens it will be as a process of referendum island by island. If you do not wish to be separated from France, France does not wish to separate herself from you.

In Moroni, the next day, Messmer modified his language but still spoke of a referendum where each island would be called upon to decide its own future.⁴⁷

France was coming awake to the fact that there was an issue. Something appearing to be a policy was being pronounced, but it was unclear whose policy it was. It was definitely not the policy of the Quai d'Orsay. In the Ministry of Foreign Affairs, there had been no clear policy-statement on the Comores,⁴⁸ but there had been strenuous general efforts to engage with the United Nations (where France held a permanent seat on the Security Council), OAU and the emerging independent African nations.⁴⁹ The Quai d'Orsay wanted to hold its head high in the world of international affairs, but perhaps failed to examine potential contradictions and complexities in its own backyard. In the world of the UN and the ICJ, the principles clearly applicable were the self-determination of peoples (enunciated in the UN Charter) and the intangibility of former colonial borders or *uti possidetis* (the subject of considerable case-law).⁵⁰ A potential point of dispute in the case of Mayotte was not clearly foreseen. Messmer did not speak for the Quai d'Orsay. Neither did he speak for his President. On 24 October 1974, Valéry Giscard d'Estaing said:

Is it reasonable to imagine that one part of the archipelago will become independent and that one island, in spite of all the sympathy we might feel for

⁴⁷ Boisadam, *Mais que faire de Mayotte?*, p.116.

⁴⁸ There was little reason for it to make one: *Outre-mer* was '*Outre-mer*' and not '*Etranger*'. At the moment of independence, responsibility shifted.

⁴⁹ A policy for which, it seems, Messmer had little time: Mansour Kamardine describes him as saying, when he was Prime Minister that the UN was being driven by the OAU; France was represented by diplomats who, like diplomats the world over, did not want to cause trouble. Mansour Kamardine, *Discours de la République pour Mayotte* (Paris: Orphie, 2007), p.116. I have not been able to find where and when this was said. It does appear that Messmer was more important to the Comores and Mayotte than they were to him. In his book on decolonisation, he gives them one anodyne sentence and one brief footnote. Pierre Messmer, *Les blancs s'en vont : Récits de décolonisation* (Paris: Albin Michel, 1998), p.187.

⁵⁰ These will be considered in subsequent chapters.

its inhabitants, should keep a different status? The Comores are a single unit and have always been a single unit; it is only natural that their lot will be a common one.⁵¹

Nor did he speak for the Prime Minister. On 4 November, Jacques Chirac wrote:

The position taken by the government has been considered at length and is the result of mature reflection. In International Law, to begin with, it is a given that territories that achieve independence keep the frontiers that they had under colonial status. France has always had respect for these rules and cannot in this case derogate from them. Also I emphasise that the institutions of the new state will be extensively decentralised. All in all, and without underestimating the attachment of the Mahorais to France, I believe that to retain the solution of the archipelago should both conform to what we are called upon to do and be in the best interests of the Comores.⁵²

It would not even to prove to be the view of the Rue Oudinot. Bernard Stasi would sign the Agreement of 15 June 1973 with Ahmed Abdallah, after Abdallah had met President Pompidou that day. Promoting the concept of a possibly decentralised but whole archipelago, but with an emphasis on the current (4-island) political body being maintained, Stasi asserted that:

It [the Declaration of 15 June 1973] guarantees on the one hand that the territory completely takes in hand its own interests, ensuring the primacy of its own elected political bodies, whilst on the other hand it organises the most direct link of the Comoriens to the international responsibilities of France for all concerning our current problems.⁵³

In Mayotte, to a very different audience he said:

⁵¹ « Est-il raisonnable d'imaginer qu'une partie de l'archipel devienne indépendante et qu'une île, malgré toute la sympathie qu'on peut éprouver pour ses habitants, conserve un statut différent ? Les Comores sont une unité, ont toujours été une unité ; il est naturel que leur sort soit commun ». Valéry Giscard d'Estaing at his press conference of 24 October 1974, quoted in Boisadam, *Mais que faire de Mayotte?*, p.215. Martin suggests the possibility that the tenor of Giscard's speech was linked to the successful delivery to him by Abdallah of the great majority of Comorien votes in the extremely close Presidential elections. Mayotte's votes went to his (losing) opponent, François Mitterrand. Martin, *Histoire de Mayotte*, p.133.

⁵² Jacques Chirac, letter to Pierre Pujo, 24 November 1974, quoted by Boisadam, *Mais que faire Mayotte?*, p.133 (my translation).

⁵³ « Elle (Déclaration de 15/6/1973) assure d'une part la prise en main complète par la territoire de ses intérêts en consacrant la primauté de ses instances politiques élues, elle organise d'autre part l'association la plus directe des comoriens aux responsabilités internationales de la France pour tout ce qui concerne nos problèmes communs... ». Quoted in Mahamoud, *Mayotte*, p.59.

It is necessary to permit each island to affirm its own personality. Each should be able to manage its own affairs, with an equitable share of the aid coming from France, including grants and credits.⁵⁴

In Moheli, the smallest of the islands, he spoke of federalism. He was, it may be suspected, trying to keep everyone happy by giving different messages in different places.

Olivier Stirn, successor to Stasi, maintained this tradition and was to say (in France and during the parliamentary debate):

Of course I think about France's reputation in the world ... I will say as well ... and I know that it is a question on which many of you, in good faith, have doubts ... about the integrity of the archipelago ... the government has [riply reflected] thought long and hard about this ... The real choice for France is a friendly co-operation with all the Comoriens.⁵⁵

Friendly cooperation with all Comoriens was rapidly becoming an unrealizable aim, as positions in the Comores polarised. The "ripe reflection" was not evident. Stirn was at best not facing facts; at worst he was misleading his parliamentary colleagues. In Mayotte, he said, somewhat more emollently:

I know that in Mayotte there are those who would like to remain completely French, but in truth the Comorien people as a whole would wish to keep bonds of friendship and co-operation with France. As a consequence those like you will need to be satisfied and will need to contribute to the bonds of co-operation and friendship. Look forward to your destiny without fear.⁵⁶

In Moroni, capital of the Comores, he said: "The question of Mayotte constitutes a problem that is internal to the Comores." Once again, three audiences receive three different messages, and differing from those of Messmer and Stasi.

⁵⁴ « Il faut permettre à chaque île d'affirmer sa personnalité. Chacune doit pouvoir gérer ses propres affaires, avec une part équitable de l'aide de la France, des subventions, des crédits ». Quoted in Mahamoud, *Mayotte*, p.59.

⁵⁵ « Je pense évidemment à la réputation de la France dans le monde ... J'en dirai autant — et je sais que c'est un point sur lequel beaucoup d'entre vous s'interrogent de bonne foi — de l'intégrité territoriale de l'archipel ... le gouvernement a mûrement réfléchi ... le vrai choix pour la France c'est une coopération amicale avec tous les Comoriens ». Quoted in Kamardine, *Discours*, p.184.

⁵⁶ « Je sais que à Mayotte il y en a qui auraient voulu rester complètement français, mais en vérité le peuple comorien tout entier souhaite garder avec la France des liens d'amitié et de coopération. Par conséquent, ceux-là comme vous-même doivent être satisfaits de l'avenir et ils doivent contribuer eux aussi aux liens de coopération et de l'amitié. Affrontez votre destin sans crainte. » Ibid., p.184. I have translated « doivent » as "need"; however, it could also be translated as "ought".

Nor did Messmer speak in conformity with what was to be the French position at the UN, where the French Ambassador Jean Sauvagnargues said:

May it be permitted to me to add that France, after having been one of the first powers to support the self-determination of many of the countries that are now members of our organization, is at this moment completing its own enterprise of preparing, in agreement with the freely elected leaders of the Comores, the accession of that country to independence ... It is not a question of the [plural] populations of the archipelago, but of the Comorien people, one and homogenous.⁵⁷

What Messmer had enunciated to the enthusiastic crowd of Mahorais was not the policy of the government. If there was anything that could be construed as an official French policy, it was the opposite. However, Messmer's was the view that struck a chord in Mayotte, and he, as the Minister, was taken to be representing Paris. It was an important occasion: he was the first minister in modern times to visit the island. As the contents of his speech became known, Messmer could have been admonished and the people of Mayotte told that what he had said was not the 'ripe reflection' of Paris. In fact there was silence, and shortly afterwards Messmer was promoted and became Prime Minister. In Mayotte his speech was taken as the word of the French government, and was painted on the airport wall for all to see. Messmer may have been captivated by the charm of Mayotte and the warmth of its welcome;⁵⁸ he may have over-stated his position; he may have been fatigued after a long journey. His words struck a receptive audience and were remembered.

Olivier Stirn inherited the unforgotten words of Messmer when he succeeded him as minister. Stirn's apparently definitive statement of the government's 'ripe reflections' and 'friendly relations with all Comoriens' took a different approach to

⁵⁷ « *Qu'il me soit permis d'ajouter que la France, après avoir été une des premières puissances à favoriser l'auto-détermination de maints pays maintenant membres de notre organisation, complète en ce moment sa propre entreprise en préparant, d'accord avec les dirigeants librement élus des Comores, l'accession de celles-ci à l'indépendance.... Il n'est pas un question 'des' populations de l'Archipel mais du peuple comorien, d'un seul peuple unique et homogène.* » Jean Sauvagnargues, French representative at the UN, 23 September 1974, General Assembly.

⁵⁸ Boisadam, *Mais que faire de Mayotte?*, p.116.

Messmer. However, when the draft law was amended on the critical issue to the point that it had effectively been overturned, he surrendered and accepted the amendments without demur, effectively following Messmer.

There was no unanimity, either in belief or speech. Critics, stringent such as Pierre Caminade and Ahmed Wadaane Mahamoud, or more nuanced such as Philippe Boisadam, or even the broadly pro-French Jean Martin all show that the government was divided and spoke with different tongues (as did the personalities within it).⁵⁹ Stirn, long after the event, attempted to explain the government's confusion by saying that they all thought that all four islands would vote for independence, based on what they had been told by Ahmed Abdallah.⁶⁰

The leading proponents of the theory that France acted in bad faith came from Comores and subsequently their supporters in Africa,⁶¹ and ultimately in the UN. An example of this perspective is the statement of Tanzanian Ambassador Himidi: "The objective of France is to humiliate and strangle the Comorien people in their legitimate claims."⁶² Ahmed Wadaane Mahamoud wrote, from the Comorien perspective and with reference to the vote of 1975: "The planned law is treacherous ... the parliamentary majority has thus legalised a procedure that is totally illegal".⁶³

Beyond the failure to state a clear position and have a policy, there was another failure. This is the real and lasting one: France's failure in the Comores as a colonial

⁵⁹ Part of the problem was the rapid turnover of prime ministers. Only George Pompidou (1962–68) showed permanence. Otherwise, the average tenure between 1958 and 2002 was less than two years.

⁶⁰ Olivier Stirn, interview with Pierre Billotte, 5 July 2006, quoted in Kamardine, *Discours*, p.119. It is such a lame excuse that it has the ring of truth. It suggests an extraordinary lack of briefing or research or awareness of Mayotte's campaign and an equally extraordinary reliance on the supposed views of a bargaining-opponent not known for his trust-worthiness.

⁶¹ While the events of the unilateral declaration were unfolding, the OAU was meeting in Kampala, Uganda. Boisadam wrote: "The government of the young state, and especially its President Ahmed Abdallah, launched on to the international scene. The craziest stories were broadcast in an attempt to discredit France and accuse it of rape and colonial aggression towards a 'Comorien island'." Boisadam, *Mais que faire de Mayotte?*, p.141.

⁶² Ambassador Himidi, UNGA 18 October 1976. He was quoted by Olivier Stirn, quoted by Mansour Kamardine, *Discours*, p.119.

⁶³ « *Un projet de loi perfide...La majorité parlementaire d'alors va légaliser une procédure tout à fait illégale.* » Mahamoud, *Mayotte*, p.153.

power. As the moment of independence approached, all four islands were in a run-down, impoverished and decrepit state. Bourges and Wauthier described it vividly:

France has left in place ... almost nothing except insurmountable difficulties. An administration that is disorganized, a high school without teachers, hospitals without doctors, a radio station that is the only source of information — there is no written press. There are no technicians; building work is suspended; services are heavily handicapped ... unemployment, empty tills and an economy that has gone to hell ... a country that is destitute, broken and abandoned to its own sad fate.⁶⁴

Earlier, Michel Legris had written in *Le Monde*:

Moreover, any Frenchman from the *métropole*, when he arrives in these admirable places, can only legitimately experience two feelings: shame and remorse ... because of the state of dereliction in which this archipelago has been left.⁶⁵

Iain Walker, the Australian anthropologist who had studied the social structures of Grande Comore, wrote:

Overall, there was a consistent failure on the part of the French administration to establish an effective and functioning state in the Comoros; this failure was to have significant repercussions in the post-independence period.⁶⁶

Dereliction and failure, leaving nothing in place — most commentators are agreed. This applies to all four islands. I have quoted, as examples, French sociologists, a French journalist and an Australian anthropologist who all knew the islands well — they are unanimous. That there was incompetence, lassitude, lack of interest, a poor calibre of functionary — they are in agreement. If France was promoting imperial or even geopolitical ambitions, it was doing it remarkably badly. If there were grand aims in Paris, they were not evident in the Comores.

If France were the instigator of the *départementalisation* as part of a plan furthering its strategic interests, it had done nothing to prepare, mobilise and lead up to

⁶⁴ Herve Bourges and Claude Wauthier, *Les cinquante Afriques* (Paris: Seuil, 1979).

⁶⁵ Michel Legris, *Le Monde*, 31 December 1970 : « *Et pourtant, un Français de la métropole, lorsqu'il arrive en ces lieux admirables, ne peut légitimement éprouver que deux sentiments : la honte et le remords ... a cause de l'état de déréliction dans lequel a été laissé cet archipel.* »

⁶⁶ Iain Walker, "What Came First, the Nation or the State? Political Process in the Comoro Islands," *Africa*, vol.77, no.4 (2007), p.582.

the event, or even to think about the implications. There was no plan. Only from about 1990 onwards did the French governments begin to react. In short, the ‘France as Prime Mover’ explanation does not stand up to scrutiny. This leads us to the second explanation given for the pro-*département* stance of Mayotte.

3.2 The ‘Politics of Avoidance’ Theory

“*Maore farantsa*” (“French Mayotte”) and “To remain French in order to be free”⁶⁷: these were curious words to come from a colony facing decolonisation in the 1960s and 1970s. These were the slogans of the *chatouilleuses* and the MPM. Furthermore, it was the stance of the vast majority of the population of the island, to be clearly shown by future responses to Consultation after Consultation. Was it a love of things French or a fear of things Comorien? I will argue, as others have done before,⁶⁸ that it was the latter. The demand was initiated, the path was started locally, and this was the reason. This was the point of departure for self-determination.

From afar, these are four small islands on a map, closer to each other than to anywhere else. From afar, these are four not very large populations that appear very similar. There is a more or less common cultural background, with minor differences between one island and another. There are differences in language, but not so great as to prevent inter-island comprehension. There are slightly more Malgache influences here (in Mayotte), slightly more Arab there (in Grande Comore). Virtually all the

⁶⁷ These slogans are quoted by many commentators, including Martin, *Histoire de Mayotte*, p.125.

⁶⁸ Boisadam is a good example. Philippe Boisadam, *Mais que faire de Mayotte?* Stirn, long after the events in which he was directly involved, was to say in 2009: “Historically, Mayotte had always been afraid of being invaded by the Anjouannais or the Grand Comoriens. I think that if the other three islands had chosen to remain French, Mayotte would have chosen independence, because their problem was not to be dependent on the Anjouannais and Grand Comoriens.” « *Or Mayotte, avait toujours eu peur d’être envahie par les Anjouannais et les Grands Comoriens, historiquement. Je pense que si les trois autres îles avaient choisi de rester françaises, Mayotte aurait peut-être choisi l’indépendance parce que leur problème, ce n’est pas d’être dépendants des Anjouannais et Grands Comoriens.* » *Radio France Culture*, 23 February 2009. Stirn is quoted by Caminade, *Comores–Mayotte*, p.61.

inhabitants are Muslim. All four islands were brought together to form one French colony. From afar, the question might be asked: why should there be such discord?

From afar, the appearance of togetherness is more evident than the more subtle phenomenon of separateness. In reality, relations of separateness have been at the core of life in the islands. The history, as we have seen, shows separateness and a high degree of mutual mistrust.⁶⁹ Inter-island travel and inter-island settlement have occurred (the distances are not great), but neither has brought about the formation of an inter-island identity. As Mohamed Toihiri writes in his novel, set in Grande Comore, *La République des Imberbes*: “First one has bonds with a family, then a clan, a village and an island before one can feel and call oneself Comorien.”⁷⁰

Local writers emphasise this perspective again and again. Abdelaziz Riziki Mohamed writes: “Insularity creates insurmountable political problems and hatreds between the inhabitants of the different islands ... Insular chauvinism divides and destabilises the archipelago.”⁷¹ He goes on to quote Gabriel Ferrand who writes of: “The insular patriotism which makes one need to be Grand-Comorien, Mohélien, Anjouannais or Mahorais before being Comorien.”⁷²

This is not simply an issue of Mayotte feeling distinct from the other three islands. All four feel separate. It is a perspective held in each island, though perhaps less overtly in Grande Comore, the largest island. Here the assumption is more readily made that where Grande Comore leads, the others should follow. In political terms, both Anjouan and Mohéli have made abortive attempts at separation; for the former, it

⁶⁹ This topic will be examined in Ch.5. The history was examined in Ch.2.

⁷⁰ Mohamed A Toihiri, *La République des imberbes* (Paris: L’Harmattan, 1985), p.139. ‘Imberbes’ are those too young to grow a beard.

⁷¹ Mohamed, *Comores*, p.15.

⁷² Gabriel Ferrand, *Les Musulmans à Madagascar et aux îles Comores* (Paris: E Leroux, 1891–2), 3 vols., cited by Vérin, *Les Comores*, p.5.

became a long and bloody struggle.⁷³ Residents of Moheli have on occasion brought out their French flags, saying they regretted not following the lead of Mayotte.⁷⁴ Relations between the three islands of the independent Comores only improved somewhat when a regime of loose federalism was adopted, with a circulating presidency and each island largely autonomous. The problem with this style of governance was its crippling cost.

This inter-island mistrust has a long history, and is vindicated, many would say, by more recent events. All commentators would agree that the history of the Comores since Independence has been an unfortunate one.⁷⁵ Seventeen coups in 20 years (1975–95) interspersed with four repressive dictatorships and periods of rule by mercenaries, followed by attempts at secession, is not an enviable record. However, the mistrust goes back to pre-French days, when Madagascar and the Comores were part of a circle of fear, *razzia*, slave-taking and land seizures, known as the epoch of the ‘battling sultans’. Indeed, these were the circumstances which brought France in, in the first place.⁷⁶ In the ‘Islands of the Moon’, the worst behaviour could be expected from near-neighbours. This was the ethos,⁷⁷ and it provides the light in which the policies, practices and personalities of Saïd Mohamed Cheikh, Ahmed Abdallah, Ali Soilihi and other leaders should be seen, and the reason why each in turn failed. Abdelaziz Riziki Mohamed, who lived through all these dictatorships, was to write: “In the Comores, from the bad is born the worse”.⁷⁸

⁷³ This struggle continued for several years and was only brought to an uneasy conclusion by intervention by the AU.

⁷⁴ Pierre Lunel, *Bob Denard, le roi de fortune* (Paris: Editions No 1, 1991), p.528.

⁷⁵ Malyn Newitt’s apparent moderate optimism would have to be the exception. I doubt that he would reach the same conclusions with the advantage of longer hindsight. Newitt, *The Comoro Islands*.

⁷⁶ The imbroglio with Adriantsoli was discussed in Ch.2 (see 2.2).

⁷⁷ This was the case at the political level; at the individual level there was considerable intermingling, mutual aid and intermarriage. Battling sultans (or political leaders with militias) are not the same as battling populations.

⁷⁸ Mohamed, *Comores*, p.35.

An underlying cause of mistrust between Mayotte and the other islands can be discerned in the difference of social structures. Decades of French colonisation had done little or nothing to alter the social structures,⁷⁹ which differed from island to island, with Mayotte differing the most. In Grande Comore and Anjouan, the successors to the ‘battling sultans’ were the elite descended from them. This elite class was not entirely inflexible and the top men can only loosely be described as an aristocracy, but the society was strongly hierarchical. It was possible to climb the ladder, but the way up was paved with study, expense, the provision of feasts, perhaps the *Hajj*,⁸⁰ ultimately the *Grand Mariage*.⁸¹ Having climbed this ladder,⁸² a man could speak and have influence.⁸³ Pierre Verin shows that there were also sanctions that could be imposed by the higher ranks of the elite, such as removal of the right to speak or requirement to perform mundane tasks.⁸⁴ The elite, particularly in Grand Comore, could either encourage or refuse access up the social ladder.⁸⁵ This social structure was not a sound basis for European concepts of electoral democracy. The society in general, including the voters, deferred strongly to age and status.⁸⁶ If anything, the

⁷⁹ Jacques Ziller describes the 1930s in particular as a time when colonial domination had plunged Comorien society into complete lethargy and increased religiosity. Diviners and astrologists held great power, both within and outside the Qu’ranic system. Jacques Ziller, *Les DOM-TOMs* (Paris: LGDJ, 1996), p.129.

⁸⁰ The pilgrimage to Mecca.

⁸¹ The *Grand Mariage* is the most ceremonial and extravagant of marriage feasts, a statement of a claim to be considered a member of the elite, who are among the invited. It is at once a *rite de passage* and an inter-clan financial arrangement, and is obligatory to achieve the highest social levels, especially in Grand Comore. It was banned by Ali Soilihi, but has since re-appeared. See Sophie Blanchy, *Maisons des femmes, cites des hommes: Filiation âge et pouvoirs a Ngazidja (Comores)* (Nanterre: Société d’ethnologie, 2010).

⁸² This was not a simple matter of self-help; it needed the support of the Notables and through them the government. Education and the *Hajj* involved travel, financial support and the granting of visas. These aids for social advancement were for selected and supported young men only. Ibrahime, *Saïd Mohamed Cheikh*.

⁸³ He would also have a seat of honour in the mosque, and the first choice of the meat at feasts. Verin, *Les Comores*, p.132. Verin points out that the new ‘democratic’ powers, from 1946 on, were confined at once to the elite.

⁸⁴ *Ibid.*, p.135 et seq. There was also, at least up to the 1970s, belief in, and active use of sorcery.

⁸⁵ M’sa Ali Djamaal, *Luttes de pouvoir aux Comores* (Moroni : Editions de la Lune 2006).

⁸⁶ Status brought the right to speak, a place of honour in the mosque and first choice of the meat at feasts. Verin, *Les Comores*, p.134. The role of age and status in elections are evidenced in Ibrahime’s discussion of the elections of 1952 and 1953. Ibrahime, *Saïd Mohamed Cheikh*, p.137.

French colonial regime and its subsequent reforms towards local self-administration provided a means by which the elite could further its dominance. Hierarchical position could be used for garnering votes.

Mayotte was always different and more flexible for two reasons: an absence of such structured elites and the greater influence of the women. Salim Mouhoutar describes life in Mayotte:

Before 1975 two social groups co-habited without ever mixing ... On the one hand there was the Mahorais society, closed in its traditions, in the villages, with at the head of each village a secular Chief and a religious one. All the major decisions were taken on the basis of unanimity by the village community presided over by the Chief. On the other hand there was the colonial-type administration in Dzaoudzi. These two spheres ignored each other completely.⁸⁷

Mouhoutar is describing a social life that was not replicated in the other islands of the Comores, which were more 'feudal' in nature. He goes on to elaborate on the role of women in Mayotte. First, they were the house owners; second, prime carer for the children; and third, politically involved agents, albeit in a parallel network to the men of the village. They were leaders from the front in defending the interests of Mayotte as they saw them. This was not the case in the other islands, where their role was more clearly subordinate. This explains the double mortification and anger felt by Saïd Mohamed Cheikh at being chased by stone-throwing women.⁸⁸

More generally, as Mouhoutar comments: "Mayotte is an island marked by the pre-eminence of the community over the individual."⁸⁹ This is an important point of difference: on the other islands, particularly Grand Comore, the community was below a superstructure of important individuals or Notables. Outsiders could perceive the

⁸⁷ Salim Mouhoutar, *Mayotte : Une appartenance double* (Mamadzou : Editions Menaibuc, 2011), p.9 (my translation). Unanimity of decision-making did not mean equality of voice: the weight put upon each man's words was according to his status. As was noted with reference to the three islands of the Comores, it was difficult to grow Western concepts of democracy here, but for different reasons.

⁸⁸ The shame was double: being stoned, and by women.

⁸⁹ Mouhoutar, *Mayotte*, p.57. Yves Salesse agrees. He writes: "The society is not given to individual opinions. To differ from the group is to show disrespect or marginality." Yves Salesse, *Mayotte : L'Illusion de la France : Propositions pour une décolonisation* (Paris: L'Harmattan, 1995), p.3.

four islands as all being very similar, and be misled; closer examination shows that the social structures were very different.

Against the social background that pertained traditionally in Grande Comore and Anjouan it is hardly surprising that a sequence of ‘big men’ (before the term gained currency in Africa) found their way to power. It is also hardly surprising that this phenomenon held no appeal in Mayotte, as it went totally against the social grain.

The first ‘big man’ of the modern era was Saïd Mohamed Cheikh*, who combined twelve princely ancestors with the first medical qualifications in the Comores.⁹⁰ He also had a popular following for leading the movement for redistributing the Humblot Company’s vast holdings of land in Anjouan and Grande Comore. At first he was popular and was elected *Député* in the *Assemblée Nationale* in 1945,⁹¹ but as time passed he became increasingly dictatorial, isolated and bitter, and physically and mentally divided between his life in France as a *Député* and his life in Comores as a traditional Notable.⁹² Cheikh ignored anyone who was not a Notable and there was no place for anyone from Mayotte or Moheli in his search for, and exercise of, political power. The Notables of his maternal and paternal home-towns of Mitsamihuli and Moroni provided his power-base, with links to other parts of Grande Comore by family and religious ties. Secondly, he was powerful in Anjouan, where his lieutenant was Ahmed Abdallah⁹³ and his reputation was high as the man who had

⁹⁰ Saïd Mohamed Cheikh spent ten years running a leprosy hospital in Madagascar.

⁹¹ He was educated, spoke French and was esteemed for his medical work. He was a Notable, but not a Prince. His fellow-representative in Paris, the *Sénateur* Grimaldi, was a *colon*. For Cheikh, it was a lonely life. Ibrahime, *Saïd Mohamed Cheikh* (see the early chapters).

⁹² His life became further complicated by having wives, mistresses and children in both places. Ibrahime, *Saïd Mohamed Cheikh*, p.266. It must also be remembered that in the 1940s and 1950s, travel between the Comores and France was long and slow.

⁹³ When Cheikh had first gone to Anjouan as a doctor, he had lodged with Abdallah’s father-in-law. They had remained friends ever since. It seems that the more Abdallah helped Cheikh politically in Anjouan, the more Cheikh helped Abdallah in his money-making — e.g., by granting him one of the rice-importing monopolies. Ibrahime, *Saïd Mohamed Cheikh*, p.127.

stopped forced labour.⁹⁴ His connections to Mayotte and Moheli were tenuous.⁹⁵ Mahorais and Mohélien representatives did not find under Cheikh, a warm and welcoming ambience in Moroni, the seat of government. There were sporadic attempts to placate the smaller islands under the TOM regime, usually encouraged by the *Hauts Commissaires*; there were visits, but these tended to be for Cheikh to exhibit himself as the centre of power rather than to make genuine contact with the populus.⁹⁶ It was not in his nature to act otherwise.⁹⁷ Those Mahorais who had been exposed to him knew he would not change, and were convinced that under any four-island arrangement it would never be otherwise.⁹⁸

The Mahorais had voted for Cheikh as *Député* (or at least some of them had; the franchise was extremely limited⁹⁹) in 1945 and subsequently; he was a respected man and, as part of a pattern of the politics of the TOM at that time, they more or less accepted that the electoral weight was in Grande Comore and Anjouan. Resentment grew as Cheikh's dictatorial behaviour and anti-Mayotte stance became more evident. Marcel Henry, who was a minister in the first two governments presided over by Cheikh from 1959 onwards, was to lead and inform this resentment.¹⁰⁰ The fear of being of no account and dominated by Grande Comore and Anjouan was well-established by the time of the movement of the *chef-lieu*. This transfer was the crystallisation of long-held fears and an event which could be played out to the Mahorais public by Nahouda, Bamana, Henry, Giraud and the women as concrete

⁹⁴ The reputation was sure, even if the facts were more doubtful.

⁹⁵ Ibrahim, *Saïd Mohamed Cheikh*, p.250.

⁹⁶ *Ibid.*, p.276.

⁹⁷ Cheikh held strongly to the belief that: "to doubt the word of a Comorien Notable is already to insult him." *Ibid.*, p.275.

⁹⁸ *Ibid.*, p.277.

⁹⁹ The franchise was limited to a 'college' of *colons* and a 'college' of certified French-speaking male autochthones, at that time less than 5% of the population.

¹⁰⁰ Ibrahim, *Saïd Mohamed Cheikh*, p.279.

evidence of the disadvantages to Mayotte.¹⁰¹ The transfer was a catalyst, and, as with all catalysts, the timing was significant. The Convention of Tzoundzou of 2 November 1958, where Nahouda in all likelihood first used the formulation ‘*Département*’, was contemporaneous with the constitutional questions coming from Paris and the *chef-lieu* issue.

Ibrahime suggests that the reluctance of Mayotte to stay as part of a four-island TOM or independent state pre-dated the issue of the moving of the capital. Ibrahime’s account is strongly supportive of the argument that the fears and the mindset of the Mahorais were started early and were confirmed by every subsequent event and every utterance of Cheikh.¹⁰² After his death and the assumption of power by Saïd Ibrahim, it is possible to argue, as Boisadam does,¹⁰³ that there was a window of opportunity for a coming together. Certainly the *Hauts Commissaires* were more optimistic.¹⁰⁴ However, this was the epoch of the Messmer visit and speech, and separatist opinions were hardening in Mayotte at the one moment that there might have been more flexibility in Moroni.

The next ‘big man’ was the Anjouannais Ahmed Abdallah*, unprincipled but extremely rich. He owned large tracts of land in Mayotte and the monopoly for rice imports to all islands, granted to him by Saïd Mohamed Cheikh. He had held Anjouan for Cheikh and was closer to Cheikh than his co-heir Saïd Ibrahim, whose popularity derived from his being a son of the last Sultan and having a relatively easy-going

¹⁰¹ The most immediate and concrete evidence of the disadvantages was the loss of jobs and income.

¹⁰² If there is a weakness to his account, it is that Ibrahime draws much of his material from the files and reports of successive *Hauts Commissaires*. While this is a mine of information of great significance that has never been so thoroughly excavated, there remains a danger that when an account and an interpretation of events in the Comores is based so much on the reports home of the French bureaucracy, there may be a lack of balance. The reports may have a particular perspective and may have been made to further ends beyond those of historical accuracy. Moreover, the turnover of *Hauts Commissaires* was sufficiently great that each in turn may not have had a full understanding of the events and personalities on which they were reporting.

¹⁰³ Boisadam, *Mais que faire de Mayotte?*, p.108.

¹⁰⁴ Ibrahime, *Saïd Mohamed Cheikh*, p.322.

aristocratic mien. Abdallah was fighting to win, whereas Saïd Ibrahim was more apparently motivated by *noblesse oblige*. Like Cheikh, Abdallah was a wily political operator,¹⁰⁵ French-speaking and popular with the French political class. While considered Cheikh's political heir, he was more clearly pro-independence than Cheikh had ever been, or allowed himself to appear.¹⁰⁶ Abdallah's enemies were in Grande Comore, Moheli and Mayotte.¹⁰⁷ It was Abdallah who unilaterally declared independence, as described in Chapter 2. There was nothing about Abdallah to change views in Mayotte or to make life as a four-island nation appear any better. With the French ceding more powers, Abdallah controlled the gendarmerie and operated the gaols. He was Cheikh's true heir in his drive towards autocracy during his two occupations of the seat of power.

In the years following separation, Abdallah was followed by Ali Soilihi*, helped to power by the mercenary Bob Denard*. Soilihi was a French-educated agronomist, neither rich nor princely. His social revolution, intended to alleviate the social circumstances of the poor, increased poverty to the stage of destitution. His rule through teenage militias and arbitrary arrests and executions brought the three islands to their knees.

When life for Comoriens seemed as bad as it could get, Bob Denard brought Abdallah back, for more long years of hardship. A joyful welcome, in the briefly held belief that Abdallah was preferable to Soilihi, was followed by a realisation that no improvement was in sight; this time it was a poisonous combination of dictatorship

¹⁰⁵ Whether he was a wily operator ingratiating himself with Foccart, or whether he was Foccart's puppet, is a matter of dispute. It could be said that they were a good match for each other.

¹⁰⁶ In 2004, Ibrahime conducted a questionnaire among Comorien politicians. Of those questioned, nine said that Cheikh was anti-independence and five said that he was pro-independence. Ibrahime, *Saïd Mohamed Cheikh*, p.319.

¹⁰⁷ Two accusations made against Abdallah, often repeated but I cannot find a reference for their origin or accuracy, were that firstly even as President of the Comores and the author of unilateral independence, he always kept his French passport, and secondly that despite being the richest man in the islands, he never paid a franc in tax. These accusations are cited in Verin, *Les Comores*.

and neo-colonialism. Deschamps, the French ambassador at the time, describes it as “a catastrophic evolution”.¹⁰⁸ Abdel Riziki Mohamed cites the general Comorien belief about political leaders: “The one before was no good, but he was certainly better than his successor.”¹⁰⁹ Denard’s white mercenaries and specially-trained militias held as much (or more) power as Abdallah.¹¹⁰ There is no need to recapitulate this history at length. My point is to emphasise that there was nothing to make the Comores attractive to the inhabitants of Mayotte, and much to make Mayotte attractive to the inhabitants of the other islands.¹¹¹

Let us return to 1958 and the origins of the call for *départementalisation*. France was directly asking its DOMs and TOMs to consider their relationships with the *République*. Pascal Marchetti makes the point that the rejection of a Comorien solution for Mayotte need not be the pretext for a definitive integration into the French *République*; there could, in theory, be other paths.¹¹² While Marchetti’s thesis is logically correct, no one saw it that way. By the 1970s the alternatives had been set. The ‘Path Dependency’ had long been in place, probably since the Tzoundzou gathering of 2 November 1958. If not then,¹¹³ the first mention of DOM status — the first overt utterance of *départementalisation* — came with the vote of 11 December 1958 on the status of the territory, when the *Assemblée* decided to maintain the status of TOM, while the four representatives of Mayotte voted for DOM. Was it this vote, with the choices clearly enunciated, that put the concept of DOM into Mahorais minds? In other words, did the possibility of DOM status come from Paris (in December) or was it already alive in Mayotte (in November)?

¹⁰⁸ Alain Deschamps, *Les Comores d’Ahmed Abdallah* (Paris: Karthala, 2005), p.167.

¹⁰⁹ Mohamed, *Comores*, p.35.

¹¹⁰ Abouboucar Said Salim’s novel *Le Bal des Mercenaires* (Moroni : KomEdit, 2004) is a lightly fictionalised account of this period of horror and deprivation.

¹¹¹ The issue of ‘clandestin’ migration will be discussed in detail later.

¹¹² Pascal Marchetti, « *Mayotte devant le processus de la décolonisation* » (Aix-en-Provence: APOI XII, 1990–91), p.444.

¹¹³ There is no record of the discussions at that meeting.

This question is not easy to answer. As we have seen, under the French law of 3-6-1958, a revision of the Constitution of France was to be prepared. This was the Constitution of the Fifth Republic. Any revision could affect DOMs and TOMs. The *Comité Consultative Constitutionnel* that was to prepare the changes was chaired by the Minister of Justice, Michel Debré (in the future to be the *Député* for La Réunion). The *Comité* text was adopted in the Referendum of 28-9-1958. In his speech to the *Conseil d'état* on 27 August 1958, Michel Debré outlined his proposals for the *territoires* and *départements d'Outre-mer*:

They have the choice between three solutions: They can live inside the *République*, and with this done, bring their status close to that of a *Département d'Outre-mer*; in the second place, they can choose the new status of 'State member of the Community'; they can also choose secession, that is under the name of independence they can break all the bonds which used to unite them to France and to the other states of the French Union, soon to become the French Community.¹¹⁴

Art.76 of the new 1958 Constitution provided:

Les territoires d'outre-mer peuvent garder leur statut au sein de la République ... s'ils en manifestent la volonté par délibération de leur assemblée territoriale prise dans le délai prévu au premier alinéa de l'Article 91 (six mois) il leur est possible de devenir, soit un département d'outre-mer de la République, soit, groupes ou non entre eux, des Etats membres de la Communauté.

The overseas territories can keep their status within the *République* ... If they show their desire, by a decision of their territorial *Assemblée* within the time limits prescribed by the first Paragraph of Article 91 (six months), it is possible for them to make a change, be it to the status of a DOM of the *République*, be it, as a group or not amongst themselves, State members of the *Communauté*.

Mayotte, on its own, was not at this time a *Territoire* and did not possess an *Assemblée territoriale*, so did not have this option. The *Communauté* as conceived by Art.76 never became a reality. However, the Debré speech and the new Constitution may well have awakened the political leaders of Mayotte to the concept of *départemental* status. This idea probably appeared at the convention of Tzoundzou, the

¹¹⁴ Quoted in Boisadam, *Mais que faire Mayotte?*, pp.91-2.

birth-place of a self-conscious Mahorais politic, as a possible solution to their woes vis-à-vis the other islands. Michel Debré was always supportive of their cause. He had strong ties to La Réunion. He had also just been appointed Prime Minister. If we are looking for a source for the idea of *département* status, this employment of the term by Debré and its appearance in the proposed Constitutional changes (though not in a form directly applicable to Mayotte) could well have been the start of the path of Path Dependency.

In the *Assemblée* in Moroni, the requirement from Paris for a voted response to the new 1958 Constitution for the Fifth Republic made for a complex debate. Did the *Assemblée* want to embrace de Gaulle? What status did it seek? Independence was not under consideration. The questions were the same as for Africa, as we have discussed. In Moroni, Cheikh's aim was the maintenance of TOM status as the basis for achieving increased autonomy and increased funding of development. The only dissent was from the four members from Mayotte. This — and Tzoundzou — seem to have been the starting points for talk of *départements*. It is hard to know whether there was any understanding at all of what DOM status truly entailed, other than it was a closer link to France than TOM status or independence. There had been no Mahorais among the Comorien representatives in Paris since 1945. Moreover, there is no evidence that anyone in 1958 ever truly contemplated the implications, the demands that *département* status would make. It is, however, from this date that the word became current and the path was set. From 1958 onward, the word *département* defined the path and there was to be no deviating from it.

The nearest example of a DOM was La Réunion but in 1958 links hardly existed; the connection was more strongly with Madagascar, where Comoriens travelled for services like education and health, and which had been until 1945 the

centre of colonial administration.¹¹⁵ Many Mahorais, indeed Comoriens in general, had relatives in Madagascar. It is, however, possible that when Mahorais thought of an example of a DOM, they thought of La Réunion, the nearest and relatively prosperous. Later, there was input from Henri Jean-Baptiste, who represented Mayotte in the *Assemblée* from 1986–2002. His birthplace and previous experience were in Martinique, long a DOM. He helped the Mahorais to understand the *départemental* system better and could explain the possible advantages,¹¹⁶ but this was long after their original demand. He may have helped them along the path but did not start it.

3.3 The ‘Economic Advantage’ Theory

It has frequently been suggested over the long years of the Mahorais campaign for *départementalisation* that the aim was economic advancement. The (arguable) assumption is often held that an economic reason must lie behind a political course of action. This widely held view of the way the world works can be applied without knowledge of the issue of Mayotte, its geographical whereabouts or the duration of the *départementalisation* campaign. It might well be the response of the average French voter who appears to remain very ill-informed about the affairs of Mayotte.¹¹⁷

The claim that economic concerns were to the fore is hard to disprove. It is particularly difficult to do so in circumstances where the tradition is oral and the spoken word has gone largely unrecorded. The absence of any documentation, French accounts excepted, on any particular topic in the politics of the Comores comes as no

¹¹⁵ Until 1945, colonial rule had been from Madagascar. La Réunion had never been part of this nexus. Edmond Maestri, *Mayotte, Madagascar, la Réunion et la France depuis 1841* (Aix-en-Provence: APOI XII, 1990–91), pp.91–114.

¹¹⁶ He was a long-standing close friend and confidante of Marcel Henry.

¹¹⁷ Mayotte gets very little coverage in the mainstream French news. I have not been able to find any reference to research on this question of French public awareness of Mayotte.

surprise. There were minimal written newspapers, and little in the way of archives.¹¹⁸ This absence of evidence applies both to proof and disproof. It may be helpful, however, to adopt the suggestion of Kira Bacar Adacolo and divide the Mahorais claim into two phases.¹¹⁹ He describes these as the ‘Utopian’ phase and the ‘Realist’ phase, and places the chronological point of division between the two as 2000, the year of the Paris ‘Accords on the Future of Mayotte’ which followed the two discussion groups. At this point, an era of indefinite delays and contradictory statements might be seen to give way to a period of defined delays and a greater degree of French commitment. When denying that economic concerns were to the fore, I am referring particularly to the ‘Utopian’ phase, the period in which the path was laid down.

The little evidence there is points to a Mahorais lack of concern for money in the early years of the campaign, when the demand was being formulated, in 1958 and after, during Adacolo’s ‘Utopian’ phase. This is not to say that the Mahorais did not object when what little they had was threatened with removal, namely the administrative activity of the *chef-lieu*.¹²⁰

Boisadam links the economic issue to the loss of *chef-lieu*, suggesting that trade and food supplies would henceforth be dominated by Grand-Comoriens, to the detriment of Mayotte. In practice, food shortages did follow rapidly once the administration had gone. Cheikh kept to his word that Mayotte would get nothing from the government.¹²¹ Abdallah held the rice monopoly.

Newitt, whose perspective is more pro-Comorien and anti-French, also ties economic issues to the removal of the *chef-lieu*:

¹¹⁸ The Moroni archive was burnt down by supporters of Ali Soilihi in the wake of his coup.

¹¹⁹ Kira Bacar Adacolo, *La Perception de la transformation de Mayotte en Département d’Outre-Mer* (Mamadzou : Menaibuc, 2011), p.20.

¹²⁰ The *Conseil* itself was long gone.

¹²¹ Boisadam, *Mais que faire de Mayotte?*, p.106.

Although the French invested little in the islands before the 1960s, there is no doubt that Mayotte benefitted most from what official expenditure did take place; French officers and *fonctionnaires* came and went, and the units of the legion spent some of their pay. Moreover there were always some French who settled near the capital, married local women and helped to swell the tiny but vocal Creole class.¹²²

In the two decades of the Comores as a TOM after the vote of 1958, the major source of income was France and the major trading partner was France. This is not saying much; there was little trade and minimal aid. The aid per capita to the Comores was approximately one tenth of that to other DOMs and TOMs. As Foccart said in 1970 (after a particularly uncomfortable night in Dzaoudzi¹²³):

For all the years that I have been involved with these territories, the Comores have always been short-changed ... I don't know why, the Rue Oudinot has always had some kind of prejudice against the Comores.¹²⁴

He was referring to the small amount of money coming to the Comores as a whole, not the far smaller portion that was being remitted to Mayotte via Moroni. Under the TOM regime, payments to Mayotte were “erratic”,¹²⁵ particularly under the regime of Saïd Mohamed Cheikh, who held a “visceral mistrust and ... hostility towards Mayotte and Moheli.”¹²⁶

Guy Fontaine cites economists who visited in 1979 and described the economy as being nearer to that found by Albert Schweitzer on his first visit to Africa in 1905 than to anything in even the poorest country in Africa in their time.¹²⁷ Fontaine describes a subsistence economy where each family unit grew and fished for themselves and cut a tree down in the forest when wood was needed; each helped

¹²² Newitt, *The Comoro Islands*, p.48. There is no evidence that French settlers married local women. The circumstances he describes were not those of 1958. The ‘Creole class’ originated in Sainte-Marie, Madagascar. They were not born locally.

¹²³ In a government house where the roof leaked and the floorboards were rotting. Boisadam, *Mais que faire Mayotte?*, p.116.

¹²⁴ Quoted by Boisadam, *Mais que faire de Mayotte?*, p.116.

¹²⁵ Zaidou Bamana, *Younoussa Bamana. Le Choix du refus* (Mamadzou : Meso Editions, 2008).

¹²⁶ Mohamed, *Comores*, p.23. This was certainly true in the later years of his Presidency; in the earlier period it may not have been. Mahmoud Ibrahim, *Saïd Mohamed Cheikh*.

¹²⁷ Guy Fontaine, *Mayotte* (Paris: Karthala, 1995) p.87.

others in the village and was repaid with help when it was needed. Alain Deschamps remembers the radical political slogan of ‘A banana-tree for every Comorien’.¹²⁸ Generally, Mahorais rejected agricultural working for a wage as socially degrading.¹²⁹ This is not to say that the population was malnourished or lived badly. Fontaine lists typical evening meals, which include rice, manioc, fish, chicken, meat, coconut, greens, mangoes, papayas and bananas. Madame Boisadam reminisced about the difficulties she faced arriving with a young family accompanying her husband, the senior administrator. There was nowhere for her to buy or acquire food. There was no market as everyone grew their own food. She had to persuade someone to sell her a fish or some vegetables or some rice.¹³⁰ At first, the Boisadam family ate very poorly, surrounded by a population that was eating quite well.

It was not an impoverished society but it was a subsistence economy. There were paths and canoes but minimal roads on Grande Terre. There was little or no formal employment.¹³¹ For the great majority, life was in the village, with a complex system of mutual obligation without financial nexus. In the 1950s, such money as was used was Arab, largely ceremonial and for special occasions, not for the conduct of everyday business, which was by barter,¹³² promise or mutual obligation.¹³³ This life should not be described, as Yves Salesse emphasises,¹³⁴ as idyllic, but it was one in

¹²⁸ Deschamps, *Les Comores d’Ahmed Abdallah*, p.31.

¹²⁹ *Ibid.*, p.94. This may be linked to their rejection of working on the estates of the colons, or, later, the holdings of absentee landlords such as Ahmed Abdallah.

¹³⁰ Mme Boisadam, interview with author, June 2012, Poitiers.

¹³¹ The last sugar factory closed in 1955. Its ruins remain, overgrown, as a site for tourists. Martin, *Histoire de Mayotte*, p.122.

¹³² Yves Salesse quotes Sophie Blanchy who pointed out that the Mahorais often confuse the French words ‘*prêter*’ and ‘*emprunter*’ (lend and borrow) because in Shimaore there is only one word to cover both concepts; not because the language is impoverished, but the Shimaore word describes a reciprocal relationship. Sophie Blanchy, *La vie quotidienne à Mayotte* (Thèse de doctorat, University of La Réunion, 1988), quoted in Salesse, *Mayotte.*, p.21. See also Sophie Blanchy, *Dictionnaire Mahorais–Français / Français–Mahorais* (Paris: L’Harmattan, 1996).

¹³³ This was not the case for Adrien Giraud, who had many commercial interests, or for Marcel Henry who had a monopoly on labour-supply on the Dzaoudzi wharf. Boisadam, personal communication, 6 June 2012.

¹³⁴ Salesse, *Mayotte*, p.17.

which the population subsisted and hardly handled money. Fontaine describes how money and the buying and selling of food gradually became more usual, and in francs, in the late 1970s.¹³⁵ The conduct of finance, inasmuch as that existed, was at first in Dzaoudzi, then in Moroni.

This virtually money-free economy is evidence (though not conclusive) against the thesis that the Mahorais were motivated by money. In 2003, Younoussa Bamana was to be recorded, for the first time in print, in a discussion with his son, about his main aim and the principles by which he was guided:

Our main objective remains finding ways and means for lasting economic development that keeps in view progress that is socially equitable, harmonious and real. This development should be based on three principles: the taking of responsibility, dignity and solidarity.

This is a statement that transcends the division of ‘Utopian’ and ‘Realist’, made by a man whose lifetime did likewise. It is about bringing together the two — development with principles. He continued:

The control of the initiatives and the actions, as much from the administrative point of view as from the socio-economic, should as much as possible promote the Mahorais, because Mayotte refuses the position of marginality and dependence. Mayotte wishes to take long-lasting measures which reflect local realities and support the creation of real jobs.¹³⁶

These are not the words of someone who was trying to maximise financial support from elsewhere; the emphasis is strongly upon self-help. One searches in vain in the literature and the reported speeches for evidence of Bamana putting the argument for *départementalisation* forward in terms of claims on France for money. The aim put forward was a status that had principle and was to bring freedom. Wealth-creation and ‘real jobs’ were important but within a framework of values. The old utopian was also realistic.

¹³⁵ Fontaine, *Mayotte*, p.117.

¹³⁶ Quoted in Bamana, *Younoussa Bamana*.

When in 1975, after the unilateral declaration of independence of Ahmed Abdallah, the Mahorais found themselves on their own, not against their will; their first reaction was to celebrate.¹³⁷ Next, they had to organize an administration. Two things became immediately apparent to the new regime with Bamana elected as Préfet¹³⁸ (M. Beaux was still in Moroni): there were no accounts (such as they were, they were in Moroni) and there was no money.¹³⁹ A new start was needed, with much to do, and no money. Zaidou Bamana, son of Younoussa, in a short book to commemorate his father, described the problems facing the new administration:

Made up of bits and pieces, the provisional administration discovers with alarm the extent of its needs. The handicaps of Mayotte go far further than the *deputés* could imagine, being only partly informed about the activities of the administration, and they accuse the territorial *Assemblée*.¹⁴⁰

The coffers were empty. There was nothing with which to pay even the current accounts. They could blame Moroni, for a “nightmarish administration and laxity” which may have been true but was hardly useful.¹⁴¹

Later, by the *Loi* of 24/12/1976, France produced a framework for the economic support of Mayotte in the light of the recognition of Comorien independence. French technical ministries could now intervene, provide services and make capital expenditure on the island. The immediate crisis was over, but a year of extreme difficulty had passed and any French investment was small, slow and difficult to anticipate in terms of the local budget. The needs were great, the plans optimistic and the money scarce.¹⁴² Apart from technical ministries, money was also available

¹³⁷ Abdallah's declaration was on the 6 July, giving a very suitable window of preparation for a massive show of pro-French enthusiasm on the 14 July.

¹³⁸ He was the first and only elected *Préfet* in the French system.

¹³⁹ An example Zaidou Bamana gives of the steps needing to be taken is the cutting of the postage stamps into quarters. He remarks that it was a legendary moment in the history of philately. Bamana, *Younoussa Bamana*, p.45.

¹⁴⁰ *Ibid.*, p.47.

¹⁴¹ *Ibid.*

¹⁴² One example was the requirement of a *Mairie* for each *canton*, following the French model. Should money be taken from Health and Education to build these? See *ibid.*, p.105.

from the government fund for *Outre-mer*, FIDOM.¹⁴³ In 1977, this amounted to 11 million Francs, but the money came with strings attached. This was political progress for the Mahorais, as it admitted their quasi-*départemental* status. The French could see the financial (and social) implications more clearly. In 1978, Dijoud (the successor to Stirn) infuriated his audience, the *Conseil General*, by saying that the future of Mayotte was problematic¹⁴⁴ and that there would be a need to conform to French models and to plan for long-term development and for self-help. This was taken as a lack of commitment and talking up delay.¹⁴⁵ A decade later, in 1988, his successor, Louis Le Pensec, emphasised the same points but in a context of friendship with Younoussa Bamana and a commitment to *départementalisation*, and his audience found it acceptable.¹⁴⁶ By 1996, and the discussions of the two Groups of Reflexion, chaired by François Bonnelle in Paris¹⁴⁷ and Boisadam in Mayotte,¹⁴⁸ the difficulties of the transition to *département* status could be enumerated coolly and there could be a start to a discussion of cost, because France was showing commitment (even if the process would not be finalised for another 15 years).

It is evident that as Mahorais society has developed, the need and the desire for French money have increased. Two generations at least have taken the stage in Mayotte since the first calls for *départementalisation*, and the society has changed greatly. The diet has changed and there is an influx of consumer goods coming through the expanded port of Longoni. There are not the exports to pay for them. The balance

¹⁴³ *Fonds d'investissement pour les départements d'outre-mer.*

¹⁴⁴ "You really must understand, if you want to have a place in French society you must practise without question the habits of France and these will be exposed to you by the government: to be French is to accept the rules of the French civilisation, the rules of French political life, the rules of French society." Dijoud worded his sermon harshly, even arrogantly; a later generation was to find there was an element of truth in his words. Quoted by Kamardine, *Discours*, p.27.

¹⁴⁵ Kamardine, *Discours*, p.28.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Avenir Institutionnel de Mayotte : Report remis au secrétaire d'état à l'Outre-mer. Réflexions sur l'avenir institutionnel de Mayotte (sous la direction de François Bonnelle)* (Paris: La Documentation française, 1998).

¹⁴⁸ Boisadam, *Mais que faire de Mayotte?*, p.287.

of payments is dire, and it is France that is supplying the money for the shortfall. Mayotte's standard of living, once as marginal and precarious (or more) as the rest of the Comores, is now maintained at a much higher level by money from elsewhere. To bring Mayotte to an equivalence with the other *départements* of France, either metropolitan or DOM, is an immense undertaking.¹⁴⁹ To help achieve this, it has been necessary to bring in qualified expertise. There are more metropolitan job-holders (usually on very favourable contracts), and their salaries are coming from France. Every move towards *départemental* parity with the *métropole* is costing money.

The French financial contributions have been large and increasing.¹⁵⁰ They also often coincided with a pre-election visit from a metropolitan politician. For example, Eduard Balladur, in a campaigning speech in Mamadzou in 1994, announced additional funds approaching 1 billion French francs and state responsibility for teachers pay and the prison service. He also announced the arrival of more police, more gendarmes, more bureaucrats and the introduction of visas, notably for Comoriens, and an extension of the period of transition, with perspectives of transition into a *département*, saying « *pour intégrer parfaitement Mayotte à l'ensemble national, il faut mettre l'accent sur les besoins réels de votre collectivité* ». ¹⁵¹ The programme and the statement combine to suggest a continuation of Chirac's 'Charru' and 'Zebu'.

Balladur was followed by Lionel Jospin, the Socialist Prime Minister, in 2001. He pointed out that Mayotte had received in the period 1994–99, 2 billion French francs and 1996–2000 €10 million from FED.¹⁵² From 2000–04, there would be a

¹⁴⁹ *Avenir Institutionnel de Mayotte* (1998).

¹⁵⁰ It has also not been known well by the tax-paying population of metropolitan France: Boisadam, personal communication, June 2012.

¹⁵¹ "To integrate Mayotte completely into the national whole, the emphasis must be placed on the real needs of your *collectivité*."

¹⁵² European Fund for Development.

further 5 billion French francs, and 2001–06 €15 million, with improvements in social security, family benefits and education. The number of *collèges* and *lycées*¹⁵³ would double in five years and there would be subsidised breakfasts for school-going children. Education funding would reach 1.2 billion French francs by 2004.

When the political pendulum swung back to the Right, Dominique de Villepin visited in May 2006 to announce increases in spending on hospitals and medical services, including psychiatry, and more for garbage collection and mosquito nets after the outbreak of Chikungunya. He pointed out that in 30 years the number of students had risen from 2800 to 64,000; the number sitting the Baccalauréat had gone from 14 to 1400 in 20 years; and that 139 teaching posts had been created in 2006 alone. He also brought border-protection radar, more frontier police and a stricter regime of identity-checking.

These figures are evidence of at least four things: the serious investment being made, the previous almost total failure to address the needs of the island, the widening gap between Mayotte and the rest of the Comorien archipelago, and the opportunities for qualified metropolitan French to find employment in Mayotte.¹⁵⁴ The implications of *départementalisation* were becoming evident.

This flow of money is certainly an outcome of the relationship with France and the slow moves towards *départementalisation*, but the evidence to suggest it was an originally intended outcome, part of the aims of the MPM, is absent. The *chatouilleuses*' slogans,¹⁵⁵ « *français pour rester libres* »¹⁵⁶ and “*Maore farantsa*”¹⁵⁷

¹⁵³ In the French system, the College is the intermediate school from which the student may progress to the *lycée* where he/she may sit the *baccalauréat* and possible admission for university.

¹⁵⁴ Mayotte has traditionally been the equal last choice (with St Pierre et Miquelon) for those seeking work *Outre-mer*, particularly teachers, with the least equipped, by qualification, preparation and temperament, being offered the posts there. The attractions of the Antilles or Tahiti are better-known in France. This has sometimes resulted in unfortunate ‘neo-colonialist’ behaviour from ill-chosen or ill-prepared ‘W’zoungou’. Mme Boisadam, personal communication, 6 June 2012.

¹⁵⁵ See Ch.2, n.75.

¹⁵⁶ “French to remain free.”

never mentioned money or material development. Marcel Henry or Adrien Giraud may have had such a thought, but there is no evidence. Younoussa Bamana, son of the soil, *Fundi*, teacher and the truly authentic voice of the movement¹⁵⁸ has left no evidence of financial issues being even a part of a motive for a lifetime spent in the struggle.¹⁵⁹ His view of the long-term well-being of the island was not couched in these terms.

In the next generation, with leaders such as Mansour Kamardine, when the negotiations towards *départementalisation* became more particularised, detailed, concrete and about money, the concept of the well-being of the island may have been seen more in financial terms. This is the phase described by Adacolo as ‘realist’.¹⁶⁰ However, by then the path was in place and motivation was no longer in issue; by this stage it was a process that was being discussed, not a dream or project. As *départementalisation* has become a fact, the demands and the expectations and the costs have increased exponentially — it is an enormously expensive operation. This is the case in 2014. In 1958, however, and even in 1975, no one was talking about money; instead, talk was about a link with France that could never be broken.

3.4 Why ‘Département’ Status?

Mayotte saw itself as different, and it was. It also felt threatened. The mistrust predated French involvement. The history, the social structures and the power structures were, as I have shown, all different. The political personalities of the other islands, Saïd Mohamed Cheikh, Ahmed Abdallah and Ali Soilihi, were unappealing

¹⁵⁷ “French Mayotte.”

¹⁵⁸ Boisadam, who became a close friend, describes him in these terms: “He was above all a fisherman and a countryman, polygamous in the normal course of things, the father of 20 children, a sincere Muslim but maintaining his distance from the rigorous precepts of Qu’ranic discipline and the strictly religious ... Younoussa Bamana had an intimate knowledge, almost intuitive, of French culture, which he had assimilated, in a synthesis that was quite exceptional in Mayotte, with Mahorais values.” Boisadam, *Mais que faire de Mayotte?*, p.103.

¹⁵⁹ This is a difficult negative to prove, as in this oral tradition records are minimal.

¹⁶⁰ Adacolo, *La Perception de la transformation de Mayotte*, p.20.

and alien. The Mahorais saw the features that separated, not the features that bound.¹⁶¹ The first voices that pronounced the possibility of *département* status may have been Creole. However, it was Younoussa Bamana, authentically autochthone and admired by all, who led the population of Mayotte to believe it really could be achieved and that it was what they wanted. It took more than fifty years.

This does not answer the question of “Why *département* status?” Why were those who demanded this status and nothing else, over fifty years, not prepared to consider any other formula or status? I will suggest two reasons, the first pragmatic and the second from the realm of political psychology. The first was that the Mahorais saw relations with the other islands continuing to deteriorate. Second, they became path-dependent. Once the word was used, the wish was framed, the policy — or rather the one-word slogan — was formed, and seen by the people of Mayotte as the way forward, it was never going to be changed. The word became the rallying point: any status without this name would not suffice. As Paul David, Jean-Philippe Vergne and Rodolphe Durand and their fellow theorists of Path Dependency Theory have shown, the path embarked upon defines the political route to be taken.¹⁶²

To have been a TOM would have been no less within the « *Sein de la République* ». Under the Constitution and under all the promises given, France could not have ejected Mayotte from TOM status unilaterally; the Mahorais would have been, as they were before, French citizens. The social and legal changes would have been less onerous. But *département* it had to be — integration so that it could not be undone. I will suggest three reasons. First, it was what had been always demanded; anything other might have appeared to be a climb-down. On Debré’s list of possibilities, *département* was clearly classified as number one and *territoire* as

¹⁶¹ See Ch.6.

¹⁶² David, “Clio and the Economics of QWERTY,” p.332; Vergne and Durand, “Theory and Empirics of Path Dependence,” p.736.

number two. Second, the Comores had previously been a *territoire* and something superior to that was needed.¹⁶³ Third, it had to be irrevocable.¹⁶⁴ It could never be undone, not by France, not by the UN or AU, not by the Comores, and not by themselves or future generations. It was a clear demand that was easily spoken and easily understood. The fact that it probably could theoretically be undone (as in the case of Algeria) did not matter. The fact that it was extremely complex in its ramifications and was ill-understood did not matter. When the demand was first made, it was not made on the advice of constitutional lawyers. Whenever the difficulties were explained (whether by Dijoud, Le Pensec, Chirac or anyone else), this was seen as justifying delay. As an expression of self-determination, the demand for *départementalisation* was as imperative as if it had been for independence.

The vote at the last consultations had changed little from that at the first. In 1976, the vote against joining the independent Comores was 99%. In 2000, 73% were in favour of the proposal for *départementalisation* in 2010. 26% voted ‘No’ because they wanted it without the ten years delay. In 2009, the percentage in favour was maintained.¹⁶⁵

When Mayotte first started upon this path in 1958, no thought was given to potential legal difficulties. These were to come later, triggered by the events of 1975. These will be considered after a voyage into the international law of self-determination. It was here that the issue of Mayotte developed from what had seemed a limited problem with the other islands and France, into confrontation with the rest of

¹⁶³ Gaston Flosse of Polynésie française described *Territoire* status as «*Tous les avantages de l'indépendance sans aucun des inconvénients.*» Quoted in Thierry Michalon, *L'Outre-mer française* (Paris: L'Harmattan, 2009), p.45. Whether or not this is a correct description, it supports the Mahorais view that this is what they did not want. It does not represent the Polynesian or Kanak view.

¹⁶⁴ Even though *département* status has been undone in the case of St Pierre et Miquelon. The status brought them within the EU rules on fishing, which they felt would have been ruinous for their community. Michalon, *Mayotte et les Comores*, p.68.

¹⁶⁵ André Oraison, «*Nouvelles remarques critique concernant le contentieux franco-comorien sur l'île de Mayotte*», *RRJ* (2010), p.913.

the world. Relations between the islands were no longer a local dispute. The Mahorais rejection of the UDI by the government of Ahmed Abdallah brought them (and France), perhaps unwittingly,¹⁶⁶ into the realm of international law. There we will now venture.

¹⁶⁶ As François Miclo wrote, « *Lorsqu' en 1974 le gouvernement français décide d'accorder l'indépendance au territoire des Comores, il était loin d'imaginer l'imbroglio juridique et diplomatique qui allait survenir.* » (“When in 1974 the French government decided to give independence to the *Territoire* of the Comores, it was far from imagining the legal and diplomatic imbroglio that would follow.”) François Miclo: *Le Statut de Mayotte dans la République française* (Aix-en-Provence: APOI XII 1990–91), p.140.

CHAPTER 4

ASPECTS OF INTERNATIONAL LAW

Where does Mayotte stand in international law? Or, to rephrase this in a more complex (also more useful and answerable) form: where does the issue of the status of Mayotte in relation to the Republic of the Comores and France stand in international law?

Mayotte's current status as the 101st *département* of France gives it no particular place in international law. However, the road to that status may have traversed the domain of international law, even if the destination now lies in the internal constitutional law of France. By comparison, the Union¹ of Comores as an independent state is clearly placed in international law, as is its route to achieving that status. There are certain principles of that body of law that are applicable and need to be understood, if we are to be able to explicate the status of Mayotte in international law. In this chapter, I will examine the much-debated legal principle of self-determination, and what might be described as its satellites — secession, territorial integrity and *uti possidetis*. I will also consider whether some are as robust as they are frequently portrayed and whether these principles have developed in language or approach over the period between 1975 and 2011. I will suggest that they are not so robust and that they have developed. There was to be a change in prevailing ethos between the time of the first wave of decolonisation of 1950-1970 and half a century later, when the majority of self-determinations towards independence had been effected, and only the smaller and perhaps more vulnerable territories remained to be accounted for. By this time the main thrust of self-determination would be concerned

¹ The former Federal Islamic Republic of Comores became the Union of Comores on 23 December 2001.

with cases where the origins were other than in decolonisation. The relationship between the demands of self-determination and territorial integrity would remain a troubled one,

As to the applicability of international law to the acquisition of status of Mayotte, there were and are two very different views. The French view is very different to that of the Republic of Comores and its supporters. However, there is common ground that once Ahmed Abdallah made, in 1975, his unilateral declaration of independence and this was accepted by France, an international law nexus existed between France and Republic of Comores. A new state was formed, even if its shape was not agreed. This raises two questions. First, was there a role for international law before the moment such a nexus was formed? Second, if there was not, was it the declaration or was it the acceptance of that declaration that brought about the new nexus? When was the starting point?

In the French view, the answer to the first question is negative. Before that moment, the Comores — all four islands — were within the *sein de la République*, as were all TOMs and DOMs. The Comores was a TOM. It was within the Constitution of France, in Art.73, the relevant descriptor of its status. A TOM only ceased to be one by the process of its removal from the relevant Article of the Constitution. Any change to the Constitution was an internal matter solely for France.

In the opposed view, the Comores were objectively a colony, and as such subject to the international jurisdiction of the United Nations and the Committee on Decolonization. The status of colony was not negated by technicalities such as ostensible integration within the metropolis, be it as a TOM or in any other form.² The reality was a colonial status. The international response was to be decolonisation,

² This was not limited to French arrangements. It applied to all colonial powers.

which introduced the theory of self-determination and the principles of secession, *uti possidetis* and territorial integrity. The task of defining a colony, an internationally understood status with a particular meaning, lay with the international community in the shape of the General Assembly of the UN (UNGA). It did not lie with the metropolitan power.

For this second view, that of the Republic of Comores, its supporters and the international community at large, we must look at the long development of these political theories, legal concepts and international institutions. For the first, the French, we must look to the French Constitution and the decisions of the *Cour Constitutionnel*.³ In this Chapter, I will consider the view from the outside — the international view. In the next, I will examine the internal — the French position.

It may be said that until the point of the UDI and its acceptance by France, the process towards independence of a four-island Comores may have been slow, ill-judged and under-financed, but it was still happening. There was no case to take to an international tribunal; no particular need for international law to be considered, except insofar as there was a generalised international law oversight of decolonisation through the UN. Perhaps *bona fides* were doubted, but some sort of progress was being made. In the past, France may have prevaricated in its colonial dealings, but decolonisation struggles had always ended with independence.

Leaving aside for the moment the ‘decolonisation’ powers of the UN and subject to the defining of the exact date on which it occurred, it may be seen that the Declaration of 1975 and France’s acceptance of it (with an exception concerning Mayotte), clearly brought the *Affaire Comores* across the threshold directly into international law. This was the breach between France and the newly formed Republic

³ The Constitutional Court decides upon the constitutionality of legislation. This will be discussed in more detail in the next chapter.

of Comores; an international law entity had been created, an international nexus formed. This was the first self-determination — the birth of the Comores as an independent state. The refusal of Mayotte to be a part of this could be construed as the second. This was the complicating factor. Where does this refusal, and the French acceptance of this refusal, place Mayotte in international law?

There are two principal interpretations of this issue. The first is that Mayotte came into the sphere of international law because the Republic of the Comores became an independent country. It should have had the boundaries of the pre-independence colonial entity, and Mayotte was a breakaway piece of the newly-independent state. *Uti possidetis*⁴ applied and Mayotte's self-determination was not a legitimate one under international law. This is the view of the Republic of Comores and its supporters.⁵ The second is that Mayotte never left France. Its self-determination was to vote to stay there. This was the view, in essence, of the French *Cour Constitutionnel* when it considered the constitutionality of the legislation concerning Mayotte. It remains the only court to have considered the issue. There is force to each argument. However, there is a third possibility: that Mayotte's self-determination could be considered as meeting the requirements of international law as a 'population' and Mayotte was free to self-determine towards independence, or to joining with another country.

4.1 Self-Determination

4.1.1 Self-determination: its place in the world

New entities emerge to join the international community; procedures and criteria have been developed to regulate this flow and to protect the interests of other

⁴ This will be discussed in detail shortly.

⁵ Ali Ahmed Abdallah argues strongly for this view. Abdallah, *Le statut juridique de Mayotte*.

states involved. As the globe has little undistributed territory, new states must come from the territory of the old. A number of intertwined legal principles regulate any such potential transition, particularly those of self-determination, secession, recognition and territorial integrity. These will be discussed separately in the course of this chapter, but in reality they are interlinked: the first and second are internally generated in the potential new state, recognition is the response from outside; territorial integrity is the riposte of the former *métropole*.

Public international law generally deals with states, but increasingly in discussion of self-determination, ‘populations’, ‘peoples’ and ‘nations’ have been commonly used terms, and problems of definition have abounded. Self-determination is problematical in international law because it is where the aspirants in a state-centred system are not states, at least as yet.

In the mid-twentieth century, the main source of new states was the process of decolonisation to independence, particularly in Africa. The accepted marker of the move to independence, the sign of its achievement, was membership of the UN, at which point the new member was ‘recognized’ (usually enthusiastically) by all other UN members.⁶ To this transition it was presumed that the principle of *uti possidetis* applied. This is a principle that will be examined in detail shortly; suffice to say at this point that it had the principal aim and effect of eliminating boundary disputes with similarly emerging neighbours. The new entity became a state with the geographical boundaries of the old colony. As such, it was welcome and recognised.

On the other hand, parts of states that wanted to become states (in other words ‘separatists’) have failed to gain the support that could lead to recognition and have not been welcomed into the UN. The principle of law cited here is ‘territorial integrity’.

⁶ John Dugard suggests that this is now the norm for recognition, effectively superseding the more traditional recognition state-by-state. John Dugard: *The Secession of States and their Recognition in the Wake of Kosovo* (Leiden: Hague Academy of International Law, 2013), p.64.

The UN is made up of states (and the states of regimes) that are for the most part out of sympathy with separatist causes. There has been a welcome for the newly independent former colony, but generally not for separatists or secessionists.⁷ The disapproval has frequently been voiced in terms of ‘Balkanisation’, with an increasing number of ever-smaller and unsustainable units; it may also be interpreted as a fear of the centrifugal domestically. We will consider whether, more recently, there has been any softening of this stance.

There has been a general presumption that there is a natural sequence in the story of independence, most notably in Africa: colony > self-determination > independence/recognition > new state, with the doctrine of *uti possidetis* providing a territorial ‘procrustean bed’. The Comores have by and large followed this path, but Mayotte has taken a different route and employed a different form of self-determination, for reasons that are central to this thesis and have been discussed in Chapter 2. The difficulty between them centres on *uti possidetis*. The new state is not the problem; the problem is the shape of it.

I shall turn now to examine these relevant concepts of international law, starting with self-determination, seen variously as a right, as a principle and as a process. There are three aspects of self-determination that should be examined. First, there is the philosophical, political and legal derivation of the concept. Second, there is the case-law. Third, there is its adoption as a central tenet of the UN. All need to be examined if we are to understand how this concept has been applied and is currently applied, and how it pertains to the Comores and Mayotte.

⁷ There are exceptions: e.g., Bangladesh, Eritrea and South Sudan. Earlier, Biafra and Katanga were viewed by the UN in a different light.

4.1.2 *Self-determination: the development of a concept*

4.1.2.1 The philosophical and political derivation

To understand the concept of self-determination, it is helpful first to consider its origins and its history — or rather, histories. There are two very different traditions and lines of development of the concept of self-determination. I will name these the ‘Western strand’ and the ‘Eastern strand’ and describe each in turn. The terminology may be similar but the concepts are very different. There is a point at which they come together and fuse, with, I will suggest, confusions resulting. I will examine the traditions separately before bringing them together in the context of the Paris Peace Talks of 1919.

The Western strand had its origins in the writings of, among others, John Locke,⁸ Paul d’Holbach⁹ and Thomas Paine,¹⁰ and was most clearly developed and laid out by Thomas Jefferson and his co-drafters of the Declaration of Independence.¹¹ They presented the arguments from natural justice and the current circumstances, and the failures on the British side. It was a principled and argued self-determination; it was succinct, approachable, memorable and persuasive. It is hardly surprising that it became a guiding light for all later proponents of self-determinations. The thesis was that, as the individual had freedoms, rights and choices, so when individuals grouped together to form a state or commonwealth, that body in turn had freedoms, rights and choices. Just as the individual had certain rights to self-determination, so had the group. Free citizens could group together to reject the rule of a faraway King who claimed to rule by divine right and inflicted arbitrary imposts.

⁸ John Locke, *Two Treatises on Government* (London, 1689).

⁹ Baron Paul d’Holbach, *Système Sociale* (London, 1773).

¹⁰ Thomas Paine, *Common Sense* (Philadelphia, 1776).

¹¹ Philadelphia, 1776.

The ideas that lay behind Jefferson's writings were, in brief: the repudiation of absolutism, the acceptance of the doctrine of the fundamental rights of man, the sanctity of the person and the freedom of the mind, and the belief that government is not an end in itself but a means to human happiness. These are the roots of what I have called the Western strand of self-determination: that the political rights of a group, people or nation grew from the aggregation of their individual human and political rights; as each had rights, so they had the right to come together. In coming together, they could form for their mutual convenience and well-being an agreed form of government.

Some 150 years later, this was the philosophic background¹² to President Woodrow Wilson's speeches and to his 14 Points. He presented these using the terminology of 'self-determination' as a basis for the Armistice and subsequently the Paris Peace Talks. By 1919, the USA was no longer the claimant; it was the arbiter. In Paris, the Western strand was presented to the world. It was, by and large, a concept alien to the Great Powers of Europe, which had, as Christopher Clark shows, spent the previous thirty years in devising a series of treaties that ran rough-shod over any notion of self-determination for subservient territories.¹³

It may be thought that Woodrow Wilson arrived in Paris (preceded by his 14 Points) as a firm and dedicated disciple of Jefferson. The reality is a little more complex. For a start, Wilson's thinking changed, even while crossing the Atlantic, as he became more aware of the complexities facing him and the other leaders at the talks. There are other interpretations; Wilson has had numerous critics, who do not see

¹² In international relations scholarship, this would become known as a 'liberal' or 'utopian liberal' perspective. Robert Jackson and Georg Sørensen, *Introduction to International Relations: Theories and Approaches*, 7th ed (Oxford: Oxford University Press, 2007), p.31.

¹³ Christopher Clark, *The Sleepwalkers* (London: Penguin, 2012), Ch.3. Mark Mazower stretches this attitude and process back further, to the development of the 'Concert of Europe' emerging from the Congress of Vienna in 1815. He also places minor independent states and kingdoms among the disregarded. Mark Mazower, *Governing the World: The History of an Idea* (London: Penguin Books, 2012), p.10.

him in this apparently heroic and Jeffersonian light.¹⁴ Others have suggested that Wilson's ideas were influenced by other sources, including Fabian socialism.¹⁵

This other main strand of self-determination, the 'Eastern', is very different, and with different origins; its roots lie in nationalism and concepts of the *volk*.¹⁶ In the writings of Gottfried von Herder (1744–1803), a *volk* was, as Thomas Musgrave writes:

a community bound together by blood-ties and characterised by a particular language, culture, religion and set of customs. Like the family, of which it was a wider extension, the *volk* was supposedly a natural unit. Every *volk* had the right to develop its own political institutions ... and thus to express in the political realm its own unique national character.¹⁷

It is here that the right to self-determination lies — in the national group, the ethnicity, the *volk*.¹⁸

In von Herder's theory, the instinctive feeling of unity becomes conscious and an aspiration to a political unity and nationhood, and that this occurs in every nation.¹⁹ This is Herder's justification for "the inherent right to form a state, to be politically independent and self-governing and to shape (its) policy and institutions in accordance with its own national wishes." Thus:

Every individual, however humble his status, was assured of his right to belong to his own national state, not because he was the subject of this or that ruler,

¹⁴ These include Allen Lynch, "Woodrow Wilson and the Principle of National Self-determination," *Review of International Studies*, vol.28, no.2 (April 2002), p.419; Victor Mamatey, *The United States and East Central Europe 1914–1918: A Study in Wilsonian Diplomacy and Propaganda* (Princeton: Princeton University Press, 1957), p.174; Richard W van Alstyne, "Woodrow Wilson and the Idea of the Nation State," *International Affairs*, vol.37, no.3 (July 1961), p.297.

¹⁵ Laurence Martin, *Peace Without Victory: Woodrow Wilson and the British Liberals* (New Haven: Yale University Press, 1955).

¹⁶ Thomas Musgrave, *Self-Determination and National Minorities* (Oxford: Oxford University Press, 1997), p.5.

¹⁷ *Ibid.*

¹⁸ This can, and has, been taken one step further: "Only in socialist states and through the sovereignty achieved by them can Self-determination be completely realised." Poeggel, *Volkerrecht* (Manual of international Law of GDR, 1973), vol.1, p.270, quoted in Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995), p.140.

¹⁹ CA Macartney, *National States and National Minorities* (Oxford: Oxford University Press, 1934), pp.97–8.

inhabitant of this or that historic unit, but in virtue of his own personal characteristics of nationality.²⁰

This was a powerful theory, not least in its appeal to those submerged in the lower echelons of nineteenth century empires. However, the defining characteristics of a *Volk* (e.g., language, culture, religion and customs) are problematical. Which characteristic is the most significant? Friedrich Schlegel (1772–1829)²¹ and Johann Fichte (1762–1814),²² proposed language as the defining spiritual link. This criterion is full of difficulties, not least in border regions, especially where there are fellow language speakers in a different state nearby.

To reiterate, in what I have called the Eastern view of self-determination, the right lay with the *Volk*, the collective, because it was a collective, with a language, a *Kultur*, a jointly held religion, or a set of customs. The word ‘self-determination’ may be the same in the Western and the Eastern views; the underlying concepts are very different. These two strands, different theories even, of the nature of self-determination were to meet at two significant times in the twentieth century, the Paris Peace Talks and the writing of the UN Charter. The attempts at, and failures of, compromise between them can be found in both the shape of Europe after 1919, and in the workings on self-determination at the UN subsequent to the 1945 UN Charter. On the one hand, there is the close link between self-determination and individual human rights; on the other, the link of self-determination is to a ‘people’. One emphasises the individual, the other the collective.

²⁰ Ibid., p.98.

²¹ Friedrich Schlegel, *Vorlesungen von 1804–6*, cited by Macartney, *National States and National Minorities*, p.99.

²² Johann Fichte, *Redan an die deutsche Nation*, cited by Macartney, *National States and National Minorities*, p.99.

4.1.2.2 The Paris Peace Talks

In Paris, the map was once again to be redrawn by the victors, but the criteria had apparently changed. Self-determination as a right was apparently on offer. This new American input to European treaty- and peace-making was one that had a strong appeal to aspiring ‘nationalities’. In his speech to Congress on 11 February 1918, Wilson had said:

Self-determination is not a mere phrase. It is an imperative principle of action which statesmen will henceforth ignore at their peril ... Every territorial settlement involved in this war must be made in the interest of and for the benefit of the populations concerned, and not as part of any mere adjustment or compromise of claims amongst rival states.²³

Self-determination ‘for the benefit of the populations concerned’ had become significant. Considerations other than the overt interests of the victorious powers were to provide criteria for the redrawing of the map — or so it was said. President Georges Clemenceau of France, notably, never saw matters in this perspective, and held to the model of Vienna in 1815, namely, that it was the right of the victors to redistribute territory as they saw fit. Keynes describes the French attitude:

Prudence required some measure of lip service to the ‘ideals’ of foolish Americans and hypocritical Englishmen; but it would be stupid to believe that there is much room in the world, as it really is, for such affairs as the League of Nations or any sense in the principle of self-determination, except as an ingenious formula for re-arranging the balance of power in one’s own interests.²⁴

To these very different Western views of what the Peace should look like, and the concept of self-determination within it, must be added the equally different ideas of Central and Eastern Europe. Wilson’s words were no secret. The question is whether they meant the same thing to Wilson’s listeners as they did to Wilson. One needs to be aware of the Central European ‘Eastern’ notion of self-determination to understand

²³ Quoted in John Maynard Keynes, *Economic Consequences of the Peace* (London: Labour Research Department, 1920), p.57.

²⁴ *Ibid.*, p.30.

how they heard it. This Eastern strand also permeated the thoughts and writings of a significant outsider who was not a participant in the Talks: Lenin.²⁵ He was the other half of what Arno Mayer has described as the ‘Wilson–Lenin Dialectic’.²⁶ Lenin’s views on self-determination and nationality were about to affect millions.

These two notions of self-determination — the Western and the Eastern — made uncomfortable bedfellows in Paris, and they have remained so ever since. Paris reached its decisions and enacted its Treaties re-creating the map of Europe.²⁷ However, the Paris talks were not only about Europe. The German colonies were on the agenda, as were the lands previously under the Ottoman Empire. Beyond these, there were others seeking a place on the agenda, but who were not to be heard. As Erez Manela shows, the ‘Wilsonian Moment’ was very much in the minds of anticolonialists and independence-seekers around the globe.²⁸ His examples of India, Korea, Egypt and Indochina are not exclusive. Wilson’s language was a genie that the likes of Robert Lansing,²⁹ Clemenceau and colonial administrations everywhere found hard to re-bottle. Manela describes how the spread of telegraphy and wire services, combined with Wilson’s fame and the efforts of the Committee on Public Information

²⁵ VI Lenin, *Imperialism: The Highest Stage of Capitalism* ([1917] Moscow: FLPH, 1920); VI Lenin, *The Socialist Revolution and the Right of Nations to Self-Determination* (October 1916), in *Collected Works* (Moscow: Progress Publishers, 1964), vol.22, pp.143–56.

²⁶ Arno J Mayer, *Politics and Diplomacy of Peacemaking: Containment and Counterrevolution at Versailles, 1918–1919* (London: Weidenfeld and Nicholson, 1967), p.385. Both Wilson’s and Lenin’s calls for self-determination had designs on the thinking of the radicals, socialists and centrists of Europe, not least of Germany, and were in part competitive. Many saw them as the alternatives: “It is certain that mankind must make up its mind for Wilson or for Lenin.” Hermann Kesser, *Neue Zürcher Zeitung*, 27 October 1918, quoted in Mayer, *Politics and Diplomacy of Peacemaking*, p.393. See also Inga Floto, *Colonel House in Paris: A Study of American Policy at the Paris Peace Conference 1919* (Aarhus: Universitetsforlaget i Aarhus, 1973), p.26.

²⁷ The Paris Peace Treaties were named by the place where the agreement was reached: St Germain-en-Laye (Austria, Yugoslavia, Czechoslovakia and Romania), Trianon (Hungary), Neuilly-sur-Seine (Bulgaria), Lausanne (Turkey), and Sevres (Greece).

²⁸ Erez Manela, *The Wilsonian Moment* (Oxford: Oxford University Press, 2007).

²⁹ Robert Lansing, Wilson’s Secretary of State and previously an international lawyer, had misgivings. In his opinion, the ‘principle of self-determination’ was a phrase “loaded with dynamite. It will raise hopes which can never be realised”. Robert Lansing, “Self-Determination,” *Saturday Evening Post*, 9 April 1921, quoted in Musgrave, *Self-Determination*, p.31.

(CPI) took his message to all parts of the world.³⁰ A speech made to Congress would be being studied in China or Egypt within days.³¹ Not only had the possession of power and the language changed; the technological processes of news propagation had changed too.

In the aftermath of Paris, the League of Nations and the Permanent Court of International Justice came into being — the first to embody the aspirations of the new world order, the second to bring a legal structure to follow the treaties. The League was one of Wilson's priorities,³² as he saw it an integral part of the Covenant,³³ for him a major outcome of the Peace Talks.

4.1.3 *The Court*

With the setting up of the Permanent Court of International Justice in September 1921,³⁴ the baton of self-determination was being passed to the lawyers and the judges. I will discuss this development in some detail for two reasons. First, the Court provided a conduit for Wilson's ideas to move forward, which many believed might provide a structure for the maintenance of peace. Second, this is the point at which the concept of self-determination, heretofore primarily philosophical/political, could take on a new life in the legal world.

³⁰ Manela, *The Wilsonian Moment*, pp.47–8.

³¹ This was true also in Russia. Wilson's speech of 9 January 1918 was translated by the CPI and 3.5 million copies were distributed in Russia within days. Mayer, *Politics and Diplomacy of Peacemaking*, p.373.

³² "My conception of the League of Nations is just this, that it shall operate as the organised moral force of men throughout the world, and that whenever or wherever wrong and aggression are planned or contemplated, this searching light of conscience will be turned upon them ...": Wilson, quoted in David Armstrong, Lorna Lloyd and John Redmond, *From Versailles to Maastricht: International Organisation in the Twentieth Century* (Basingstoke, UK: Macmillan, 1996), p.17. Wilson's concept of the League owed much to the League of Nations Society, set up in Britain in 1914, to the ideas of Lord Robert Cecil, and to the pamphlet of General Jan Christian Smuts, *The League of Nations: A Practical Suggestion* (London: Hodder and Stoughton, 1918).

³³ The name, chosen by Wilson, shows his Presbyterian background.

³⁴ 12 jurists had been invited under Art.14 to prepare plans. The invitation to them stated: "If the Court were established on sound and statesman-like principles, it can contribute perhaps more than any other single institution to maintain the peace of the world, and the supremacy of right amongst the nations." Quoted in George Scott, *The Rise and Fall of the League of Nations* (London: Hutchinson, 1973), p.52.

Under Art.14 of the Covenant the Court would be set up “to hear and determine any dispute of an international character which the parties submit to it” or give advisory opinions when called upon. Art.13 provided that: “members will agree to submit to arbitration or judicial settlement suitable cases, such as the interpretation of Treaties and breaches of international obligations, and that they will carry out in good faith awards or decisions”. Art.18 required registration of Treaties. Art.22 dealt with Mandates and Mandated Territories.³⁵ Under Art.10, members undertook to respect and preserve, as against external aggression, the territorial integrity and existing political independence of all Members.

The scheme for the Court was not received enthusiastically by all. For example, a British conference of ministers set up to consider it concluded that it was “highly detrimental to our interests and could not be accepted”.³⁶ The 1920 Court was part of an attempt to move as much as possible of what could be construed as legal away from the Council of the League,³⁷ and to develop international legal activity beyond the arbitrational. Among the questions facing the consulted Jurists were: who were to be the parties; who were to be the judges; what was to be the scope; and what was to be the law applied?

The answers to these questions³⁸ came in the end in the form of the PCIJ Statute, containing 64 Articles.³⁹ The parties were to be “Only States or Members of the League of Nations” (Art.34). The judges were covered in great detail (Arts.2–21).⁴⁰ The jurisdiction was to comprise “all cases which the parties refer to it and all matters

³⁵ The Mandated Territories were the former German colonies, distributed for oversight by specified victorious powers, with a responsibility for the well-being of the populations.

³⁶ Quoted by Scott, *League of Nations*, p.65.

³⁷ *Ibid.*, pp.379–80.

³⁸ These are discussed by Manley O. Hudson, “The Permanent Court of International Justice,” *Harvard Law Review*, vol.35, no.3 (1922), pp.245–75.

³⁹ Record of the First Assembly, Plenary Meetings p.468. The Statute appears in complete form as an appendix to Hudson, “The Permanent Court of International Justice.”

⁴⁰ The Court was to consist of 11 judges whose tenure would be for nine years.

specially provided for in Treaties and Conventions in force” (Art.36). A party could not force another to appear before the Court. The law to be applied (Art.38) was to be found in: international conventions; “international custom, as evidence of a general practice accepted as law”; the “general principles of law recognized by civilised nations”; and (with qualification) “judicial decisions and the teachings of the most highly qualified publicists of the various nations”.

The Paris Peace conference engendered a sense of gloom and failure in many,⁴¹ but the Court was a source of some optimism, at least for liberals. Here was the possibility of a way of doing things better; a structure was being set up that might help to prevent the recurrence of war.

Self-determination could still be an idea of political philosophers and a slogan of politicians, but now its meaning was to be shaped and enunciated by judges and lawyers. Time was to show that this shaping, in the hands of lawyers, was to take the form of a minimising; the enunciation of the principle was to be from this point forward always in tandem with the concept of territorial integrity. Self-determination as an operative concept was to be kept in check; there was a fear of its potentially disruptive or destructive effects. The judges and lawyers were not about to open the floodgates.

4.1.4 *The cases*

The PCIJ was to be the forum for international legal issues, including self-determination. As it happened, not one of the major cases on this topic was heard by it. One was heard, as we shall see, before the Court was ready to sit; the others came to its

⁴¹ Jan Christian Smuts was to say at Woodrow Wilson’s funeral: “Not Wilson but humanity failed at Paris”. Quoted in Quincy Howe, *A World History of Our Own Times* (New York: Simon and Schuster, 1949), p.74. See also Hamilton Foley, *Woodrow Wilson’s Case for the League of Nations* (Princeton: Princeton University Press, 1923), p.145.

successor after its demise. The significance of the praxis of the Court lies in the legalisation of the previously political, a step that would not be reversed. Overall, the most significant cases have been the *Aaland Islands*, *Namibia*, *Western Sahara*, *Northern Cameroons* and the *Frontier Dispute (Burkina Faso and Mali)* case.

Much of the early work of the PCIJ concerned the treatment of minorities, who abounded in the new map of Europe.⁴² However, before the Court was operational, there was the significant case of the Aaland Islanders. This was considered by a Commission of Jurists appointed for the purpose.⁴³ This was the first case where issues of self-determination were discussed in a quasi-legal/judicial environment, and principles of the post-Wilson era were considered. From hindsight, the great pity is that the PCIJ was not operational to handle it. As it was, the matter was considered in three stages. First, the specially appointed Commission of Jurists considered whether there was a justiciable issue; they replied in the affirmative. The case, if not the Aaland Islanders directly, would get a hearing. Second, the Rapporteurs (political figures, not lawyers⁴⁴) travelled, interviewed and reported as to the substance of the matter. Third, the matter was brought back to the Council of the League of Nations for decision. There was thus an amalgam of the political and the legal in a quasi-legal format. The legal format of the PCIJ was still in the making. The Rapporteurs concluded first that

⁴² Most cases concerned language and teaching. They came to the PCIJ under the terms of the Treaties, not from ad hoc agreement of the parties.

⁴³ The Aaland Islands lie in the Gulf of Bothnia, between Sweden and Finland. When Finnish nationalists declared the independence of Finland from Russia, the Aaland Islanders (some 25,000) simultaneously declared their desire for union with Sweden and secession from the new Finland. 97% were ethnic Swedish and Swedish speaking. They voted overwhelmingly in unofficial plebiscites, and then asked Finland for an official plebiscite, which was refused. The Finnish government pointed out that even when the islands had belonged to Sweden (as did all of Finland before 1809, when it was ceded to Russia), they had always been administered as part of Finland. In 1920, Finland offered autonomy within Finland to the Islanders. This was rejected. Finland then arrested the Islanders' leaders and charged them with treason. Britain exercised its 'friendly right' to refer the matter to the League, who referred it to the Jurists, whose subsequent decision was referred to Rapporteurs. There is a considerable literature on the case, which is well summarised by Musgrave, *Self-Determination*, pp.31–5. I have used the more usual and Anglicised 'Aaland' to the more correct Swedish 'Åland'.

⁴⁴ A former Belgian Foreign Minister, Baron Bayens; former President of Switzerland, Felix Calonder; and former US Ambassador in Constantinople, Abraham Elkus.

the Aaland Islanders were not a ‘people’ (like the Finns, from whom they wanted to be separated) but a ‘minority’ and therefore not entitled to claim any right to self-determination, and, second that the archipelago should be demilitarised. Their report asked and answered the question:

Is it possible to admit as an absolute rule that a minority of the population of a state, which is definitely constituted and perfectly capable of fulfilling its duties as such, has the right of separating itself from her in order to be incorporated in another state, or to declare its independence?

The answer was ‘No’. The maintenance of stability within states and the prevention of anarchy in international life took precedence. Minorities could not be given the right to withdraw.⁴⁵

In this judgement/report can be seen the significance of the rule that parties before the Court were to be States. Even in the quasi-legal format, the Aaland Islanders themselves had no status, not being a state.⁴⁶ Their case and their argument for self-determination were heard only by reason of the intercession of a state (Britain). Any self-determination entity or population needed to have a state introduce its case. The principle of maintaining states as ‘territorial and political entities’ had, and was always to have, precedence over giving rights to ‘minorities ... withdrawing from the community to which they belong’. The minority’s feelings of lack of belonging were to rank below the integrity of the state where they were presumed to belong. The Aaland Islanders were a minority who could enjoy autonomy as granted within Finland, but were not free to choose to be Swedes. This is quite a change from the view of Woodrow Wilson — and considered by some, such as Charles Gregory, who

⁴⁵ *The Aaland Island Question: Report of the Rapporteurs* (1921), p.28; Crabtree, *New Ways of Looking at an Intractable Problem*, p.24.

⁴⁶ Representatives travelled to Geneva, uninvited. Gunnar Jansson writes: “When, finally their representatives appeared there, they were perceived as rather odd creatures, who had big hands and did not speak any foreign languages.” Gunnar Jansson, “Introduction,” in Lauri Hannikainen and Frank Horn (eds), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe* (The Hague: Kluwer Law International, 1997), p.3.

viewed free self-determination as a 'toxic principle', to be all the better for being so.⁴⁷ The emphasis is on international order and stability, not on the freedom of people to come together and choose.

It could be argued that as far as the parties were concerned, the outcome of the *Aaland Islands* case was reasonably fair. There was something for Sweden: a demilitarized archipelago that would no longer threaten close-by Stockholm. There something for Finland: they continued to have sovereignty over the archipelago, based on the arguments of territorial integrity. The benefit, if it was one (it was not what they wanted), for the Islander non-parties only appeared after the referral of the case: the guarantee of autonomy and enshrining of the Swedish language. Finland offered these, in a generalised form. Lauri Hannikainen suggests that this was in order to improve the country's standing with the League of Nations.⁴⁸ At first these guarantees were rejected as inadequate by the islanders, but they were subsequently passed into Finnish Law⁴⁹ in a form agreed with Sweden. It was also agreed that the islanders had a right to complain to the League if there were abuses from Finland but no complaint was ever entered.

As Gregory says, in its beginnings, the case was imbued with the spirit of Wilson.⁵⁰ This was where the Islanders gained their inspiration.⁵¹ In the confusions of post-war Baltic politics, they were making a clear choice of where they wanted to be,

⁴⁷ Gregory wrote: "The result of the determination as to the Aaland Archipelago ... is in the highest degree salutary on one point at least, namely, *the limitation of the right of free self-determination*, a toxic principle, which, unlimited and unrestrained, threatened the integrity and menaced the welfare of all nations, and thus of all men." Charles Noble Gregory, "The Neutralization of the Aaland Islands," *American Journal of International Law*, vol.17, no.1 (1923), p.76 (original emphasis). An American had travelled a long way from the Declaration of Independence.

⁴⁸ Lauri Hannikainen, "The International Legal Basis of the Autonomy and Swedish Character of the Aaland Islands," in Lauri Hannikainen and Frank Horn (eds), *Autonomy and Demilitarisation in International Law: The Åaland Islands in a Changing Europe* (The Hague: Kluwer Law International, 1997), p.58.

⁴⁹ Special Autonomy Acts 124/1920 and 189/1922.

⁵⁰ Gregory, "The Neutralization of the Aaland Islands," p.67.

⁵¹ Jansson, "Introduction."

and the words of Wilson, that “every territorial settlement involved in this war must be made in the interest of and for the benefit of the populations concerned ...”⁵² pointed the way. The case could be argued that a minority ‘population’ based on language might have the right to choose to move to the preferred country of their own language; and that such a choice was available under the rubric ‘self-determination’. It was the Aaland Islanders’ misfortune to be the first voyagers into a post-Wilson world. By the time they were making their case, the revision was under way. There was to be no place for non-states beyond the specific minorities named in the Treaties. What could have been drawn widely was drawn narrowly. In the view of many (of whom Gregory was typical), Wilson’s can of worms was safely closed again.

Self-determination lay dormant until the International Court of Justice (ICJ) decisions of the second half of the twentieth century, when the UN had long replaced the League. Then there were four cases where aspects of self-determination were discussed, all concerning Africa, namely, the *Namibia*, *Western Sahara*, *Northern Cameroons* and *Frontier Dispute* cases, and a number of others, more marginal. These cases do not answer all our questions, but decisions of the ICJ are the strongest form of law we have.

The *Namibia* series of cases⁵³ suggested the possibility of greater flexibility. Here, the Court said that in mandate cases: “the ultimate objective of the sacred trust

⁵² Speech to Congress, 11 February 1918, quoted in Keynes, *Economic Consequences of the Peace*, p.57.

⁵³ The hearings on the subject of Namibia, formerly the German colony of Sudwestafrika, were many. In all there were four Advisory Opinions and two Judgements from the ICJ, from 1949–71. Namibia became independent in 1990. Namibia was at the time a mandated Trust Territory, and not a State. The formerly German colony of South West Africa had been mandated in 1919 to South Africa, which administered it in trust for the League of Nations and subsequently the UN. South Africa had administered Southwest Africa as if it had been another province of the country and refused to accept that the League had been replaced by the UN for the purposes of overseeing the Mandate. Despite the Advisory Opinion of 1950 that the Mandate had not lapsed, the system of apartheid was extended to the territory. The case, brought by Ethiopia and Liberia, sought a judgement against South Africa, which in a preliminary hearing (1962) maintained that the Court had no jurisdiction. This was rejected, and the substantive judgement was given in 1966. The majority judgement (8-7), with many significant dissenting judgements, found that South Africa’s obligations were to the League (hence the UN) alone

was the self-determination and independence of the people concerned” and “the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them.”⁵⁴ It was a new Court and the UN not the League, but more had changed than that. In 1922, the Aaland Islanders could be sent back, lacking status and protesting, to Finland; but by 1970, Namibia would not be sent back to apartheid South Africa.

The next discussion of self-determination came in the *Western Sahara* case,⁵⁵ where the Court said: “to pay regard to self-determination was not the same as to be bound by it”. These words suggest a reluctance to endorse self-determination while adopting a more flexible approach. In both the *Namibia* and the *Western Sahara* cases, the Court was prepared, as Jan Klabbers shows, to consider self-determination generally as a principle rather than as a legal right, although it was prepared to endorse a legal right in the particular circumstances (mandate + *apartheid*) of the *Namibia* case.⁵⁶ Self-determination was making a small come-back from the *Aaland Islands* days. At the least, it had not died. However, the more self-determination looked like a

and not to individual members, and the cases brought by Ethiopia and Liberia were dismissed. Musgrave, *Self-Determination*, p.84. UNGA then adopted Resolution 2145, terminating the Mandate and declaring the presence of South Africa in Namibia as illegal. In its 1970 Advisory Opinion, the Court held that UNGA had the capacity to terminate the Mandate; that South Africa had not fulfilled its obligations; and it was now under a duty to withdraw.

⁵⁴ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)* [1971] ICJ Reports 16, 31. Michla Pomerance, “Case Analysis: The ICJ and South West Africa (Namibia): A Retrospective Legal/Political Assessment,” *Leiden Journal of International Law*, vol.12, no.2 (June 1999), pp.425–36. Pomerance, inter alia, considers that Liberia and Ethiopia were poorly advised and could have presented their case better, with a better outcome.

⁵⁵ *Western Sahara (Advisory Opinion)* [1975] ICJ Reports 12. This concerned the claims of Morocco and Mauritania to the Spanish colony of Western Sahara when it became independent from Spain. The issues were (i) was it *Terra Nullius* when Spain colonized it in 1884? Answer — No. (ii) If not, what legal ties were there to Morocco or Mauritania? Answer: None — there was no sufficient evidence of any ties amounting to sovereignty. In these circumstances it was necessary to have regard to the self-determination that was applicable to all non-self-governing territories, and “to pay regard to the freely expressed will of the peoples.” The practical difficulty was that the territory was largely desert with a moving population of tribally-based herders whose ‘freely expressed will’ was not easy to ascertain.

⁵⁶ Jan Klabbers, “The Right to be Taken Seriously: Self-determination in International Law,” *Human Rights Quarterly*, vol.28, no.1 (February 2006), pp.186–206.

claim to secede, the more the Court shied away from it, except in very particular circumstances, namely decolonisation and apartheid. *Western Sahara* was a matter of decolonisation⁵⁷ and *Namibia* a matter of apartheid; but in neither case was the discussion in terms of secession, though in each case a new state was the outcome. Put this way, the right may not need a mention of self-determination. The rights may be: first, ‘not to be colonised any longer’ and second, ‘not to be the subject of apartheid’. Beyond these, there may be a principle that self-determination may be applicable in circumstances unknown and as yet undefined by the Court.

Even this most limited class of circumstances, where the Court agrees there is a right, is problematic: for example, is colonisation to be construed as only of the ‘salt-water’⁵⁸ variety? Is apartheid only as practised by South Africa? Was this instance unique, or could the conduct of another state (e.g., Israel) be construed as apartheid? Is it strictly a matter of apartheid (separateness) or is it a more generalised white supremacism⁵⁹ that can justify self-determination and implicitly secession? In both the *Namibia* and *Western Sahara* cases, the Court was prepared to talk in terms of self-determination, clearly as a principle,⁶⁰ apparently not as a right except in these two extreme circumstances. Whether there are other extreme circumstances has been the cause of much debate amongst lawyers, both academic and practising. Cases of extreme brutality and hardship have been suggested.⁶¹ The question remains: Is self-

⁵⁷ Decolonisation will be discussed extensively shortly, with reference to the UN.

⁵⁸ This term is used to describe the traditional colonial empire, where the *métropole* and the colony are separated by sea.

⁵⁹ Moreover, does the supremacism have to be white? And does it have to be by colour?

⁶⁰ In the *Western Sahara* case, the Court described self-determination as: “the need to pay regard to the freely expressed will of peoples”. [1975] ICJ Reports 12, pp.33, 80.

⁶¹ The leading legal philosopher discussing these issues is Allen Buchanan, *Justice, Legitimacy and Self-Determination* (New York: Oxford University Press. 2003). See also his *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, Colorado: Westview Press, 1991).

determination first a right, albeit with boundaries or limitations,⁶² or second a principle, or third is it an aggregation of sets of special circumstances where it will be considered as a remedy?

It can be argued that there is a principle, but in rather different terms: that the ‘peoples of a territory’ (a phrase that has slipped in here) should be heard, or have, as Jan Klabbers puts it, “a right to be heard and be taken seriously”.⁶³ This still does not answer the questions: (i) who has this right and (ii) to be taken seriously by whom? Klabbers suggests that the first question should be answered widely — the ‘population’ or ‘people’ is not confined to the inhabitants of a defined territory. It might be a church or an ethnic group. He implies that the answer to the second question should be narrow: that it is the state from which they are attempting to separate that should take them seriously. This is not to suggest that they have status at the ICJ; they clearly do not. Klabbers is suggesting that there could be a right for a ‘people’ within a state to achieve a form of autonomy, of recognition or special treatment, not a right to secession. Essentially, he suggests, the question becomes one of procedure:

The point, then, is to reconceptualise self-determination as a procedural norm. Decisions affecting groups of people should be taken, at the very least, with those groups having been consulted. ... It simply means that the group should be heard and should be taken seriously.⁶⁴

He does not answer the questions of who the ‘decision-maker’ might be, and whether this procedural right will ever be enough for the ‘people’ or ‘group’ concerned. If the ‘decision-maker’ is the metropolitan state, there is the difficulty that it has, in most cases, already taken the ‘group’ very seriously, more often than not by police action or

⁶² The Unrepresented Nations and Peoples Organization (UNPO) has no doubt: their home page begins: “All Peoples have the right to Self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” UNPO, <http://www.unpo.org/article/4957>.

⁶³ Klabbers, “The Right to be Taken Seriously,” p.202.

⁶⁴ *Ibid.*, p.203.

armed force. From the perspective of the group or ‘population’, attempts at secession are not undertaken lightly; they tend to have a very long life if not accommodated⁶⁵ or crushed. If the ‘decision-maker’ is another body, it remains unspecified. How a ‘principle of self-determination’ and a ‘right to be taken seriously’ are to help the would-be self-determiner, or to be enforced, is not clear. Where is this procedure to proceed?

The third significant case was that of the *Northern Cameroons* series of proceedings and judgments (1961–63).⁶⁶ Here the issue was: of whom should a plebiscite question (leading to self-determination) be asked? This is a point directly in issue in the case of the Comores. Where there are, as was the case in the Cameroons, two parts of a single mandated trust territory, administered separately purely for the convenience of the administrator of the mandate (in this case the UK), should the parts vote separately or as one? However, the Court only decided on the precedent question of its jurisdiction and capacity, and declined to rule on the main issue as it considered any possible judgement had been overtaken by events. The issue was the definition of the ‘self’ in self-determination, but it was never directly addressed by the Court.

Unfortunately, these three leading cases since the *Aaland Islands* are not such a great help. *Namibia* discussed the issue of self-determination; the principle was extant but essentially this was a particular case. *Western Sahara* discussed the issue but it was

⁶⁵ Examples are Abkhazia where the attempt has lasted 20+ years; and Sudan, where accommodation has been more or less reached and secession achieved after many years.

⁶⁶ *Northern Cameroons (Cameroons v United Kingdom)*. The former German colony of Cameroons had been mandated to Britain. This had been administered from Nigeria in two parts, North and South Cameroon, an arrangement not in the original Mandate of 1921 nor in the subsequent agreement of 1946, but accepted by UNGA. Next-door French Cameroon (not a Mandated Territory, simply a French colony) gained independence and became the Federated Republic of Cameroon. The question for the people of British Cameroons was: did they want to join with the Federated Republic, or with Nigeria? The South voted for the Republic, the north for Nigeria. If they had voted as one, the choice would have been for the Republic. UNGA accepted the results as they were, with a division of the former German colony, and the Court declined to hear the case, primarily on the basis that it would not hear what would be theoretical only — the application of the Cameroons to have the case heard and to claim that the whole territory should join them was simply too late. The difficulty for the Federated Republic was that it was not a state until it had gained its independence, and by that time it was too late to bring the case.

sent back to the UN for decision, with the Court saying only that the peoples of the region (mostly nomadic, of an ill-defined region) should be consulted. In *Northern Cameroons*, the plaintiff was too slow and too late, but the principle was acknowledged. In the fourth, the *Frontier Dispute* case,⁶⁷ self-determination was briefly considered, but subordinated to *uti possidetis*. The issue was more of where the border should be drawn, with the states on either side — Burkina Faso and Mali — claiming disputed territory, than it was of the nomadic residents of the disputed territory claiming a right to self-determination. Beyond these, self-determination was also discussed in the *East Timor* case,⁶⁸ where Portugal suggested that by entering into a treaty with Indonesia, Australia had failed to observe the right to self-determination of the East Timorese.⁶⁹ Again, the Court found itself unable to adjudicate.⁷⁰ It did, however, say that self-determination was “one of the essential principles of contemporary international law”⁷¹ and that it had an *erga omnes* character.⁷²

The *obiter dicta* are numerous; the decisions are few. If we are looking to the case-law to date to provide a definitive answer, we will be disappointed. That there is such a concept as self-determination is evident. The extent of its existence as a right is uncertain and may be limited to restricted cases, as we have seen. The main reason for this restrictive approach is the close link believed to exist between self-determination and secession (in the unilateral sense of the word). It is perhaps possible for a principle, subject to some adjudication as Klabbers suggests, of self-determination to

⁶⁷ *Frontier Dispute (Burkina Faso v Mali) (Judgment)* [1986] ICJ Reports 554. The case was of a dispute over borders between the two states in a desert region. There was conflict over the exact line as delineated by the previous colonial powers. The area between the two lines was considerable, with a population, for the most part nomadic, living between them.

⁶⁸ *East Timor (Portugal v Australia) (Judgment)* [1995] ICJ Reports 90.

⁶⁹ Klabbers, “The Right to be Taken Seriously,” p.196.

⁷⁰ Musgrave, *Self-Determination*, p.89.

⁷¹ [1995] ICJ Reports 90, p.102. It was unable to adjudicate, as Indonesia, whose acts were under discussion, had not consented to being a party before the Court.

⁷² This Latin phrase is taken to mean that the duty under discussion is owed not to one particular party, but to the world at large.

be considered without a flow-on to secession; it is hard to see that this can be the case with a right. The claim of the right would be the first move of the potential secessionist, which will almost always be rejected by the metropolitan state.⁷³

Having had somewhat disappointing results from the Courts and the cases, let us turn to the United Nations, where self-determination has been much discussed. The General Assembly and its committees have been the main forums, particularly in the context of decolonisation.

4.1.5 *The United Nations*

The UN has been engaged with decolonisation since its inception, at times very actively, at times with more a watching brief. This engagement has been seen in terms of self-determination, despite there being no reference to the latter in the original Dumbarton Oaks proposals,⁷⁴ beyond it being a ‘goal’. Cassese suggests that self-determination was not considered at the conference as an independent value, but only as instrumental vis-à-vis universal peace.⁷⁵ As time passed, the anti-colonialist aspects of self-determination were developed and it became an important focus in the work of the UN General Assembly (UNGA). For the most part the presumption of the UN has been that self-determination and decolonisation would lead to independence, but on occasion UNGA has been prepared to countenance other outcomes.

⁷³ Where it is not rejected, there will be the likely outcome of a moderately civilised ‘divorce’ — e.g., Norway/Sweden, Czech Republic/Slovakia and the territories of the South Pacific. Aleksandr Pavkovic and Peter Radan, *Creating New States: Theory and Practice of Secession* (Aldershot, UK: Ashgate, 2007), p.35. There has been much discussion of ‘grounds for divorce’ in Canada, with the potential secession of Quebec.

⁷⁴ Musgrave, *Self-Determination*, p.63. The reference originated in the USSR proposals. The colonialist countries did not agree, but a compromise was reached. Antonio Cassese, “Political Self-Determination: Old Concepts and New Developments” in Antonio Cassese (ed), *UN Law — Fundamental Rights: Two Topics in International Law* (Alphen aan den Rijn, The Netherlands: Sijthoff and Noordhoff, 1979), p.138.

⁷⁵ Cassese, “Political Self-Determination,” p.138.

In the UN Charter, Ch.XI, Art.73 covers the administration of Non-self-governing Territories (NSGTs) other than Trust Territories.⁷⁶ The classification of NSGT is enormously significant to the UN's approach to decolonisation and thence to self-determination. Resolution 66(i), passed in 1946, proposed that all members considered to possess colonies be requested by the Secretary-General to list the NSGTs for which they were responsible. In compliance, the colonial powers provided the original list of Territories, but it was a list formed by their assessment, not by any outside body or objective criteria. It was certainly not a matter of self-selection by the colonies. Art.73(e) then required those members of the UN who administered NSGTs to transmit regularly "statistical and other information of a technical nature relating to economic social and educational conditions in the territories ... for which they are responsible".⁷⁷ Ch.XI did not expressly refer to self-determination, but this requirement to report effectively provided a list of the NSGTs who had not yet self-determined.⁷⁸

By Resolution 332(IV), a Committee of 16 was set up to consider the information provided, but the legality of this committee was queried, and on occasion its 'illegality' denounced, most notably by Belgium.⁷⁹ Despite these complaints, the Committee continued to do its work, and its successor was endorsed with further formal powers.⁸⁰ An NSGT remained on the list until it was shown to be no longer 'non-self-governing'. Territories could come off the list by achieving self-determination and independence. As Benedetto Conforti points out, this did not of

⁷⁶ 'Trust Territories' were the post-1945 successors to the Mandated Territories of the League of Nations. They included the original list with some new post-WWII additions. The originals were Cameroons (Britain/France), New Guinea (Australia), Ruanda-Urundi (Belgium), Tanganyika (Britain), Togoland (Britain/France), W. Samoa (NZ). The additions included Nauru (Australia), the Pacific Islands (USA) and Somalia. There was also the contested Southwest Africa.

⁷⁷ UN Charter Art.73(e).

⁷⁸ The original list was of 74 NSGT's, named by eight member Administering States. Robert Aldrich and John Connell, *The Last Colonies*, (Cambridge: Cambridge University Press, 1998), p.156.

⁷⁹ *Ibid.*, p.260.

⁸⁰ Resolution 1514 (XV), 14 December 1960. See also Musgrave, *Self-Determination*, p.92.

itself give the colonial powers an obligation to bring their colonies to independence.⁸¹ Evidence of the linking of self-determination with decolonisation is provided by Resolution 637 (VII) of 1952, which called upon members to “recognize and promote the realization of the right of self-determination of the peoples of non-self-governing and trust territories who are under their administration.”⁸²

Resolution 1514 was entitled the “Declaration on the Granting of Independence to Colonial Countries and Peoples”.⁸³ As Musgrave says, it became the definitive statement of UNGA with regard to colonial situations.⁸⁴ It effectively took over from and replaced Art.73. Para.5 of the Resolution sought the immediate transfer of “all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom”. However, this transition from colonial status to independence was subject to Para.6: “Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the UN”. It also established the Decolonization Committee of UNGA.⁸⁵ This Committee, known as the Committee of 24 (the successor to the Committee of 16) became the clearing-house for Art.73(e) information and made draft recommendations on de-listing. It became an important focus for communist, non-aligned and recently-decolonised members of UNGA and was viewed with a mixture of alarm and condescension by some Administrating Members. This was most

⁸¹ Benedetto Conforti, *The Law and Practice of the United Nations*, 3rd rev ed (The Hague: Martinus Nijhoff, 2005), p.260.

⁸² Quoted in Musgrave, *Self-Determination*, p.69.

⁸³ Resolution 1514 (XV), 14 December 1960.

⁸⁴ Musgrave, *Self-Determination*, p.70.

⁸⁵ The full title of this committee was “Special Committee on the Situation with Regard to the Implementation of the Declaration”.

noticeably the case in Britain, especially in the right-wing press.⁸⁶ France was viewed by many on the Committee as non-cooperative, especially over the issue of New Caledonia.⁸⁷

Resolution 1541, adopted the day after 1514,⁸⁸ laid down a list of twelve principles to help determine whether an obligation to report existed under Art.73(e). As Musgrave comments, both Resolutions were anti-colonial in nature. Principle I stated that Ch.XI was to apply to territories “known to be of the colonial type”. Principle III said that the obligation continued until “a full measure of self-government is attained”. Principle IV described a NSGT: “*Prima facie* there is an obligation ... in respect of a territory which is geographically separate and is ethnically and/or culturally distinct from the country administering it”. Principle V listed additional factors which could be taken into account when deciding whether a territory was an NSGT. Principle VI listed the alternative outcomes: independence, free association with an independent state, or integration with an independent state. Principle VII elaborated on free association; Principles VIII and IX covered the third alternative of integration, which was taken as being an irreversible procedure. Principles X, XI and XII dealt with the transmission of information under Art.73 (e).⁸⁹ The old list, of NSGTs nominated by the colonial powers was thus replaced by a new list, formed by the standards of the 12 Principles under Resolution 1541. The Committee, not the colonial powers now decided.

There has been discussion as to whether the Resolution, being an expression of the intent of the member states of the UN, can be viewed as having the same legal

⁸⁶ George Drower, *Britain's Dependent Territories* (Aldershot, UK: Dartmouth, 1992).

⁸⁷ In recent times France has had further involvement, with the re-listing of Polynésie française in May 2013, following a proposal by Solomon Islands, Nauru and Tuvalu under Art.73(e). Jean-Paul Pastorel, « *La réinscription de la Polynésie française sur la liste des pays à décoloniser, une nouvelle étape des relations avec l'Etat français ?* », *Bulletin juridique des collectivités locales*, Juin 2013.

⁸⁸ 15 December 1960.

⁸⁹ This is a condensation of Musgrave's condensation of the text of the Principles. Musgrave, *Self-Determination*, pp.71–3.

binding force as a Treaty,⁹⁰ or whether it is better seen, as Steven Hillibrink says, as a generally acceptable interpretation of a Charter provision. This would have the effect of allowing members in future years more room for interpretation. Hillibrink cites a number of UNGA members saying at various times that they prefer to view it in this light.⁹¹

During the 1960s, Resolutions referring to self-determination continued to be passed, becoming more radical in tone as the decade progressed. This could be ascribed generally to the political circumstances of the times including the Cold War and the rise of the non-aligned movement; more specifically to the increasing influence of the newly-independent in UNGA, eager to ensure that colonialism should disappear. Western and Administering powers found themselves voting ever more in the minority, as the demands for decolonisation became more strident and with more supporters. These Resolutions included 2131 (XX), 2160 (XXI) and 2621 (XXV).

Some change to this adversarial voting pattern came with Resolution 2625 (XXV) of October 1970, the “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the UN”. This Declaration was more consensual in tone, endorsed the seven years’ work of the Special Committee that had produced the Declaration on Friendly Relations, and was a carefully-crafted compromise. Under para.2, every state had a duty to promote self-determination in order to bring “a speedy end to colonialism, having due regard to the freely expressed will of the people concerned”. Moreover “the subjection of peoples to alien subjugation, domination and exploitation” was a

⁹⁰ Jorge Castaneda, *Legal Effects of United Nations Resolutions* (New York: Columbia University Press, 1969), quoted in Steven Hillibrink, *The Right to Self-Determination and Post-Colonial Governance: The Case of the Netherlands Antilles and Aruba* (The Hague: TMC Asser Press, 2008), p.22.

⁹¹ Hillibrink, *The Right to Self-Determination*, p.17.

violation of the principle of self-determination, a denial of fundamental human rights and contrary to the UN Charter.⁹² The Declaration stated:

The establishment of a sovereign and independent state, the free association or integration with an independent state or the emergence into any other political status freely determined by a people constitute modes of implementing the right to self-determination by that people.⁹³

Gaetano Arangio-Ruiz comments that this was intended to discourage the tendency of states to “dissimulate” the dependent condition of a people by promoting it to the status of a province or overseas *département* or any other municipal law subdivision, or to any other more or less autonomous status.⁹⁴ The wording here is of direct relevance to Mayotte, whose new status seems capable of falling within the Resolution. However, Mayotte’s earnestly-sought *départementalisation* can hardly be described as a ‘dissimulation’ by the state. The Declaration did expressly emphasise that outcomes other than outright independence were permissible. The emphasis is on the ‘free determination’. Cassese wonders about the status of the Declaration, and concludes that it is not, as such, a legally binding text, but has contributed to the formation of a set of ‘general rules’ concerning self-determination.⁹⁵ These general rules have been cited on numerous occasions since, but their boundaries still remain unclear. The Declaration may be seen as evidence of a move to a more nuanced approach, where free association or integration, as well as independence, can be envisaged as the outcome of a ‘freely determined’ self-determination.

By 1970, the great wave of decolonisations had been achieved. The major empires had been dismantled. The Committee and the Administering members were, as we have seen, no longer quite so viscerally opposed. The Committee, even its most

⁹² Here also I am indebted to Musgrave, having again condensed his already condensed analysis. Musgrave, *Self-Determination*, pp.74–5.

⁹³ Resolution 2625 (XXV), 24 October 1970.

⁹⁴ Gaetano Arangio-Ruiz, *The Declaration on Friendly Relations and the System of the Sources of International Law* (Alphen aan den Rijn, The Netherlands: Sijthoff, 1979), quoted by Hillibrink, *The Right to Self-Determination*, p.26.

⁹⁵ Cassese, *UN Law*, p.146.

stridently anti-colonialist members, were becoming aware that the main surge of decolonisation had passed; the territories still on the list were smaller, more marginal as viable economic entities and less likely to be in search of a simple independence. On the other side of the table, the Administering members had generally concluded that it was better to co-operate with the Committee than fight it, even to call it in for advice and endorsement of plans for self-determination. New Zealand, in its relations with the Cook Islands,⁹⁶ provides an example of this approach. As Cassese points out, ‘external’ self-determination (occupation by a foreign/colonialist power) was declining in significance compared to ‘internal’ self-determination (the rights of a ‘people’ or a minority group within an independent and sovereign state).⁹⁷ The principle itself can be seen to be developing to a more mature model.

It was with this background, and with a European perspective, that the Helsinki Declaration of 1975 was agreed.⁹⁸ Art.VIII provided: “The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the UN and with the relevant norms of international law, including those relating to territorial integrity of States.”⁹⁹ Self-determination is a *right of peoples* (not of states) but only in conformity with the Charter and relevant norms. It is not, therefore an invitation to secession, but all peoples are to have the right to “determine their internal and external political status”.¹⁰⁰ The Declaration does not have treaty status, but strong persuasive

⁹⁶ There will be a return to this question in a later chapter.

⁹⁷ Cassese, *UN Law*, p.146.

⁹⁸ It may be seen that throughout the 1960s, UNGA was the main forum of debate. In the 1970s, more outside meetings were held, typified by those in Helsinki and Algiers. The Helsinki Accords, the Conference on Security and Cooperation in Europe, were prepared over two years, 1973–75 and signed on 1 August 1975 by 33 European Heads of Government + USA and Canada.

⁹⁹ Declaration on Principles Guiding Relations between Participating States (Helsinki, 1 August 1975), Art.VIII.

¹⁰⁰ *Ibid.*, Art.VIII, p.10.

power; it appears to widen the international acceptance of self-determination by peoples, but within limits.

Helsinki was followed by the Algiers Declaration of the Rights of Peoples of 1976 (from a gathering of expert individuals and not of governments) which went further and included the notion that political oppression (be it external or internal) was a denial of the right to self-determination. Art.7 stated,

Every people has the right to have a democratic government representing all citizens without distinction of race, sex, belief or colour, and capable of ensuring effective respect for the human rights and fundamental freedoms for all.¹⁰¹

The tenor and the balance had shifted: the Algiers Declaration did not follow the cause of sovereignty and territorial integrity at all cost. Cassese noted that a salient feature was that the declarants spoke up “in favour of peoples and not in the interests of governments” and claimed (over-optimistically) that “the bogey of Secession has been exorcised”.¹⁰² It is noteworthy that the Algiers meeting was not a gathering of governments. If it indicates a direction, it is towards entertaining the self-determining efforts of ‘peoples’ within the framework of the UN Charter. We must now turn to the “bogey of Secession”.

4.2 Secession

4.2.1 Problems of Definition

At first sight, secession appears to be, as political concepts go, relatively uncomplicated. Where once there was one state, now there are two or more. It is possible to believe that the theorists are all talking about the same thing — until one reaches the finer points of definition. Let us examine some examples. In 1981, John Wood pointed out that secession is more specific than separation, and defined it as: “a

¹⁰¹ Algiers Declaration of the Rights of Peoples (1976), Art.7.

¹⁰² Cassese, *UN Law*, pp.153–6.

demand for formal withdrawal from a central political authority by a member unit or units on the basis of a claim to independent sovereign status.”¹⁰³ James Crawford’s definition is: “the creation of a state by the use or threat of force without the consent of the former sovereign.”¹⁰⁴ Julie Dahlitz describes secession in these terms: “The issue of secession arises whenever a significant proportion of the population of a give territory being part of a state, expresses the wish by word or deed to become a sovereign state in itself or to join and become a part of another sovereign state.”¹⁰⁵ Pavkovic and Radan define secession as: “the creation of a new state by the withdrawal of a territory and its population, where that territory was previously part of an existing state.”¹⁰⁶ To return to Wood: “secession then represents an instance of political disintegration wherein political actors in one or more subsystems withdraw their loyalties, expectations and political activities from a jurisdictional centre and focus them on a centre of their own.”¹⁰⁷ John Dugard, in a recent and most persuasive book on secession, explains: “Secession is the creation of a new independent entity through the separation of part of the territory and population of an existing state without the consent of the latter.”¹⁰⁸ In these definitions, and they are only five examples taken from many, the elements are: that there is a threat or a demand to move away; to start something new or join another state; to take territory from an existing state. These definitions have in common a threat to the territorial integrity of

¹⁰³ John R Wood, “Secession: A Comparative Analytical Framework” *Canadian Journal of Political Science / Revue canadienne de science politique*, vol.14, no.1 (March 1981), pp.107–34.

¹⁰⁴ James Crawford, *The Creation of States in International Law*, 2nd ed (Oxford: Clarendon Press, 2006), p.375. Earlier, Crawford had laid less emphasis on threats or force, when he wrote, at p.268: “Secession is neither legal nor illegal in international law, but is a legally neutral act, the consequences of which are or may be regulated internationally”.

¹⁰⁵ Julie Dahlitz, “Introduction,” in Julie Dahlitz (ed), *Secession and International Law: Conflict Avoidance and Regional Appraisals* (The Hague: TMC Asser Press, 2003), p.6.

¹⁰⁶ Pavkovic and Radan, *Creating New States*, p.7.

¹⁰⁷ Wood, “Secession,” p.111.

¹⁰⁸ John Dugard, *Secession of States*, citing with approval Marcelo G Kohen, “Introduction,” in Marcelo G Kohen (ed), *Secession: International Law Perspectives* (Cambridge: Cambridge University Press, 2006), p.3.

the old state, albeit with their own justifications. The different definitions put different weights on the various parts of that process.

The basic problem of definition here is to decide whether the attempt is to find a form of words that fits all cases, or whether to start with a definition, and then see which cases fit the classification. A first step may be to separate secession from self-determination. Whereas self-determination is aspirational, secession is an act; it is at least an attempt, whether it succeeds or fails — or partially succeeds. Whether it requires Crawford's ingredient of the use or threat of force is doubtful; the Czech Republic and Slovakia come to mind. Pavkovic and Radan are surely right in saying that there is no point to this; that Crawford's definition is unduly restrictive.¹⁰⁹ Both Dahlitz and Wood emphasise sovereignty but only Dahlitz expressly includes a joining within another sovereign state.

Wood goes on to allow for cases where so little integrative activity has taken place that loyalties cannot be said to be withdrawn because they never developed in the first place. He cites the then-new but rapidly failing Federations, such as the West Indies and Central Africa. He also draws attention to cases where, at the time of colonial emancipation, the loyalties to the new central regime had never existed. Here he cites the South Moluccans, Nagas and Katangans, and includes them as potential secessionists as they were seeking to withdraw, as a territorially defined group, from a political authority on the basis of a claim to independent sovereign status.¹¹⁰ It is into this group that the Mahorais might fall, were it not for the exceptional fact that they were never seeking independence or sovereign status.

Pavkovic and Radan would appear to be limiting secession to cases where a new state is formed; Dahlitz on the other hand would allow cases where there is a

¹⁰⁹ Pavkovic and Radan, *Creating New States*, p.9.

¹¹⁰ Wood, "Secession," p.110.

joining with another sovereign state. If this is so, then by this criterion Dahlitz would include Mayotte, but Pavkovic and Radan would exclude it. I have here taken only five scholarly definitions; it can be seen that they differ greatly. The identification of the salient features of secession is not simple or agreed.

4.2.2 *The practice of secession*

The next questions are: under what circumstances can an act of secession be considered legitimate, or be condoned or approved, and what will happen if it is not condoned or approved? To take the case where the secession has been announced, attempted, even effected: what does the rest of the world do now? There are those secessions that have been effected and approved, usually resulting in acceptance of the new state as a member of the UN.¹¹¹ The largest and most notable is the secession of Bangladesh from Pakistan. More recently, the secession of South Sudan from Sudan has been approved, even applauded. Besides these cases that have definitively resulted in a new and recognized state, there are those that have been achieved de facto, but have been not approved, or only recognized by some. Examples are Abkhazia, South Ossetia, Somaliland and Northern Cyprus (TRNC). Others have not been recognized at all, or by one sponsor state only, such as Transnistria and Nagorno-Karabakh. There may be those who have only been recognized by others of the non-recognized or as the membership of UNPO¹¹² shows, identify themselves as a group by the criterion of being unrecognised.¹¹³ These all come into the category Scott Pegg has named “de

¹¹¹ Dugard is surely correct in taking this as the modern form of Recognition. Dugard, *Secession of States*.

¹¹² UNPO currently 46 members, from (alphabetically) Abkhazia to Zanzibar. ‘Unrepresented’ refers to a lack of UN status; there is an element of self-selection.

¹¹³ Being unrepresented may be seen, as John Dugard suggests, as very similar to being unrecognised. Dugard, *Secession of States*.

facto” states.¹¹⁴ Pegg suggests certain qualifying conditions for the de facto state: first, that there is an organized political leadership which has risen to power through some degree of indigenous capacity; second, it receives popular support and has achieved sufficient capacity to provide governmental services to a given population in a specific territorial area, where it has had effective control for a significant time; third, it sees itself as capable of having relations with other states; and fourth, it seeks full independence and recognition as a sovereign state.¹¹⁵

For the de facto state, secession has been only partially successful. Pegg’s work on de facto states is important for the discussion of post-secession states. However, it is clear that Mayotte is not one of them. If the Mahorais had rejected unity with the Comores after the unilateral declaration and attempted to gain an independent status, they could well have ended in Pegg’s world of the de facto. However, this was never their intention. Independence was never contemplated or aspired to. *départementalisation* is quite a different direction. Are there precedents — or indeed other subsequent cases — for seceding to join another? It could be said that the Aaland Islanders in their quest for self-determination were moving towards it and failed. The complex politics of the Netherlands Antilles provide another example. The arrangements of New Zealand and the Cook Islands also show a step in this direction.

Secession has been traditionally the most likely outcome of a successful self-determination. Once again, Mayotte provides the exception. It needs to be emphasised, however, that though self-determination to secession to independence has been the most common path, it is not the only one. As we have seen, integration in, or

¹¹⁴ Scott Pegg, *International Society and the De Facto State* (Aldershot, UK: Ashgate, 1998); Scott Pegg, “From De Facto States to States-Within-States: Progress, Problems, and Prospects,” in Paul Kingston and Ian S Spears (eds), *States Within States: Incipient Political Entities in the Post-Cold War Era* (New York: Palgrave Macmillan, 2004), pp.35–46. Ian S Spears, in his chapter in this book prefers the terminology of ‘states-within-states’ to ‘de facto states’: “States-Within-States: An Introduction to Their Empirical Attributes,” pp.15-34.

¹¹⁵ Pegg, “De Facto States,” p.4.

arrangements with, another state remains a possibility, despite the international courts strong unwillingness to endorse secession in preference to territorial integrity. In the *Québec* case, the Supreme Court of Canada continued this unwillingness to a domestic sphere.¹¹⁶

4.2.3 *Did Mayotte secede?*

A case could be argued by the Republic of Comores that Mayotte seceded from it. If the Republic of Comores could show that Mayotte had passed with the other islands to independence, even for a moment, then the separation of Mayotte from it could be classed as secession.¹¹⁷ This can only be argued if Mayotte was a part of the Comores for the moments after the UDI of Ahmed Abdallah, and that it was this act that triggered independence. If it was the UDI that caused independence, and not the acquiescence (subject to qualification) given by France, only then could Mayotte be considered secessionist.

This introduces the question of the legal outcomes of UDI. International law is not well-developed on this point. The main case is that of Rhodesia, where there was a general reluctance to ascribe consequential legal powers to a pronouncement of UDI. In the present case, in the absence of a characterisation of the issues in terms of secession by any of the parties, it is preferable to ascribe the actuality of separation to the acquiescence by France rather than to the UDI itself. However, an arguable point remains. Klabbers and Lefeber seem to imply that secession is relevant here, when they write: “the absence of a right to secede and/or the principle of territorial integrity

¹¹⁶ *Reference Re Secession of Quebec* [1998] SCR 217 (‘*Quebec case*’).

¹¹⁷ This is a widely held, but little analysed view. For example, the *African Research Bulletin* writes: “The new Comoran state was thus born with one island amputated”. It then describes Mayotte as “the breakaway island of Mayotte”. The former implies that there was an amputating force, the latter that there was secession. *African Research Bulletin*, vol.42, no.8 (1–31 August 2005), p.16340. The nearest case in point is that of Somalia/ Somaliland where a brief period of integration has been taken as the cause for Somaliland to be considered secessionist.

were invoked to condemn ... Katanga ... and the Comorian island of Mayotte from the Comorian archipelago ...”¹¹⁸

France’s response to a Comorien claim to a four-island status was that this was not the basis on which France accepted and agreed to the independence of the Republic of Comores. Moreover, Mayotte had never had a status other than within the *République* and it was legitimate and constitutional for France to ascertain the wishes of the *Territoire* island by island. The unilateral declaration came after, and in response to, the legislating of the method of voting.

Hence, in the French view, which will be discussed more fully in the next chapter, there was no secession by Mayotte. In the Comorien view, the complaint was not put in terms of secession by Mayotte, but rather in terms of an illegal retention by France. It might have been stronger if it had been. In the Mahorais view they were never a part of the Republic of Comores, so there was no question of secession. Secession was in the language of commentators, rather than the parties.

4.3 *Uti Possidetis*

As a legal principle, *uti possidetis* has had an unusual career. It is now taken to be the rule that “came to be the cornerstone for the maintenance of the system of sovereign states”.¹¹⁹ Put briefly, it is the rule that, upon independence, the colony becoming a state shall keep the same boundaries. It started a long way from that, as a

¹¹⁸ This discussion of an invocation does not make their position clear, except insofar as they bracket Mayotte with Katanga. Jan Klabbers and René Lefeber, “Africa: Lost Between Self-Determination and *Uti Possidetis*,” in Catherine Brölmann, René Lefeber and Marjoleine Zierk (eds), *Peoples and Minorities in International Law* (Dordrecht: Martinus Nijhoff, 1993).

¹¹⁹ Joshua Castellino and Steve Allen, *Title to Territory in International Law: A Temporal Analysis* (Aldershot, UK: Dartmouth, 2003), p.8. I am indebted to Castellino and Allen throughout this section. Steven Ratner introduces the topic in these terms: “At the core of the legal debate over the territory of new states is the principle of *Uti Possidetis* ...” Steven Ratner, “Drawing a Better Line: *Uti Possidetis* and the Borders of New States,” *American Journal of International Law*, vol.90, no.4 (October 1996), pp.590–624.

procedural interdict in Roman law. Its full title is or was: *uti possidetis ita possidetis*, or ‘As you possess, so you possess’.

Uti possidetis has been central to the discussion of the *Affaire Comores*. ‘Cornerstone’ or not, it has been constantly invoked by supporters of a four-island Republic of Comores as the main argument for the illegitimacy of Mayotte’s separation from the Comores. Most recently, it has been the cornerstone of Ali Ahmed Abdallah’s argument.¹²⁰ I will outline its development, pointing out its flawed history and question whether it is suitable for a role as a ‘cornerstone’.

4.3.1 *Uti possidetis in Rome*

When a dispute about immovable property (there was another and parallel interdict *Utrubi* for moveable property) was first coming before the Praetor responsible for *ius civile*, he could act to enforce the status quo by this interdict *Uti Possidetis*.¹²¹ It was designed to protect existing arrangements of possession without regard to the merits. In this respect it was somewhat similar to a present-day Interlocutory Order. It was addressed to both parties, who were brought together to hear the Praetor. This, then, was the first appearance of *uti possidetis*. It may well be asked what this could conceivably have to do with modern international law and state sovereignty.

The next stage was, as Castellino and Allen suggest, a blending of the *ius civile*, the private law of the Roman citizen, with the *ius gentium*, the law of the peregrine (foreign national). They point out that the previous separation of the two became increasingly problematic and contrary to Rome’s commercial interests. There developed a more inclusive approach that brought in peregrines and all inhabitants of the expanding empire into a single system brought an intermingling of *ius civile* and

¹²⁰ Abdallah, *Le statut juridique de Mayotte*.

¹²¹ Gaius, *Institutes*, Book IV, para.150: Francis de Zulueta (ed), *The Institutes of Gaius* (Oxford: Clarendon Press, 1946), Pt.1, p.293.

ius gentium and a merging of the functions of the offices of the two Praetors, the *Urbanus* and the *Peregrinus*. Thus the *ius gentium* acquired pieces, including *uti possidetis*, of the *ius civile*. The notion of *ius gentium* then went through several periods of adaptation, before reappearing with the medievalists to represent approximately the modern ‘laws of nations’.¹²² It may have been the name that suggested this notion of a private international law to those who came after and knew some Latin and little law, such as Isidore of Seville in the early seventh century.¹²³ Grotius was to continue this trend, excluding *ius gentium* from the municipal and applying it only to interstatal institutions, “as sanctioned by the deliberate will of the family of nations as exercised within limits set by reason.”¹²⁴

As the *ius gentium* changed in identity, from the law covering dealings with foreigners to a law of nations, so it took with it the Praetorian interdict of *uti possidetis* that had never been a part of it in the first place. Of the whole body of Roman procedural law of the period of Gaius, it seems that *uti possidetis* is one tiny segment that has survived into the modern epoch, despite the twists and turns, the jumps and incoherencies in its history.

4.3.2 *Uti possidetis in Latin America*

We can go now to Spanish America and the year 1810.¹²⁵ Here, with the achievement of independence from Spain by the now-sovereign states under Creole leadership,¹²⁶ two Roman legal terms were invoked to describe the status of the

¹²² Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome* (London: Macmillan, 1911), vol.1, pp.69–72. These changes took place over several centuries.

¹²³ *Ibid.*, p.89.

¹²⁴ *Ibid.*, p.90.

¹²⁵ Castellino and Allen, *Title to Territory in International Law*, pp.57–83.

¹²⁶ Creoles were those of European ethnicity born in the colonies. A Alvarez, “Latin America and International Law,” *American Journal of International Law*, vol.3, no.2 (April 1909), p.272. Alvarez has provided the first and most detailed account of the origins of *uti possidetis* in a modern English-language law setting.

continent: *terra nullius* and *uti possidetis*. The objectives were clear: no return to dependency, no Europeans to regain a foothold on the American continent, and maintenance of the sovereign independence and territorial integrity of each and all.¹²⁷

By the first it was claimed that there was no *terra nullius* or unoccupied land upon the continent; no lacunae left to be claimed by future predatory European powers.¹²⁸ By the second, generally but incorrectly believed¹²⁹ to have been written into a number of Constitutions of the new Republics, the boundaries were to be set at the status quo of the year 1810,¹³⁰ the beginning of the fourteen year period of the struggle for independence. This has been the widely accepted account of the issue of boundaries and the role of *uti possidetis*. It has been said and believed that the newly sovereign states agreed early in their independence to a scheme whereby the 1810 former colonial administrative boundaries were to be adopted, maintained and enforced, thus setting a principle of *uti possidetis* capable of export to the world. However, they did not.

The reality was different. The new states were not sufficiently organized, nor were they based on any particular unit of the erstwhile Spanish colonial administration.¹³¹ As Suzanne Lalonde shows, the early constitutions and declarations

¹²⁷ Ibid.

¹²⁸ This is a rather different application of the concept to that in Australia, where it has been applied in relation to the indigenous population.

¹²⁹ This has been taken as an article of faith by many subsequent legal writers: e.g., Jorge Dominguez, *Boundary Disputes in Latin America* (Washington, DC: United States Institute of Peace, 2009). However, Suzanne Lalonde, after scrutinising all the Constitutions, found that it was not so. Of 43 Constitutions of the period 1811–50, one only, that of Costa Rica, made explicit reference to *uti possidetis*. Of the period 1850–1901, of 40 Constitutions, four did so, of which three were revised versions of the Costa Rican and one, of Colombia expressly excluded it. This is not to say that a generalised principle of taking pre-existing boundaries was not referred to; it is the name that was not used. Suzanne Lalonde, *Determining Boundaries in a Conflicted World: The Role of Uti Possidetis* (Montreal: McGill-Queens University Press, 2002), pp.24–60.

¹³⁰ This was entitled the ‘Uti Possidetis of 1810’. Alvarez gives as a footnote: “The term is generally understood to mean the territory which the respective country had the right to possess according to the Spanish administrative divisions obtaining at that date, the date of the beginning of the movement for emancipation.” Alvarez, “Latin America and International Law,” p.290, n.10.

¹³¹ There were viceroalties, *audencias*, *presidencias* and *provincias*. There was no principle which determined which colonial entities were to be respected. Lalonde, *Determining Boundaries*, p.35.

of independence merely expressed adherence to the colonial status quo and acknowledged the need to postpone the delimitation of boundaries to a more convenient time, with no mention of *uti possidetis*. “The states which adopted it (the colonial status quo) for reasons of opportunism were aware of the impossibility of resolving their boundary problems in the immediate aftermath of their accession to independence and the adoption of the status quo merely reflects a tacit acceptance that these issues would have to be revisited at some point in the future.”¹³²

One issue left undiscussed and never written in a Constitution or elsewhere was the principal purpose of the Roman Interdict: the laying down of rights and duties during the process of contest and dispute. There may have been no lacunae, but the boundaries of 1810 were in practice undefined and subject to subsequent dispute. This was not for lack of attempts at the maintenance of confraternity or occasionally confederacy to support the sovereignty, independence and territorial integrity of each and all. The Congress of Panama of 1826, called by Bolivar, sought ways and means to maintain solidarity against foreign threats and domination.¹³³ It was followed by a lack of ratification, and subsequent attempts at congresses in 1831, 1838 and 1840. The Congress of Lima of 1847 had a similar aim against foreign threats, but was also internally directed. Art.12 forbade interference in the internal affairs of another state or member, or making preparations to do so. Art.8 interdicted boundary alterations between parties without permission of all the confederated Republics. The aim was clear: the minimisation of territorial disputes.

There are a number of weaknesses in the claim that the Congress of Lima is the source and origin of a so-called Latin American customary law principle of *uti possidetis*. First, the agreement was necessarily retrospective, that a state of affairs that

¹³² Ibid., p.29, quoting Dias van Dunem.

¹³³ This series of Congresses is discussed at length by Alvarez. Alvarez, “Latin America and International Law,” p.280.

existed for 37 years was only now being formalised. Second, it conferred powers to the confederacy to veto alterations to boundaries, which argues against the presumption that the boundaries were set 37 years before and could not be changed. By creating a veto, it admitted the possibility of boundary-change. Third, it was never ratified by any of the parties. One at least, Chile, expressly disavowed its plenipotentiary.¹³⁴ Fourth, the Congress itself was called in response to specific circumstances of outside threat; it was for this reason primarily that the plenipotentiaries foregathered, not to agree principles of boundary law. Fifth, it was followed nine years later by another Congress and another Treaty with more modest aspirations, and after another nine years by another with re-iterated aspirations. All in all, the Congress of Lima is to be doubted as the source of a legal principle for all people and all time, later to be described as ‘customary’ law.

As Lalonde indicates, the express use of the formulation *uti possidetis* came into favour only in the second half of nineteenth Century and was used retrospectively. As the date 1810 fell further and further into the mists of the past, it was invoked more frequently to justify positions taken in the present. The ‘lines of *uti possidetis* of 1810’ was a latter-day incantation; it was only used from the 1870’s onwards when it acquired *de iure* status.¹³⁵ It may, however, have assisted South America in the matter of boundary-formulation to progress from mid-century wars to late-century arbitrations.¹³⁶ In any event, it was a very recently acquired ‘custom’.

¹³⁴ Elliott Marcus, “Chile and Hispanic-American Solidarity 1830–1865,” *The Americas*, vol.9, no.2 (October 1952), pp.177–200.

¹³⁵ Examples are: *The Treaty of Peace and Friendship, Dominican Republic–Haiti* of 1895, *The Additional Arbitration Convention, Peru–Ecuador* of 1894, *The Bolivia–Peru Arbitration of 1901*, and *The Boundary Case between Honduras and Nicaragua* of 1904.

¹³⁶ The clearest, most quoted and manifestly incorrect invocation of the principle came in the *Colombia–Venezuela Arbitral Award* which started in 1881 and reached a conclusion in 1922 : “When the Spanish colonies of Central and South America proclaimed their independence ... they adopted a principle of constitutional and international law to which they gave the name of *Uti Possidetis juris of 1810* for the purpose of laying down the rule that the boundaries of the newly established Republics should be the

The invocation of Roman law now seems stretched, almost superfluous. *Uti possidetis* has changed beyond recognition from the original. Once it was temporary and interlocutory, laying down no permanent rights; now it is invoked *de iure*. Once it was in private and municipal law; now it is in international law only. Once it concerned occupation; now it concerns boundaries. Once it provided for payments of penalties or rents between the parties for wrongful or improper occupation; this has disappeared. Each change and interpretation has taken the concept further from its origin but, at the same time, the Roman law origins, authenticity and gravitas have been claimed and assumed. It has led a charmed life and transformed itself totally. Its first appearance was not where it was thought to be, in the early Constitutions. It was not in the early Treaties. It was not at the Congress of Lima. A temporary solution of working pragmatically from the status quo has been elevated into a principle of international law, capable of being applied in very different circumstances, a century and a half later, in Africa, where we will move for *uti possidetis*' next appearance, more changes and even further rigidification.

4.3.3 *Uti Possidetis in Africa*

At the very time Latin America was grappling with boundary disputes and the retrospective formulation of *uti possidetis*, the European colonizing states were engaged in the 'scramble for Africa'¹³⁷ that was to have such a momentous effect on that continent. The Europeans drew lines on the map for their mutual convenience. These lines were oblivious to the lives, needs or groupings of the indigenous peoples. As Jeffrey Herbst says, the prime purpose of boundaries was the avoidance of conflict

frontiers of the Spanish provinces which they were succeeding." Quoted by Lalonde, *Determining Boundaries*, pp.47–8. Here is the nutshell statement of what did not actually happen in reality.

¹³⁷ Thomas Pakenham, *The Scramble for Africa* (London: Abacus, 1991).

between the colonialist powers.¹³⁸ These colonial regimes, often established by treaties with local rulers with varying degrees of spuriousness,¹³⁹ were to last for less than a century. The tide of colonialism came and went, but left a very different African political landscape. From the moment of the first independence, the issue of boundaries became part of the new African reality. It was there for the newly independent states; it was also there for the leaders of the post-independence regimes in these states. The incoming presidents and governments were necessarily defined by, and had an investment in, the standing boundaries. For the departing colonialists and the incoming governments, it was convenient, necessary¹⁴⁰ and seemingly unavoidable. What this construct lacked was a supporting legal theory.

The theory that could be summoned was *uti possidetis*. It was convenient, and avoided short-to-medium-term antagonisms, could be portrayed as having the full authority of ‘legal principle’ complete with a Latin name and an apparently strong history in Latin America. It was ‘ancient’; it was ‘historic’; it cemented the position of those in power. Arguably, it could be judged wise, sensible and a strong restraint on inter-state conflict and intra-state recalcitrant minorities. However, as a principle of international law, it had, as we have seen, a less good pedigree and less robustness than was commonly believed.

On its journey from Latin America, it had changed again. In its new form, any notion of the temporary had been cut out. The boundaries should be for ever as they were on the day the colonial power left. As Castellino and Allen write, “In the decolonization of Africa and (to a lesser extent) Asia, it was decided to choose the

¹³⁸ Jeffrey Herbst, “The Creation and Maintenance of National Boundaries in Africa,” *International Organization*, vol.43, no.4 (Autumn 1989), p.682.

¹³⁹ Cf. Castellino and Allen, *Title to Territory*, pp.91-118. Cf also CH Alexandrowicz, “The Partition of Africa by Treaty,” in K Ingham (ed), *Foreign Relations of African States* (London: Butterworth, 1973).

¹⁴⁰ “It is in the interest of all Africans now to respect the frontiers drawn on the maps, whether they are good or bad, by the former colonizers.” Prime Minister of Ethiopia, May 1963, at the inaugural summit of OAU. Quoted in Klabbers and Lefeber, “Africa.”

departure of the colonial ruler as the point or ‘critical date’ after which the physical dimensions of the new state would be considered crystallized.”¹⁴¹ This was not without opposition: in the early days of decolonisation, the Pan-Africanist movement had urged a drawing of boundaries more in keeping with the ethnic and tribal divisions on the ground.

The Cairo Declaration provided a written form for the principle. Brownlie describes it in unquestioning terms: “The Organization of African Unity (OAU) Resolution on respect for frontiers existing at independence is very similar to the policy adopted in Latin America in the wake of the Spanish Empire and its internal administrative divisions.”¹⁴² Signatories to the Declaration solemnly declared that, recalling the principles of Art.3 of the OAU Charter, “all member states pledge themselves to respect the frontiers existing on their achievement of national independence.”¹⁴³ This post-dates the Katanga crisis, and was perhaps partially in response to it, but did not prevent the fighting in Biafra, Eritrea and Sudan, and many other wars, insurgencies and crises. Allen and Castellino, trying to draw a balance, comment that, “international lawyers tend to argue that this situation is relatively constrained, in contrast to the potential havoc that could be wreaked” in the absence of a principle such as *uti possidetis*.¹⁴⁴ This is, of course, essentially unprovable. However, the words of the Declaration were there and recorded, and could be used to denounce a renegade, even if they did not prevent him from renegade acts. The Cairo Declaration has some similarities with the Congress of Lima, where high hopes and confraternal attitudes were recorded but not always acted on thereafter. It did, however, consolidate the position of *uti possidetis*.

¹⁴¹ Castellino and Allen, *Title to Territory*, p.15.

¹⁴² Ian Brownlie, *Basic Documents on African Affairs* (Oxford: Oxford University Press, 1971), p.360.

¹⁴³ See *ibid.*, p.361 for the full text.

¹⁴⁴ Castellino and Allen, *Title to Territory*, p.194.

The Declaration of Cairo was eleven years old, and its influence at its zenith, when the Islamic Republic of Comores brought the matter of Mayotte to the OAU at its Kampala meeting in 1975. By this time, with its new attribute of permanence, *uti possidetis* could be seen as effectively another name for ‘territorial integrity’.¹⁴⁵ The two phrases were used increasingly interchangeably or alternatively in tandem, with each giving weight to the other, despite their differences in law and in origins.

4.4 Territorial Integrity

Territorial integrity is a well-established principle of international law, enshrined in the Covenant of the League of Nations (Art.10) and the Charter of the UN (Art.2(4)). It remains as a statement of the maximal position, from which, on occasion, derogations may be made. The difficulty comes not from the statement of the principle but with identifying the possible occasions for derogations. These are what have been under discussion throughout this chapter. In general, states hold on strongly, almost blindly, to this principle; frequently they do so long after the point at which it can continue to benefit them, where an analysis of reality and cost/benefit would suggest a letting go. In other words, divorce might actually be better. The banner of ‘territorial integrity’ can be waved with many different motivations, ranging from pride and a

¹⁴⁵ As, for example: “Where title to territory is concerned, two related but different principles had become the parameters of international law’s unceasing if illusory, quest for certitude. One is the static principle of *Uti Possidetis* or ‘territorial integrity’. The other is the dynamic principle of Self-Determination.”. Thomas Franck, “Postmodern Tribalism and the Right to Secession,” in Catherine Brölmann, Renée Lefebvre and Marjoleine Zieck (eds), *Peoples and Minorities in International Law* (Dordrecht: Martinus Nijhoff, 1993), p.4. This identification of *uti possidetis* with ‘territorial integrity’ is challenged in the comments of Rosalyn Higgins, “Post-Modern Tribalism and the Right to Secession, Comments,” in Catherine Brölmann, Renée Lefebvre and Marjoleine Zieck (eds), *Peoples and Minorities in International Law* (Dordrecht: Martinus Nijhoff, 1993), p.34. She distinguishes between the ‘one moment in time only’ *Uti Possidetis* and the general and time-free principle of ‘territorial integrity’. “If Self-Determination has come to mean all things to all men, so has the concept of *Uti Possidetis* ... *Uti Possidetis* is to do with parallel moments of decolonization; territorial integrity is a basic Charter principle applicable to all states”. Despite Higgins’ doubts and the very valid distinction she makes, it is likely that Franck’s position has now become widely accepted and represents much current legal and political thinking. This view has been given extra weight by the recommendations of the Badinter Commission.

sense of history, through reluctance to be identified by the metropolitan population as the government that let go, to an awareness of where the natural resources such as oil and gas reserves may be.

In the Comores, the belief in the integrity of the Union as four islands remains strong, as shown by Abdallah's recent book.¹⁴⁶ It is, as we have seen, enshrined in the Constitution.¹⁴⁷ At times, other islands (Anjouan and Moheli) have tried to leave. Despite that, at the government level in Moroni, the belief remains strong that the absence of Mayotte from the four-island nation results from a breach of territorial integrity.¹⁴⁸ We will now turn to the Constitutional position as it is seen in France.

¹⁴⁶ Abdallah, *Le statut juridique de Mayotte*.

¹⁴⁷ Union of the Comores, *La Constitution Comorienne 2001*, Art.1.

¹⁴⁸ Mahamoud, *Mayotte*. From an American perspective, Mi Yung Yoon describes the attitude of the Republic thus: "The Union of the Comoros bases its claim to Mayotte on the principle of *Uti Possidetis*, violated by its former colonial power, France". Mi Yung Yoon, "European Colonialism and Territorial Disputes in Africa: The Gulf of Guinea and the Indian Ocean," *Mediterranean Quarterly*, vol.20, no.2 (Spring 2009), p.92.

CHAPTER 5

FRENCH LAW

In the previous chapter, I set out the principles of international law involved in the issues between France, the Comores and Mayotte. However, France did not view the matter as being one, in essence, of international law. In practice, the law of France is the law that has prevailed and been applied to the bringing of *département* status to Mayotte, despite the 1970's protests, based in international law, of the Comores. These protests have continued to this day and have recently been ably argued by Abdallah.¹ French law has provided the context for the discussion of Mayotte by French lawyers and legal academics, who, apart from Abdallah, have had the field to themselves. An understanding of this body of law is essential to an understanding of the movement of Mayotte to *département* status. We will therefore go now to the French perspective, where interpretation of the Constitution is central.

In the French legal view, decolonisation in general is a topic which may fall within international law; in contrast, TOMs and DOMs are regarded as matters of administrative law, emanating from the Constitution. The idea that a DOM could be the object of decolonisation is absent. A DOM is an administrative unit of France. It is therefore not a colony. It cannot therefore be decolonised. A TOM is, more loosely, an administrative unit with greater autonomy and taking a greater variety of forms; yet, it is still just as much in the *sein de la République* within the Constitution, Art.74,² and therefore not a colony; likewise, it cannot be decolonised. Independence is a possibility, but this emerges from the Constitution, not from decolonisation.

¹ Abdallah, *Le statut juridique de Mayotte*.

² DOMs are within Art.73. The position of Nouvelle Calédonie under Title XIII has been less certain.

The logic is compelling to all those within the French political/administrative/legal system; not so much to those on, for example, the UN Committee on Decolonisation. This logic has guided the French attitude to ‘Reporting’ under the requirements of Art.73 of the UN Charter. Until 1956 TOMs were listed,³ but DOMs were not; since 1956 and the *Loi Defferre*,⁴ neither have been. It was considered that the *Loi Defferre* of 23-6-1956 gave sufficient autonomy to TOMs that they no longer qualified as NSGTs.⁵ The decision was, as it always was at that time, of the Administering power, France. At the time, as François Luchaire points out, this withdrawal from reporting did not cause any difficulty.⁶ Moreover, the UN had, until the complaint by the OAU and Comores, never appeared otherwise than accepting of the French position, that reporting was not required. The vote of the UN General Assembly in favour of referring Nouvelle Calédonie to the Committee, thus effectively classifying it as a colony, came later, in December 1986.⁷ The 1958 French Constitution further defined the status of DOMs and TOMs, and in French eyes lessened even further the need for reporting. In this epoch France’s position was clear: it was a supporter of and subscriber to the UN Charter, including Art.73. It held the view that the requirements of Art.73(e) did not apply to the DOMs and TOMs and therefore felt no need to report. This was a view that could be and was, in certain circles, seen as typical of a still essentially colonialist Administering power. It was, as

³ Aldrich and Connell have the delisting date as 1947. Aldrich and Connell, *Last Colonies*, p.156. Luchaire’s 1956 and linkage with the *Loi Defferre* is correct. François Luchaire, *Le statut constitutionnel de la France d’Outre-mer* (Paris: Economica, 1992), p.151.

⁴ See above, Ch.2 (at 2.5).

⁵ See Ch.3.

⁶ Luchaire, *France d’Outre-mer*, p.162.

⁷ Aldrich and Connell, *France’s Overseas Frontier*, p.224. Michel Rocard, the Prime Minister who instigated and oversaw the Matignon Accords of 1998, described his proposal as “Decolonisation within the framework of French institutions” (quoted in Aldrich and Connell, *France’s Overseas Frontier*, p.229). This does suggest that the TOM of Nouvelle Calédonie was viewed privately as more ‘colonial’ than the official position of non-reporting claimed. It was a French Prime Minister using the vocabulary of the ‘*indépendantiste*’ parties of the DOMs and TOMs. More recently, Polynésie française has been relisted.

we shall see, to become contested, particularly with reference to Nouvelle-Calédonie and Mayotte.

In considering the French view, let us go to first principles. In France, the first principle is the rubric or motto to be found on every public building and central to the post-1789 belief structure system: « *Liberté Egalité Fraternité* ». ⁸ Then, coming as the centre-piece of French Law, there is the Constitution, in whose Preamble these words are repeated.

5.1 The Constitution and the *Outre-mer*

The Constitution has changed with each of the five Republics, and has undergone amendments, but its essence has not changed. It is the marker against which all legislative activity may be measured. It defines the legislative, executive, administrative and legal functions of the various elements of government, and delimits what may be done by whom. It is the object of commentary, exegesis and debate and is the reference for decisions by the *Conseil Constitutionnel*, effectively its interpreter. It is a complex whole, not simply a list of regulations;⁹ it is to be interpreted through the rubric already mentioned; it is a document that binds the present all the way back to 1793 through the various Republics. While the Constitution's predominant role is to define the operation of the French State internally, it also defines it externally. This aspect of the Constitution has become increasingly important as France has developed external involvements and membership of international bodies, a process that has accelerated since 1958 and the inception of the Fifth Republic. This development is

⁸ Some will argue, correctly, that this is a motto that has not always been lived up to. I am only saying that it is the rubric of the *République*, the core belief, against which instruments including the Constitution are measured.

⁹ As Georges Vedel (Chair of the Constitutional Review Committee) emphasises in his preface to the most readily available paperback version: Carcassonne, *La Constitution*.

particularly important with relation to TOMs and DOMs, where exposure to the rest of the world is evidently greater than for metropolitan *départements*.

If a proposed law is found by the *Conseil Constitutionnel* to be contrary to the Constitution, it cannot become law; the same applies to treaties. There is a clear and often-used process for this: every proposed law has the possibility of being scrutinized by the *Conseil Constitutionnel* before it is passed, to ensure that it is within the Constitution. Sixty legislators may make the request, identifying the grounds on which they do so. The *Conseil* will then adjudicate on the grounds submitted, and more widely if it considers it necessary. There are two ways in which the law of the Constitution may evolve. Firstly there are amendments to the Constitution, and a complex procedure for making them. Secondly, the *Conseil Constitutionnel* is constantly making decisions which may change the interpretation, and therefore permit constitutional evolution. With reference to Mayotte, the constitutional circumstances of 1958 when *départementalisation* was first demanded, of the period of crisis of 1974-5, and of 2011 when Mayotte became a *département*, were certainly not identical, even if there is a bedrock element that remained. Over these 53 years, French constitutional law did not stand still. We will examine the relevant changes shortly; however, it is important to be strict in viewing each development in the light of the contemporaneous legal background.

The Fourth Republic came into being in 1946, after the Liberation and the disposal of the Nazi/Vichy regimes. The Constitution was re-written. The new Preamble contained these words:

La France forme avec les peuples d’Outre-mer une Union fondée sur l’égalité des droits et des devoirs sans distinction de race ni de religion.

France forms with the peoples of *Outre-mer* a Union founded on equality of rights and obligations without distinction by race or religion.

Pierre Caille points out that this effectively marks the abandonment of colonialism in favour of association within a Union.¹⁰ He is correct on an official and constitutional level: 1946 did mark a change in relations and an official abandonment of colonialism. It did not, however, change everyday activities or attitudes in distant places where the lives of colonised peoples and the practices of administrators and *colons* remained much the same. The Preamble is consistent with de Gaulle's view of relations with the former colonies,¹¹ which was based on the promise that the overseas populations would enjoy the same liberties as the inhabitants of the *métropole*, and would be represented politically in the same two places — the *Sénat* and the *Assemblée Nationale* — and under the same President. The practice was a little more uncertain than the theory. For example, the representatives of the overseas populations might enjoy the same status as the metropolitan members of the *Assemblée Nationale*, but they were not always made to feel that way, as Mahmoud Ibrahim's biography of Saïd Mohamed Cheikh makes clear.¹² It could be a lonely and difficult life representing the *Outre-mer* in Paris. Moreover, while the formal and constitutional changed circumstances were clear, the day-to-day practice and behaviour of the administrators and the *colons* in the *Outre-mer* did not necessarily change to match them. The local elite may have had more status, but this did not flow through to the population at large, especially in a place as remote and set in its ways as the Comores. The number who had the vote remained very small; the elite remained just that. For most of the population, the legal change of status made little difference to the everyday way of life.

¹⁰ Pierre Caille, « *Les Libertés fondamentales au cœur du pacte républicain* », in Pierre Lise and Ferdinand Mélin-Soucramanien (eds), *Outre-mer et devise républicaine* (Paris: L'Harmattan, 2012), p.69.

¹¹ See Ch.2.

¹² Ibrahim, *Saïd Mohamed Cheikh*. Not least, they were far from home for long periods in an alien climate with little or no support.

Thus the Fourth Republic changed the framework, if rather less the actuality.¹³

It is not, however, the period with which we are primarily concerned. The issue of *départementalisation* only started to be discussed with the advent of the Fifth Republic. The Fifth Republic came into being in 1958, at the behest of de Gaulle, and continues to this day. Its Constitution was largely modelled on that of the Fourth. Each Republic has not broken with the Constitutions of its predecessors; the thread goes back directly to the First, in 1792. The *Préambule* of the 1958 Constitution states:

En vertu des Droits de l'homme et (des) principes de la souveraineté nationale tels qu'ils ont été définis par la Déclaration de 1789, confirmée et complétée par le préambule de la Constitution de 1946 : la République offre aux territoires d'Outre-mer qui manifestent la volonté d'y adhérer des institutions nouvelles fondées sur l'idéal commun de liberté, d'égalité et de fraternité et conçues en vue de leur évolution démocratique.

In accordance with the Rights of Man and with the principles of national sovereignty as they were defined in the Declaration of 1789 and confirmed and supplemented by the Preamble to the Constitution of 1946, the *République* offers to the Overseas Territories who show the wish to join with it, new institutions which are founded in the common ideals of Liberty, Equality and Fraternity and are conceived with a view to their democratic evolution.¹⁴

There was continuity, then, with 1789, 1792 and 1946; however, the 1958 offer made to the territories was a new and different one. All territories *Outre-mer* had a period of four months in which to make a decision.¹⁵ They could agree to remain within the *sein de la République* on the terms offered, effectively a life within the Community, or they could leave and find their way to independence. The Comores, as we have seen, voted to remain within the *sein de la République* and like all those who did so that were not already DOMs, continued as or became a TOM. After this vote, they were within the Constitution and were covered by Arts.72, 73, and 74. The two

¹³ At least, this was the case for the Comores. The other 'old' DOMs were formed under the Fourth Republic.

¹⁴ The current Preamble is similar, but has undergone amendment. Carcassonne, *La Constitution*, p.39.

¹⁵ This offer was only open to *territoires*: it was not available to *départements*. Stéphane Diemert: « L'ancrage constitutionnel de la France d'Outre-mer », in Jean-Yves Faberon, *L'Outre-mer français : Le nouveau don institutionnel* (Paris: La documentation française, 2004), p.68.

electoral colleges¹⁶ of the four islands of the Comores as a whole voted, supporting Saïd Mohamed Cheikh who saw TOM status as preferable for the Comores. The only alternative offered in 1958 was to leave and become independent. There was no other choice, and no offer to individual islands.

The third principle, after *Liberté, Egalité, Fraternité* and the centrality of the Constitution, is that, under the Constitution, France is ‘indivisible’. There are complexities here. One is that the word does not have exactly the same meaning as the English ‘indivisible’: it is nearer to the tenet that there can be only one source of authority or holder of power.¹⁷ We shall examine this in more detail shortly, and see that there are differences of legal opinion. The *République* is also now specified to be *décentralisée* (Law of 2003 Art.1). As Michel Verpeaux observes, this is a word whose general meaning and legal significance is less than clear.¹⁸ It indicates an ability to delegate by the central authority and a possibility of local self-administration not foreseen or permitted in the highly centralised earlier Constitutions. It must be taken to apply, *e fortiori*, in the *Outre-mer*.

The fourth principle is that France is secular — its *laïcité* is guaranteed. In some ways this may make the achievement of a multi-ethnic, multi-confessional state easier, but it makes for considerable difficulties when bringing into *département* status a geographic area whose society is built around the Muslim faith, a faith which informs all aspects of personal and social life. Polygamy is only one, albeit the most discussed, aspect of a social and religious structure and way of life different to those of all other parts of the *République*.

¹⁶ The colleges were made up of *colons* and French-speakers of substance.

¹⁷ Carcassonne, *La Constitution*, p.42.

¹⁸ Michel Verpeaux, « *Les Conséquences générales de la Révision constitutionnelle de 2003* », in Jean-Yves Faberon (ed), *L’Outre-mer français : le nouveau don institutionnel* (Paris: La documentation française, 2004), p.35.

5.2 French Law and International Law

In short, after 1958, the entity of the Comores was within the French Constitution Art.74, and was not on the list of NSGTs of the UN under UN Charter Art.73.¹⁹ In French eyes, there was no problem. French law recognized international law, and the UN as being a source of that law. There is no reason to doubt Mansour Kamardine's view that throughout the 1960s, France was a supporter of the principle of self-determination of peoples.²⁰ The permitted departures from the Community to independence were evidence for that. This generally internationalist position did not and could not extend to accepting international intrusion into internal constitutional matters. If a matter is considered, under the Constitution, to be an internal matter for France, or rather a matter to be decided in France, then it is so. Derogations to an international body must be made in France by the person or body with the constitutional power to do so. Moreover, the *République* and its officers can exercise powers only within the boundaries of the Constitution; no outside body can change this principle. The Constitution must be consulted to see the powers it gives each officer, up to and including the President. In past times, this would not have caused many problems, as there were relatively few external international involvements, and most were governed by treaties specific to the relationship and the issue, and governed by the treaty-making powers as laid down in the Constitution. However, more recently, the question of the intrusion of the international into the internal has become much

¹⁹ The reader is warned of a potential confusion. The most relevant Article of the UN Charter to which we shall refer repeatedly is Art.73. One of the most relevant Articles of the French Constitution, again frequently referred to, also happens to be Art.73.

²⁰ Kamardine, *Discours*, p.9.

more complex with membership of the EU in particular, the UN and the multitude of other international bodies.²¹

The once almost-total separation of the internal from the external has diminished, and the boundaries have become more blurred, as EU bodies, for example, make Regulations applicable in France.²² In 1999, the *Conseil d'état* was instructed by the Prime Minister to examine the question, and in 2000 produced its report, « *La norme internationale en droit français* ». ²³ This is written, for the greater part, within the context of the EU, but it does consider more widely the question of the insertion of international law into the internal, with an analysis of the practices of other states (mostly European) in this area. The introduction to the report points out that French administrations have not always recognised all the consequences of the growing importance of international law.²⁴ Administrations (and politicians and governments) may have been slow to understand that this is not only a question of Conventions and Treaties²⁵ with their own specific texts, but also of “international customs as proof of a general practice accepted as being the law”, and “the general principles of law as recognized by civilized nations”, as laid down in Art.38 of the Charter of the ICJ.²⁶

There are two principal ways in which international law can enter French internal law. First, the President negotiates and ratifies treaties (Art.52). In practice, he signs a letter giving plenipotentiary powers to those who negotiate in his name and then another letter approving the text that is the outcome. For certain classes of treaties or agreements, under Art.53, *alinéa* 1, ratification or approval by the *Parlement* by *loi*

²¹ This is not a uniquely French problem. In Europe, much national legislation is subordinate to European, and subject to scrutiny by the European Court. The issue is more complex in wider international law, where binding scrutiny is lacking.

²² This occurs under a general power given by France for them to do so.

²³ Paris: La documentation française, 2000. This is an authoritative text as of its date, but is not, of course, retrospective.

²⁴ *Ibid.*, p.8.

²⁵ I note that this includes the UN Charter.

²⁶ « *La norme internationale en droit français* », p.9.

is required.²⁷ Included here are treaties concerning cession, exchange or addition of territory. Second, the Prime Minister directs the action of the government (Art.21) which determines and conducts the political activities of the Nation (Art.20), including the making of accords. Here may be included administrative arrangements; for example, by ministers with foreign homologues. By Art.55, treaties and accords that have been ratified or approved in proper fashion and properly published have supremacy to internal *lois*.²⁸ This requirement of correctness of ratification or approval is supervised by the *Conseil d'état*.²⁹ Ratification by the *Parlement* does not include a power of amendment.

This abbreviated account of French law shows the internal pathway. It is subject to the external requirement of Art.27 of the 1969 Vienna Convention on the Law of Treaties: “A party may not invoke the provisions of its internal law as justification for its failure to perform a Treaty”. The constitutional requirements must be met; a failure to meet them cannot be used as an excuse for non-performance. The signing of a treaty supposes the willingness and the constitutional ability to live by its terms. Treaties have long been held to have superiority to antecedent *lois*, and the Vienna Convention is such a Treaty. In the case of *Nicolo*,³⁰ treaties were held to have superiority to subsequent *lois* also. The superiority is still the case where the *loi* is silent. It is the responsibility of the various organs of the state to supervise the application of international conventions in their own areas of responsibility.³¹

²⁷ *Alinéa* translates as ‘paragraph’.

²⁸ By 2000, France was a party to >6000 treaties and accords, of which 80% were bilateral accords. *Ibid.*, p.19.

²⁹ There is also under Art.55, a requirement of reciprocity by the other party to the accord. Carcassonne, *La Constitution*, p.267.

³⁰ CE Assemblée 20-10-1989 p.190.

³¹ *La norme internationale*, p.45. Cited here are decisions of the *Conseil Constitutionnel*: 3-9-1986 86-216 p.135; 29-12-1989 89-268 p.60; 20-7-1993 93-321 p.196. The report, in its Conclusion, points out that the status of France and the conduct of its foreign policy involves a participation in numerous international negotiations, and that the negotiators should keep in mind that they are effectively also

5.3 The *Conseil Constitutionnel* and the Case of Mayotte

The case of Mayotte was examined and adjudicated upon by the *Conseil Constitutionnel* in 1975. I shall examine the decision and the subsequent discussion in some detail. In part, the issues could be termed ‘external’, concerning relations with the outside world and defining limits to the relationships. In part, they were essentially ‘internal’, describing the permitted workings of the *République* and the statuses of the bodies which go to make it up and the extent of their powers. It might appear, then, that the issue was between UN Art.73 and the Constitution’s Arts.72–4.

The question of the constitutional status of Mayotte came to a head when on 17 December 1975, 60 members of the *Assemblée Nationale* (mostly from the Socialist Party, [PS]³²) were signatories to an approach (*saisine*) to the *Conseil Constitutionnel* putting forward the argument that the «*Loi relative aux conséquences de l’auto-détermination des îles des Comores*» was contrary to the Constitution.³³ The *Loi* referred to was that of 3 July 1975,³⁴ discussed earlier. When this was introduced into the *Assemblée Nationale*, it provided a process of voting by all the islands globally; this was then changed by the *Sénat* into a process of vote counting island by island.

The arguments put forward by the 60 members were: (i) that the Comores and Mayotte form a *unique* (single) territory and that the French legislature had long treated it as one; (ii) that internationally the Comores had always been considered as a four-island dependency of France; (iii) that this was the basis on which the French government and the Comorien *Conseil de Gouvernement* had formed an accord to

law-makers. It provides a series of steps and suggestions to make them both more aware and more effective in this dual role. *La norme internationale*, pp.127–30.

³² This was not a matter of a division on simple party lines. Their PS colleagues in the *Sénat* had been major players in the change in the method of voting; more it appears to have been a disjuncture, rivalry even, between the two *Chambres*, and possibly the influence of particular personalities.

³³ For text of the *saisine*, see App.2.

³⁴ *Loi 75-560*, 3 juillet 1975. Text in App.2.

forward the process of the territory towards independence; (iv) that the Preambles of the Constitutions of 1946 and 1958 state that France will conform to the rules of public international law — which includes the UN Charter, ratified by France; (v) under these Preambles, France commits itself never to use its forces against the liberty of another people (holding on to Mayotte against the wishes of a majority of the population of the Comores violates this commitment); (vi) the *Loi* anticipates the decision of the people of Mayotte of whether they want to be part of a new Comorien state, and thus is an intervention into the internal affairs of a foreign state; (vii) the *Loi* fails to conform with Art.74 of the Constitution, in that it does not meet the requirement that organization of a TOM should be changed by law (only) after consultation with the *territorial Assemblée*. This consultation has never occurred. Mayotte does not have a *territorial Assemblée*; the *Assemblée* of the Comores has now become the *Chambre des Députés* of an independent state. The proposed *Loi*, inasmuch as it provides a procedure for Mayotte to choose a new status at the same time as it gives validity to the accession of the three other islands to independence, does not conform to Art.74.

The grounds for the reference to the *Conseil* are numerous and wide-ranging. The response from the *Conseil Constitutionnel*³⁵ came on 30 December 1975.³⁶ The decision is one-third of the length of the arguments put to the *Conseil*. Deciding the case on the basis of a section of the Constitution not mentioned in the argument put to it, Art.53, the *Conseil* made the following points.

First, the last *alinéa* of Art.53 states: «*Nulle cession, nul échange, nulle adjonction de territoire n'est valable sans le consentement des populations intéressées*». (“No cession, no exchange and no addition of territory is valid without

³⁵ For text, see App.2.

³⁶ This came after only two weeks, with Christmas intervening.

the consent of the populations concerned.”) Mayotte is ‘territory’ within the meaning of Art.53. The proposed law provides for a means to discover the required consent.

Second, the *Loi* under discussion is not one that defines or modifies the particular organization of a TOM, and therefore Art.74 has no application. Mayotte is part of the *République française*, and falls within the Constitution notwithstanding any international intervention. The *Loi* under discussion concerning this island does not put in cause any rule of public international law.

Third, the arguments concerning the Preambles are not relevant since the other three islands, by their decision by an expressed majority of the suffrage, are by this *Loi* ceasing to be a part of the *République française*.

Fourth, there is nothing else in the text contrary to the Constitution.

This characterisation of the law drew considerable criticism in France. The issue has divided the legal theorists. André Oraison has written extensively on Mayotte and has been a consistent critic.³⁷ He described the result as being an “unachieved decolonization of a colonial entity” and “running against the current of history”,³⁸ and insists that the case of Mayotte is “still a question of public international law.”³⁹ He goes on to suggest that France misunderstands “the cardinal principle of indivisibility of colonial entities” and concludes rhetorically: “Do we need to add, therefore, that in a global perspective, the principle of *uti possidetis* is not about to fall into disuse?” By way of answering his own question, he continues:

As wished by the states of the Third World, the customary international law of decolonization demands in effect that dependent people exercise the right to a free self-determination within the framework of frontiers that are even ‘arbitrary’ and drawn up by the colonisers. The aim is to forestall future

³⁷ André Oraison is Professor of Public Law at the University of La Réunion.

³⁸ André Oraison, « *Réflexions générales sur les perspectives de règlement du conflit franco-comorien sur l'île de Mayotte à l'aube du XXIème siècle* », in Laurent Serment and Jean Coudray (eds), *Mayotte dans le République. Actes de Colloque de Mamadzou* (Paris : Montchrestien, 2004), p.237.

³⁹ *Ibid.*, p.243.

manoeuvres by European powers who would like to support one decolonizing movement rather than another in the colonial country.⁴⁰

The criticism is wide-ranging, but only confronts the actual judgement on one point. *Oraison* suggests that Art.53 is not applicable here, in that it refers only to situations where there is another state involved, to which the territory is being ceded, exchanged or joined; then there must be a consultation. It only applies where France is proposing to interact with another state. As Art.53 does not apply here, it is necessary to return to Art.74 as the relevant Article, as suggested by the complainants to the *Conseil Constitutionnel*. One difficulty, as *Oraison* admits, is that the use of the word *territoire* in Art.53 and in Art.74 is clearly different, in that in the former it means any piece of French territory and in the latter, because of the grouping of Articles under Title XII, only refers to *territoires d'Outre-mer*. The *Conseil* is taking the wider meaning, that consultations and consent will be required before the cession, exchange or addition of any French territory anywhere. Art.53 would, for example, be the relevant Article covering a possible secession of Brittany or Corsica, or a move in Alsace to return to Germany. There is no indication that this requirement of consultation is confined to TOMs or that the « *cession, échange ou adjonction* » is limited to them.

Oraison's arguments are significant and represent a viewpoint much more consonant with world opinion. Essentially, he is saying that the *Conseil Constitutionnel* was wrong.

Louis Favoreu is the *doyen* of French constitutional law writers and editor of the main textbook, *Droit Constitutionnel*. Favoreu writes: "The Parliament, and therefore the *République*, remains the master of the decision to grant independence,

⁴⁰ *Ibid.*, pp.251–2 (my translation).

and when the moment will be for this independence to take effect”.⁴¹ There are essentially procedural requirements, such as consultation under Art.53, but it is the *République* that grants independence and releases a part of itself. By his reasoning the *République* never let go of Mayotte and the departure of the Comores occurred when France granted it, not when Ahmed Abdallah declared independence. Favoreu is saying that the *Conseil Constitutionnel* was right.

He does, however, raise a number of important questions. First, does ‘cession’ in Art.53 include ‘secession’? If so, why was the word ‘cession’ chosen? It implies by itself that Art.53 is about an act of the *République*, disposing of a piece of territory. If the framers of the Constitution wished to include ‘secession’, an act of the departing territory, why did they not say so? He concludes that even if this was once an open question, it is not so now. The decisions of the *Conseil* in the case of Mayotte, and earlier that of the Afars and Issas⁴² (Djibouti), have made it clear that the word is to be read widely, to include secession, following the Capitant doctrine in the Djibouti case.⁴³ Thus, he concludes that secession is constitutionally possible, but it must be preceded by consultation of the ‘interested populations’.

Second, he asks whether the consultation must take the form of a referendum. What does consultation actually mean? How will we know whether a ‘consultation’ has taken place? Elsewhere in the Constitution (e.g., Arts.11 and 89) a referendum is

⁴¹ Louis Favoreu, *Droit constitutionnel* (Paris : RDPSP, 13^{me} édition), p.570.

⁴² Décision 68-505/510, 14 Janvier 1969.

⁴³ Document 2199: Annexe au procès-verbal de la séance de l’Assemblée Nationale, 30-11-1966. Professor Rene Capitant was asked to advise the Assemblée Nationale in 1966 on issues concerning the self-determination of Djibouti. This pre-dates the 1975 Comores case. One issue was whether ‘cession’ includes ‘secession’. Cession involves two states, one granting territory to the other; secession, by definition does not, as the seceding territory is not a state. Capitant advised that ‘cession’ included ‘secession’; his advice in the particular case of Djibouti (advice, not a judicial or Conseil decision) has been broadened into the Capitant doctrine, and appears to have been generally accepted. M. Fontaine, the Député from La Réunion, argued against this view again in the *Assemblée*, in the context of the Comores and Mayotte, but when it was put to the vote, had his amendment rejected by 402 votes to 12 (17-10-1974). *J.O. Débats*, p.5171 (daily journal of debates). This shows up the difficulty of arguing a legal point in a political forum. Prof. J-C Maestre later argued that the matter was more complex than the *Assemblée* appeared to believe. J-C Maestre, « *L’indivisibilité de la République française et l’exercice du droit d’autodétermination* », *Revue de droit publique* XCII Mars-Avril 1976, p.431.

specified. Art.53 only requires consultation. As we have seen, Favoreu states that it is the role of the *Parlement* and thus of the *République* to decide whether the consultation has been adequate for the purposes of Art.53 when according independence.⁴⁴ The adequacy can only be assessed case by case — in France.

Favoreu's third question is whether Art.53 and its elucidation by the *Conseil* go beyond DOMs and TOMs to metropolitan cases. He concludes that the *Conseil* did not decide this but definitely left the door open. On the other hand, Guy Carcassonne in his commentary on the French Constitution considers the door is closed, citing the requirements of indivisibility and unity elsewhere in the Constitution.⁴⁵

Jean-Claude Maestre writes «*Le 'droit' de sécession est totalement inconstitutionnel*» (citing Art.2 of the Constitution, «*La France est une République indivisible*»), and makes the point that this phrase goes back to the 1792 Constitution and before.⁴⁶ He argues that under the 1958 Constitution, the TOMs were put in a different position to the rest of France, in that they were offered self-administration and a free choice concerning their political futures. This was temporary; they had four months in which to decide. Once they had opted in, there was no right to secession.⁴⁷ Internally, arrangements could be altered under Arts.72–4, and could be specific to a particular territory, but there was no exit. If there were to be an attempt at an exit, it would require an amendment of the Constitution. Maestre prefers the view of Aimé Césaire that having chosen, one is a TOM or DOM in perpetuity.⁴⁸ He then goes on to

⁴⁴ Or presumably (theoretically) withholding it. It is hard to imagine the circumstances, though perhaps the situation of Québec is analogous.

⁴⁵ Carcassonne, *La Constitution*, p.257.

⁴⁶ Maestre, «*L'indivisibilité de la République française*», p.433.

⁴⁷ This was not the view taken by Capitant: in his view, at least in the case of TOMs there was a right of secession if it was authorised by the French *Parlement* and had the consent of the population in question. This is a view shared by François Luchaire and Michel Prelot. Cf F Luchaire, *Droit d'Outre-mer et de la Coopération* (Paris: Thémis, 2^{me}, 1966); M Prelot, *Institutions politiques et droit constitutionnel* (Paris: Dalloz, 5^{me} édition, 1972), p.385. Both are cited in Maestre, «*L'indivisibilité de la République française*», p.432.

⁴⁸ Aimé Césaire, in *JO Débats*, 1966 p.5229.

insist (agreeing with Oraison) that a ‘cession’ can only be of territory to another state, giving the example of the transfer of French enclaves to India. ‘Secession’ is something different.⁴⁹ He, like Oraison, thinks that the *Conseil Constitutionnel* was wrong, and that Art.53 is not applicable to ‘hypotheses of secession’. Maestre and Oraison may have persuasive arguments, but theirs is not the prevailing view. Moreover, perpetuity, a legal concept, tends to be at best an aspiration in political relations, as Norman Davies convincingly shows.⁵⁰

The difference between ‘cession’ and ‘secession’ in the context of the French Constitution is a difficult one. Can the former include the latter? Secession gets no mention in the Constitution but in reality exists as a political possibility. There would appear to be two sets of alternatives, making four scenarios in all. First, is the action initiated by the *République* or by the territory? If it is initiated by the *République*, then it is a clear case of cession, subject to Art.53 and the requirement is of a consultation of the populations concerned. They may, on being consulted, agree or not. These two possibilities have not been put to the test. There are no examples to guide us. Second, is it initiated by the *territoire*? If it is, and a full and suitable consultation has been carried out, then following the Capitant doctrine and the decision of the *Conseil Constitutionnel*, the *République* will give permission and the outcome is a departure, whether it is called cession or secession. This leaves the difficult case, where the initiative comes from the territory and the *République* considers that a full consultation has not been carried out. It would seem that under Art.53, the *République* holds to itself the right to refuse the separation. In what circumstances would it do so? What would happen then? We have no answer.

⁴⁹ This is contrary to the Capitant Doctrine.

⁵⁰ Norman Davies, *Vanished Kingdoms: The History of Half-Forgotten Europe* (London: Penguin Books, 2011).

It would seem that Maestre's doubts, and his differentiation between 'cession' as being to another state and 'secession' as being a move to independence, although logically and legally correct in their time, have been overtaken by events and decisions. The 'cession' of Art.53 would seem now, following Capitant, to include actions that might better be described as 'secession', but the difference has been elided, so long as those piloting the secession are prepared first to consult the populations; second, to present the outcome; and third, to wait for approval from Paris.⁵¹ This is the essence of the Capitant doctrine. In practical political terms, the price (to the secessionist) of not doing either, the consulting and/or seeking approval is possibly a refusal, but more likely a loss of French goodwill and financial aid. On the other hand, there may be also the problem of loss of face at home and internationally — it may be galling to have to ask permission to leave. The question becomes a political one: counting the cost of leaving the *République* on bad terms. It may be very damaging, and a hard way to start a new life as an independent state, as Guinea and the Republic of the Comores, both permitted to go but on bad terms, found. However, there is no example of a territory opting to leave directly: Guinea left within the permitted four months of 1958; Djibouti gained independence after consultation and in the light of Capitant's advice, and in the Comores the populations were considered to have been consulted adequately.⁵² The question remains — perhaps in theory only — will the *République* ever refuse? If it does, what happens then?

The question of secession/cession in Art.53 highlights a number of issues. One is that of who, exactly, is a member of the *République*. The Preamble to the 1958 Constitution proclaims the attachment of the French people to the Declaration of the

⁵¹ Moyrand and Angelo emphasise that the process is under the control of the *République*. Alain Moyrand and Tony Angelo, "International Law Perspectives on the Evolution in Status of the French Overseas territories," *Revue juridique de Polynésie*, vol.5 (1999), p.57.

⁵² There had been plebiscites with overwhelming majorities, as we have seen.

Rights of Man and the principle of national sovereignty and then states, as we have seen: “By virtue of these principles and that of the free determination of peoples the *République* offers to the *Territoires d’Outre-mer* who show the wish to join it new institutions founded upon the common ideal of « *Liberté Egalité Fraternité* », institutions designed with a view to their democratic evolution.” This is a carry-over, marginally developed from the 1946 Constitution to meet the exigencies of 1958, but still in place today. Some references are now meaningless. The ‘new institutions’ (de Gaulle’s concept of a ‘Community’), is a reference to an idea long-dead. However, from the Preamble a theory has developed that there is an offer capable of being accepted, something like a contract, described as the « *pacte républicaine* ». This was the theory that the *République* made a pact with the *Outre-mer*, defining relationships and giving guarantees. As Pierre Caille shows, this is an incoherent concept.⁵³ There can be no pact: the *Outre-mer* is a part of the *République*, which cannot make a pact with a part of itself. A pact needs two parties. This concept has now been expressly repudiated by the *Conseil Constitutionnel*, in its decision in the case of St Pierre et Miquelon,⁵⁴ as being contrary to the Constitution, which gives it no support other than in the Preamble. The wording of the Preamble has not been changed. So what I have described as the invitation is still in the Preamble, but in its original and archaic format. In reality, it matters little, in that there are, after Mayotte, no obvious candidates as invitees.

Art.53, *alinéa* 1 provides that certain treaties, including those which concern the cession, exchange or addition of territories, must be ratified or approved by the passing of a *loi* (i.e., approved in due form by the *Parlement*). *Alinéa* 2 states that they can only take effect after this. *Alinéa* 3 (which concerns us most) then states that no

⁵³ Caille, « *Les Libertés fondamentales* », p.69.

⁵⁴ 2000-435 DC.

cession, exchange or addition of territory is valid without the consent of the « *populations intéressées* ». This does not resolve the questions of who these populations are and what form the interest may or must take, or the form of the consent. The *Conseil Constitutionnel* considered that consent had been gained in the particular case of Mayotte, but went no further in discussing other possible scenarios, or the meanings of these most important words.

The choice of the word « *populations* » in Art.53 must be taken as deliberate. Elsewhere in the Constitution, the « *peuple* » is the French people as a whole. The law does not recognize a « *Peuple Corse* » in Corsica — a decision of the *Conseil Constitutionnel*⁵⁵ of 1991. This would lead one to believe that there is not a « *Peuple Bréton* » either.⁵⁶ How far does this extend *Outre-mer*? In general terms, as Carcassonne points out, it is not groups but individuals who hold rights under the Constitution — there is a generalised lack of recognition of communities. Individuals are the bearers of equal, universal and natural rights: this is the basis for the French conception of democracy, which can eventually allow for differences based on what citizens do, but not on differences of what they are.⁵⁷ It is this view that prevents, on principle and in law, programmes of the style of American ‘affirmative action’.⁵⁸

While a « *Peuple Martiniquais* » (or *Réunionnais*, *Guadeloupien*, for example) is not recognized,⁵⁹ there is a strong and developing individualisation of the DOM personalities, their requirements and their issues. Where once the emphasis was on uniformity, now it is on the local interpretation of status. This goes far beyond the increasing French celebration of cultural diversity to a wide-ranging diversity of status

⁵⁵ 19 91-290 DC.

⁵⁶ Despite the slogan « *Bréton toujours; Français jamais* » being a ubiquitous graffiti in that region. There are separatist and specific-identity-seeking groups in many regions of the Hexagon.

⁵⁷ Carcassonne, *La Constitution*, p.45.

⁵⁸ There can be no division of the « *peuple* » on the basis, for example, of the colour of skin.

⁵⁹ This is to an extent contradicted by the special arrangements in Nouvelle Calédonie, where provision has been made for the special circumstances of the Kanak population

and administrative arrangements. The demand that governmental practice *oultre-mer* should be uniform and identical to that of the *métropole* has over time disappeared. Mayotte has been a major beneficiary of this process of relaxation which has developed while the Mahorais have been seeking *départemental* status. This has not, however, given greater clarity as to the definition of the « *population* » for the purposes of Art.53.

5.4 Arts.72–4: The Mechanics of the *Outre-mer*

It can be seen that the Preamble provides the ‘invitation’; Art.1 describes the relationship; Arts.72–4 provide the detail; and Art.53 decides the possible departure. The first is still in effect but out-dated. After the question of the invitation comes that of: “what is it an invitation to?” In earlier days it was to a defined status of DOM or TOM, with a place in the Constitution under Art.72 or Art.73, and a structure identical to that of metropolitan *départements*. This is clearly no longer the case; increased flexibility, autonomy and decentralisation have been the characteristics of every constitutional change. The argument became more one of whether similar flexibility and autonomy should be allowed to the metropolitan *départements*. One answer to this, effectively a sidestepping of the issue, has been the development of the concept of the *Région*, made up of a number of *départements*. It is through these that decentralisation has occurred.

The *Région* has wide powers, including strategic planning and representation and the ability to make links externally with its homologues,⁶⁰ whereas the *département* has had traditionally only an administrative function. Increased autonomy

⁶⁰ Bretagne, a mid-size but out-going *région*, has cooperation commitments with three areas of Europe (Saxony, Wales and a region of Poland), two areas in Madagascar and one in China on topics such as marine activities and sailing, training and youth exchanges, cultural activities, eco-tourism and agriculture.

may come with a new level of representation/bureaucracy but it is further decentralised from Paris, and is a body with financial muscle. There are 27 *Régions* in all, including those overseas,⁶¹ varying considerably in size and economic power.⁶² Martinique, Guadeloupe, Guyane and La Réunion (the four ‘old’ DOMs, which are still single *départements* and not groupings, as in the *métropole*, now have a second life as *Régions* and a new acronym of DROM⁶³) and (somewhat ambiguously) Mayotte. One particularly important aspect of increased autonomy is that DROMs can have relations with foreign entities. For example, Guadeloupe, as a DROM, can decide in its *Conseil Régional* to join a Caribbean trade group, tourism body or fishing convention. It is now free to do this: it does not need France to represent it there or to decide about representation. Mayotte’s position remains, as I have said, ambiguous. It technically has mention of being a *Région*, but without the *Conseil*, the capacity or the budget to be so. Thus, it does not have the capacity and doubtfully the legal status to engage with bodies that are homologues in the other islands or in the region. In the short term, Mayotte is fully extended by the adaptations required in becoming a *département*, not least to achieve an income to meet its statutory obligations. The *Région* level is beyond its current capabilities, although the question of local engagement needs to be addressed.

Within the Constitution there are three Articles that regulate the DROMs, DOMs and TOMs: Arts 72, 73 and 74. Art.72 is the widest ranging and concerns the powers of *Collectivités territoriales* (a group term that includes *Communes*, *Départements* and *Régions*), whether metropolitan or *Outre-mer*. By this Article, they

⁶¹ There are currently 101 *départements*.

⁶² PACA among the larger and Limousin among the smaller are examples. PACA (Provence Alpes Côte d’Azur) covers six *Départements* (Alpes de Haute Provence, Hautes Alpes, Alpes Maritimes, Bouches du Rhône, Var and Vaucluse) and in 2013 had a budget of €3.6 billion. Limousin covers three *Départements*, the Corrèze, Creuse and Haut-Vienne (three of the poorest in France) had a budget of €469 million. There are moves afoot (2014) to amalgamate smaller *régions*.

⁶³ *Département Régionale Outre-mer*.

must act and administer within their competence⁶⁴ through elected *Conseils*. They cannot supervise one another. There may be a hierarchy in terms of size or of powers, but each level is independent of the others. Each *collectivité* will have someone (the *Maire* or the *Préfet*) who will represent the national interest.⁶⁵ There is now no requirement for uniformity. The post-2003 Art.72 is a place where heterogeneity can flourish so long as all *collectivités* stay within the competences afforded to them by the *lois* that established them. The outcome can be seen to resemble a codified form of the English theory of ultra vires. It includes the *Outre-mer* without specific mention. From the largest *Région* to the smallest *Commune*, all must look to Art.72 for their power to operate. Carcassonne points out that “decentralisation has become not only acquired as a fact, it has become a *right*’.⁶⁶ He shows that the untidiness of heterogeneity was allowed to enter, and unity and equality could exist without uniformity.

So it was that uniformity, such a feature of the *département* status that Mayotte wanted to enter in 1958 and in 1975, had disappeared by the time it finally achieved the goal in 2011. The post-2003 Art.72 takes heterogeneity even further. Under *alinéa* 4, *collectivités* have certain powers, within limits and for finite periods, to extend or alter their competences themselves. These essentially home-made competences may (probably)⁶⁷ be renewed for subsequent periods, and then (possibly) for further

⁶⁴ This will be defined by the specific *Loi* bringing each into existence. This *Loi* is the connection between the operation of the *Collectivité* and the Constitution, the source of its powers.

⁶⁵ Carcassonne, *La Constitution*, enumerates 36,682 *communes*, 100 *départements* (he was writing before the advent of Mayotte as a *département*), 1 ‘*Collectivité métropolitain à statut particulier*’— Corsica. There are five ‘*Collectivités d’Outre-mer* (St Barthelemy, St Martin, St Pierre et Miquelon, Wallis et Futuna + Mayotte); 1 *Collectivité d’Outre-mer autonome (Pacifique française)*; 1 ‘*Collectivité d’Outre-mer à statut constitutionnel particulier (Nouvelle-Calédonie)* + 3 Provinces of *Nouvelle-Calédonie*. There are also the *Régions*, which first made their constitutional appearance in the reforms of 2003. Mayotte, as we have seen, has altered Carcassonne’s figures. His book pre-dates the change.

⁶⁶ Carcassonne, *La Constitution*, p.342 (my emphasis).

⁶⁷ Definitive decision is lacking here. One day there will doubtless be a *Conseil Constitutionnel* judgement.

periods, which leads Carcassonne to point out that “the Eiffel Tower stands as an example of the temporary that endures”.⁶⁸

Art.72, *alinéa* 3 refers specifically to the *Outre-mer*, recognized « *au sein du peuple français* » in a common ideal of *Liberté, Egalité, Fraternité*. The elements of the *Outre-mer* are here named and placed, according to category in Art.73 or Art.74. Only *Nouvelle Calédonie* is separated out, under its own Title XIII. This listing and naming is significant because it ensures that a removal from the list can only be by constitutional amendment. This is new, and was not the case in 1975 when the *Conseil Constitutionnel* considered the case of Mayotte and Comores. It is an attempt to set the status of the listed territories in constitutional concrete, and was thought to make them (not least Mayotte) feel more secure.

On examination, it is a ‘belt and braces’ piece of constitutional addition, whose merits or additions to a sense of security are illusory. Art.53 already prevents departure without consent: France cannot just eject a DOM that wants to stay, or probably a population that wants to stay despite their rulers. A listing in Art.72, *alinéa* 3 is unlikely to be enough for France to insist on the continuing *au sein* status of a DOM that really does not want to be there. In reality, in the end, when the demand is made, it is probable that the necessary Constitutional amendment will be passed and the *Collectivité* erased from the list. The effect will probably only be to make a departure messier, as this Article gives France (the only changer of the Constitution) another task. Already, under Art.53 where the “interested populations” have not merely to be consulted but to consent, the *République* has the last word. The question is also begged as to why only the *Outre-mer Collectivités* are listed here. The Constitution elsewhere goes to lengths to claim that all French are French; it is curious that there is a list here

⁶⁸ Carcassonne, *La Constitution*, p.344.

of special kinds of French people, named and listed. Is it that the overseas people are different, after all?⁶⁹

Art.72, *alinéa* 4 specifies that any change in status of those named in Art.72, *alinéa* 3 must be done with their consent. Art.72, *alinéa* 1 has already provided for consultation and a referendum for any change in status of any *collectivité* anywhere. This goes further and indicates that in the *Outre-mer* consultation is insufficient: consent is required. The second *alinéa* describes the circumstances in which a consultation may be launched by the President of the *République* on being approached by the two houses of parliament. It does not specify the form of the search for consent.⁷⁰

Art.73 deals with DROMs and allows them autonomy over categories of lawmaking and regulation. In fact, it is the exceptions that are enumerated, namely, where the DOM or DROM cannot legislate or regulate. These include nationality, organization of justice, criminal law and procedure, foreign affairs, defence and money. These limitations are stricter than those under Art.74, and the DROMs (except La Réunion, which, for reasons of its own, wanted less) aspire to more latitude.

Art.74 is the equivalent enabling clause and descriptor for what once were TOMs and now are COMs (*Collectivités d'Outre-mer*). Here are found a mixed group of territories: French Polynesia at the one end of the spectrum with a high degree of autonomy, and at the other Wallis et Futuna, St Pierre et Miquelon, the Iles Eparses⁷¹ and the Antarctic Territory, with very little or none. It is the place in the Constitution

⁶⁹ Carcassonne writes of « *abîmes sous nos pas* »; translatable as “a can of worms”. Carcassonne, *La Constitution*.

⁷⁰ Moyrand and Angelo, “French Overseas territories,” p.52. They ask whether the vote of a regional assembly would suffice, and suggest it would not (p.61), and discuss whether non-locals should be included in any vote (p.63).

⁷¹ The ‘Scattered Islands’.

for all who are not DOMs, DROMs or Nouvelle-Calédonie, which has Title XIII to itself.

It has been necessary to examine these Articles of the Constitution and their re-writings, generally of little significance to the French person of the *métropole*,⁷² to understand that successive governments have at least attempted to provide a *modus operandi* for the France of *Outre-mer*, likely to remain a long-term feature of France-as-a-whole. They have grappled with difficult problems where, in general, independence has not been a sought option. The DOMs may have complained, and there may have been undercurrents of dissatisfaction, but not one has in recent times sought to leave. There is now another level of complexity in the status of many of these *collectivités*. This is the status of *Région Ultrapériphérique* (RUP) of the European Union, to which we will now turn.

5.5 The *Région Ultrapériphérique*

The status of RUP or ‘Outermost Region’ of the European Union was attained by Mayotte on 1 January 2014. Mayotte on that day joined a group of territories which by reason of their connection with, or rather integration into, members of the EU, are parts of the EU themselves.⁷³ The group of territories is not widely known, nor is the concept of RUP, either in the EU itself or in the wider world. They are little discussed in non-specialist political or academic circles, especially in the Anglophone world.⁷⁴

⁷² It is often overlooked as an important part of the Constitution. John Bell, writing an introduction to French constitutional law for British practitioners and students (the foremost work in the field), does not mention these Articles. John Bell, *French Constitutional Law* (Oxford: Clarendon Press, 1992).

⁷³ There is another group of territories — the Overseas Countries and Territories (OCTs) — which are not. OCTs have beneficial trading relationships with the EU, but are essentially on the outside. This is true also of the ‘Associated Territories’. Dmitry Kochenov: *EU Law of the Overseas: Outermost Regions Associated Overseas Countries and Territories and Territories Sui Generis* (Leiden: Kluwer Law International, 2011).

⁷⁴ This is a point made by Jacques Ziller in one of the very rare (and very valuable) English-language writings on the subject. Jacques Ziller, “The European Union and the Territorial Scope of European Territories,” *Victoria University of Wellington Law Review*, vol.38 (2007), pp.51–63.

There are nine members of the current class: the Azores, the Canary Islands, Madeira, Guadeloupe, Saint Martin, Guyane, Martinique, La Réunion and Mayotte. Bonaire, Saba and Saint Eustache are aspirants. Saint Barthelemy ceased to be a RUP on 1 January 2012. Curacao and Sint Maarten once were applicants, but are no longer. With one exception (Guyane) they are all small islands or groups of small islands. The Azores and Madeira are Portuguese Autonomous Regions; the Canary Islands are an Autonomous Community of Spain; the rest are either *collectivités* of France (DOMs or DROMs) or Autonomous Regions of Evolving Status within the Kingdom of the Netherlands (Bonaire, Saba and St Eustache).

Their existence and status is now regulated by Art.349 of the 2009 Treaty of Lisbon; previously they were under Art.299(2) of the 1997 Amsterdam Treaty. Art.349(2) describes the reasons for their inclusion. It takes account of the “structural social and economic situation of the French overseas departments, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity and small size”.⁷⁵ It also notes the difficult topography and climate of these territories and their economic dependence on a few products which restrains their development.⁷⁶ It then states that the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament shall adopt specific measures “aimed, in particular, at laying down the conditions of application of the present Treaty to those regions, including common policies.”⁷⁷ Art.349(3) describes the areas where relevant measures can operate: “customs and trade policies, fiscal policy, free zones, agricultural and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to

⁷⁵ In reality, none of these descriptors applies to Guyane, which is large, continental and potentially with natural resources. It would be, however, politically difficult to separate Guyane from the other DOMs, as in French constitutional terms, as we have seen, it is indistinguishable from the other DOMs.

⁷⁶ Treaty of Lisbon 2009 Art.347, *alinéa* 2.

⁷⁷ *Ibid.*

structural funds and horizontal Community programmes.”⁷⁸ This is subject to taking into account the special characteristics and constraints of the RUPs without “undermining the integrity and coherence of the Community legal order, including the internal market and common policies.”⁷⁹

Thus, there are important benefits for the RUPs. These include the non-application of what would otherwise be Customs and trading regulations, market access for crops and exports, and access both to funds for structural and social development⁸⁰ and to specific programs such as the partial financing of agricultural pest-control. In the case of Mayotte export markets are not at present the major benefit. Ylang-Ylang is currently virtually the only export.⁸¹ It is access to funds and programs that is immediately important.

Art.355(b) of the Lisbon Treaty, known as the “*Passerelle*”⁸² clause, gives access to this status. By this clause, French, Danish and Dutch territories may change their status under EU law (e.g., from ‘Associated territory’, on the outside to RUP, on the inside) without the need for amending the Treaty.⁸³ An entry by this means requires a suitable status within the Member country and approval from the 27 members (never yet withheld). Thus, Mayotte, by becoming a *département* of France in 2011 gained the right to apply, or rather have France apply on its behalf, to become a RUP.

For the EU, there are costs but there are also benefits. The costs are mostly in the form of payments, much less in income foregone. The costs are difficult to

⁷⁸ *Alinéa* 3.

⁷⁹ *Ibid.*

⁸⁰ These include FEDER, FSE and the POSEI programs (POSEIDOM, POSEICAN and POSEIMA). There is also access to, for example, air and maritime plans for port and airport improvements.

⁸¹ Ylang-Ylang is an important ingredient for the manufacture of perfume. A large number of flowers is needed for a small bottle of perfume. Incidentally, the founder of the eponymous Guerlain company was Mahorais.

⁸² This translates as “footbridge”.

⁸³ See Fiona Murray: *The EU and Member State Territories: A New Legal Framework Under the EU Treaties* (Leiden: Springer/TMC Asser Press, 2012).

calculate with precision.⁸⁴ It is safe to say that they form a very small part of the EU's 5-year Regional Budget of €348 billion. It seems likely that Mayotte will receive cash funding of the order of €1 million p.a. The benefits brought by RUPs to the EU include a marine territory in excess of 25 million km², and >80% of 'European' bio-diversity; there are also the goods such as tropical fruits that Europe cannot supply to its consumers. There could also be an advantage that these relatively impoverished islands, as Regions of the EU, are less likely to become centres for drugs, illegal gambling, money-laundering and the like — fates which have befallen a number of their neighbours, particularly in the Caribbean. A rocket and satellite station in Guyane is a plus. There is also the question of migratory access from the RUPs to the EU and vice-versa.⁸⁵

For some member states, the notion of RUP is both quite alien and one that could be portrayed as another bloating of the Brussels budget.⁸⁶ With financial constraints in the EU and some Member-states having real domestic problems and no knowledge of small faraway islands, the RUPs run the risk (if they are noticed at all)

⁸⁴ One French study, in a paper of expert advice to the *Ministère d'Outre-mer*, states in the introduction that "[our] methodology is of great pragmatism ... there is a lack of validated data, a great number of informal studies, lack of statistics ... heterogeneity, lack of comparisons, arbitrariness and lack of linkage between the micro and the macro ..." Nadine Levratto et al., « *Evaluation des surcoûts économiques de l'ultrapériphéricité dans les DOM* », Ecole Normale Supérieure de Cachan, Juin 2005, p.7 (my translation). The authors may be honest, but they fail to inspire great confidence in the accuracy of their findings.

⁸⁵ The territorial scope of Schengen is particularly complex. The French DOMs have been excluded from Schengen by Art.138 and an annexed statement by the French Government. The status of the other RUPs is unclear. Also doubtful is the constitutional standing of the French statement. Ziller, "The European Union," p.54. There is no doubt of the ability of the RUP-born to travel to the Member-country. What is untested is his/her right to free movement in the EU beyond that. A French appellate court (in Bordeaux) has recently held that a 'foreigner' from Comores who had lived in Mayotte since 1988 with regular papers had no right of residence in France in 2013. "For a foreigner, to stay in Mayotte was not to reside in France": *Cour administrative d'appel de Bordeaux. Requête No. 12BX00638*. 18 October 2012. It is to be presumed that this will not be the case for foreigners arriving in Mayotte after the acquisition of DOM status in 2011 and that now the rules are the same as for any other *Département*. Rights of EU citizens to reside in RUPs may be presumed but are as yet untested.

⁸⁶ Moreover, it is one with ill-understood colonial origins. As far as the non-colonialist EU members are concerned, it may not be a question of the 'confetti of Empire' but the 'baggage of Empire'.

of being ‘scape-goated’.⁸⁷ They have, however, been within the confines of the Treaties for longer than most of the members. They are, between themselves, organized. Their last group meeting, in the Azores in September 2012, was their eighteenth, and attracted dignitaries from the EU. They are no ‘confetti’. They are integral parts of member states. They are *Régions*, albeit *Ultrapériphériques*, of the EU.⁸⁸

What the European Union will make of its newest recruit is hard to foretell. In the main, RUPs and their activities have been unknown and ignored in the EU world beyond the confines of their Member-states. Mayotte will probably be little different, although the Union may take notice of its first Muslim, predominantly African/Malagasy, and Shimaore speaking Region. The Comorien opposition to the « *Rupeisation* » of Mayotte has been unsurprising and total.⁸⁹ It has failed, however, to gain much traction in Brussels or Strasbourg despite attempts to persuade the EU that it should not happen. The Comorien successes at the OAU and UN of half-a-century ago have not been repeated.

5.6 Concluding Remarks

I have spent two chapters describing in some detail the two worlds of law that Mayotte was to encounter when it put forward the demand for *départementalisation* in 1958, and when it first took definite steps down that path in 1975. In 1958 (and probably also in 1975), there would not have been a person in Mayotte who would

⁸⁷ This question is discussed by Hélène Pongérard-Payet, who argues that solidarity towards less favoured countries and regions, including the RUPs, was and continues to be a fundamental feature of the Treaty of Lisbon (and its precursors). Helene Pongérard-Payet, « *La politique de cohésion de l’Union Européenne en faveur des régions ultrapériphériques* », *Europe*, No.1, Janvier 2013.

⁸⁸ The most recent and definitive book on the topic is Dmitry Kochenov’s *EU Law of the Overseas*. Aldrich and Connell, *The Last Colonies* discusses these territories from a slightly different aspect, giving the pre-history to *Rupeisation*.

⁸⁹ See, for example, www.alwatwan.net and www.comores-web.com. These arguments from Moroni are countered, from Mamadzou, by www.melango-actualite.fr and www.mayotte-observer.com.

have comprehended a word of all this. The demand was never made with an awareness of the convoluted ramifications that it entailed. These ramifications would be news to most still today. If there were two main aspects to the ‘imagined community’⁹⁰ of the Mahorais, I would suggest they were that it was (a) a place that was not subject or subordinate to the other islands, and possibly (b) a place something like La Réunion, where life seemed good, and prospects were better and it was a *département* of France.⁹¹ The original aspiration was a simple statement. No one imagined the complexities or the time-span of achieving it.

There is a widespread misunderstanding in the outside, and especially Anglophone, world that Mayotte is a ‘French possession’. This is simply not the case. As we have seen, by the French Constitution, Mayotte is an integral part of France. The Constitution would need to be amended for Mayotte to have another status.

In summary, but risking oversimplification, France sees the departure of *territoires* as a topic that requires reference to the French Constitution Art.53, which demands the consent of the « *populations intéressées* ». If consent is given, the departure is legislated in the correct form in the *Parlement*. For this purpose a *territoire* need not be the totality of a previous colony and the *populations* may be plural. The departure is not to be seen as a decolonisation. *Uti possidetis* is not relevant.

⁹⁰ Benedict Anderson, *Imagined Communities*, 2nd ed (London: Verso, 2006).

⁹¹ In a society where the oral was all and textual evidence significantly lacking, it is difficult to prove such statements. I contend that the previous Ch.2 argues proposal (a) successfully. Proposal (b) is surmise.

CHAPTER 6

THE WORLD OF SMALL ISLANDS

In the previous two chapters I discussed the principles of international and French law particularly applicable to the matter of Mayotte, the Comores and France. These principles were seen for the most part in the context of the eruption of the dispute in 1975. In this chapter I will consider the developments in thought and action that should now be seen as modifiers of these original positions. This is not to suggest a rejection of twentieth century principles, but rather that, in the thought and practice of the twenty first century, there is an awareness of more complexity and nuance. Things are not as simple as they once seemed.

In Chapter 4, I examined at some length the principle of *uti possidetis* and its application to decolonised territories; the reasons why it was adopted in Africa; and its supposed utility and the frailties in its pedigree. Also discussed, albeit more briefly, was the question of the form that a plebiscite should take when the ‘intention’ of a ‘population’ was being sought for their self-determination. I now want to examine these questions in the particular context, significant to the Comores and Mayotte, of small islands. This context brings to both *uti possidetis* and the issue of plebiscites difficulties which have remained unexplored, for the reason that cases concerning small islands were, until more recent times, unusual and exceptional. There had been little cause to explore them as possible exceptions when considering the doctrines and theories that were to be applied in the vast majority of cases. Both the methods of consultation and *uti possidetis* are highly relevant to Mayotte, as they go to the heart of issues between the Mayotte, the Comores and France.

The general rule, as we have seen, is that the ‘population’ should be consulted as a ‘whole’. This begs the question of what is or is not a ‘population’.¹ The interpretation of this word has proved enormously difficult in ‘mainland’ circumstances; there has, until recently, been little discussion of it in the possibly special case of islands.

The nearest we have to a leading (mainland) case, the Northern Cameroons Case, would suggest that the matter of the methodology of the consultation remains open, or at least that ‘consultation as a whole’ can be interpreted flexibly. In this case, the votes of the south and the north of the mandated territory were counted separately, in circumstances where this distinction between north and south was made only for the convenience of the administering authority, Britain. This process was not overruled, despite critical *obiter dicta*. The ICJ never adjudicated on the substantive point,² having decided by a majority that it was not in a position to hear the case.³ If, as it might appear from the case, there might be the possibility of exceptions to the general rule of ‘consultation as a whole’ in supposedly unitary ‘mainland’ territories, should the rule be considered a rule in the more problematic cases of groups of small islands?

I will argue that both for the purposes of the rule concerning the consultation of populations (and the principle of *uti possidetis*), small islands and groups of small islands need to be considered in a different light. The concept of a ‘whole population’ of multiple islands is a difficult one where there are populations divided by seas and

¹ This discussion has generated a large literature. It is closely related to the discussion of what is a ‘people’, which has generated an even greater literature. Karen Knop is among the best guides. Karen Knop, *Diversity and Self-determination in International Law* (Cambridge: Cambridge University Press, 2002). See also Cassese, *Self-Determination of Peoples*.

² *Northern Cameroons Case (Cameroon v United Kingdom) (Preliminary Objections)* [1963] ICJ Reports 15. Judge Badawi, dissenting, was closest to the substantive point when discussing criticisms of the Administering Authority (p.153). Judge Bustamante, also dissenting, emphasised the responsibility of the Administering Authority, and was prepared to consider the view of the applicant that the plebiscite was of an “abnormal and distorted character” (p.154). The dissenting judgements are of greater interest in that they discuss the substantive issues between the parties, while the main judgements were concerned with the ability of the Court to hear the case.

³ See Ch.4.

possibly maritime boundaries. This is even more so when each island population considers itself as particular, unique and not part of some other, larger, whole.⁴ Does the population need to self-define before it self-determines? We shall return to self-perception and self-definition shortly, after considering *uti possidetis* and its application to small island groups.

There are several unexamined presumptions in the following well-trod argument that contains these steps: (i) Mayotte is an integral part of an ex-colonial archipelago, a unity of what was a colony of four islands, and (ii) *uti possidetis* applies to islands as an assumed extension of its role in mainland territories and (iii) Mayotte is therefore subject to the principle of *uti possidetis*. This argument lies at the heart of the Comorien claim to Mayotte⁵ and the terms in which the matter was discussed at the UN.⁶ At the UN, there may have been no actual reference to *uti possidetis* by name, but it was present in the form of a conjunction of the doctrine of territorial integrity with decolonisation. This argument will be considered in this chapter and presumptions on which it is based will be shown to be questionable. We will then continue to the question of self-definition, a precursor to self-determination, and its important role in the political and social development of small islands. In these societies, self-perception leads to self-definition, necessary before there can be self-determination. It is not claimed that these three concepts are unique to small islands; instead, the claim is that small islands provide, in their defined populations, circumstances where the processes can be seen strongly and clearly.

⁴ The origins of this approach, a concern with self-consideration, lie in the work of Benedict Anderson. Anderson, *Imagined Communities*.

⁵ This was recently exemplified by Ahmed Ali Amir, whose article on the subject of « *Mayotte comorienne* » begins: “The unity of the archipelago is an historic fact”. Ahmed Ali Amir, in *Al Watwan*, 9 July 2013. It is also integral to the argument of Abdallah, *Le statut juridique de Mayotte*.

⁶ UNGA, 39th plenary meeting, 21 October 1976: “... to accede to independence in conditions of political unity and territorial integrity.”

As a preliminary, it is necessary to clarify a concept which lies at the heart of *uti possidetis*, the boundary. This concept may be thought to be self-evident, but it is not. There has been a lack of clarity of definition or awareness of the nature of boundaries, both territorial and maritime, in the application of the principle of *uti possidetis*. This has caused confusion and, I will argue, incorrect interpretation. This is particularly the case when a concept once applied only to continents is brought to the world of small islands.

6.1 Boundaries

The determination of boundaries is complicated by problems of definition, and further problems of identifying who is entitled to make the definition. Four particularly troublesome words in this context are ‘boundary’, ‘frontier’, ‘border’ and ‘archipelago’. A number of dictionaries (for example the Macmillan English dictionary) suggest a degree of interchangeability⁷ between the first three words,⁸ while experts in the field, notably Victor Prescott,⁹ insist that they have quite distinct and separate meanings. For the present purpose, the most important word of the three is ‘boundary’, as the one employed in the principle of *uti possidetis*. For Prescott, a frontier is a zone, not a line; a boundary is a line, not a zone; a border is not a technical term.¹⁰ The frontier is a zone which lies each side of the line, which is a boundary. Prescott identifies three stages in the formulation of the normal boundary: allocation, by which he means the in-principle agreement between the neighbouring states; delimitation, namely, the selection and definition of the boundary, the part of the

⁷ The Oxford English Dictionary (OED) has ‘frontier’ as ‘a line or border’; a ‘border’ is ‘a line separating two countries’. Merriam-Webster has ‘frontier’ as a ‘border between two countries’; a ‘boundary’ is an ‘imaginary line’; a ‘border’ is a ‘line separating one country or state from another’.

⁸ It is notable that all three words translate into French as « *frontière* ».

⁹ See JRV Prescott, *Boundaries and Frontiers* (London: Croom Helm, 1978), Ch.1.

¹⁰ *Ibid.*, pp.31, 195. These distinctions are repeated in the later book, Victor Prescott and Gillian D Triggs, *International Frontiers and Boundaries: Law, Politics and Geography* (Leiden: Martinus Nijhoff, 2008), p.1.

process where error and dispute most readily occur; and demarcation, the construction in the landscape. It is reasonable to assume that this is the process by which the majority of territorial boundaries were formulated, including those between colonial powers, although in some cases the third stage was never achieved.

If land boundaries are usually (sometimes with difficulty) capable of delimitation¹¹ and demarcation,¹² and provide a “line of physical contact”,¹³ maritime boundaries are different in kind and add another layer of difficulty. As Prescott and Triggs point out,¹⁴ the reasons for the establishment of maritime boundaries are usually very similar to those where the boundaries are on land: to secure title to parts of the globe that are valued for resources or strategic advantage, and to create lasting arrangements between neighbours that will minimise the risks of friction. Even if the purposes are considered similar, the formulation is quite different. The differences, both in formulation and in operation are sufficient, I will argue, to deny a place for *uti possidetis* in the world of maritime boundaries.

Maritime boundaries are more permeable and usually not demarcated; there may be a series of boundaries for different purposes, for territorial waters and ZEE waters; the right of innocent passage is well established. Maritime boundaries have a rather different relationship to the concept of sovereignty and, in their present format, were developed long after it. They are frequently not contiguous, with the High Seas intervening. Maritime boundaries thus may well be one-sided in nature; territorial boundaries are always with another territory. Territorial boundaries are (adopting Prescott’s taxonomy) the defining line within a zone or frontier. Within the zone, on both sides of the line there may be populations very similar to each other, with

¹¹ *Frontier Dispute (Burkina Faso v Mali)* [1986] ICJ Reports 554.

¹² Eritrea/Ethiopia Boundary Commission Award, April 2002.

¹³ Prescott and Triggs, *International Frontiers and Boundaries*, p.5.

¹⁴ *Ibid.*, p.14.

language and culture that are not strongly differentiated at the boundary line. There may be coming-and-going, with family and friends and pastures each side of the line.¹⁵ With maritime boundaries, this is generally not the case; there is no frontier zone of blending and usually little or no casual cross-boundary visiting.¹⁶ There are no ‘lines of physical contact’. There can be, as recent Australian naval experience has shown,¹⁷ ‘inadvertent’ transgressions. When setting or negotiating the maritime boundary, greater attention is paid to technical questions of delimitation — e.g., ‘when is a bay not a bay?’ — and less, generally, to historical or cultural questions — e.g., ‘who has a long history of fishing in these waters?’ Maritime boundaries are quite unlike territorial boundaries.

Maritime boundaries between islands, and between islands and mainlands, bring their own problems. When, and for whose benefit, should islands be considered as connected with a mainland coast? Each example provides a unique relationship. These include Zanzibar/Tanzania, Newfoundland/Canada, the Aaland Islands/Finland and the Channel Islands/UK. All are different in their relationships; some have a single maritime boundary in conjunction with the mainland, some are separate in this respect. These coastal islands form an important category, but not one immediately relevant to our consideration of groups of islands described as ‘mid-ocean’. The mid-ocean islands have come in two main forms: where each island is surrounded by its own maritime boundaries (the traditional form), and where the line goes around the group, (the more recent). When does the maritime boundary go between, and when does it go around?

¹⁵ This is to describe the general case. There have also been totally closed boundaries, exemplified by those between North and South Korea and Israel and Lebanon.

¹⁶ The exception might be where the boundary has been transcended by, for example, an international bridge. The bridge between Denmark and Sweden and the causeway between Singapore and Malaysia might be cases in point.

¹⁷ This reference is to 2014 transgressions into Indonesian waters.

The most authoritative statements are to be found in the 1958 and 1982 Conventions on the Law of the Sea. Victor Prescott and Clive Schofield are authors of the definitive book on the topic.¹⁸ They make three general points with reference to maritime boundaries.

First, maritime boundaries only began to be significant in the middle of the twentieth century. Prior to that time, state jurisdiction only extended three nautical miles off shore, with the result that there were few disputes.¹⁹ Subsequently, in mid-twentieth century, a 5 nm limit gained some international favour; the underlying belief was that this was the limit of shore-to-shore visibility at the high-tide mark. Maritime boundaries came to the fore as problematical with the development of 200 nm limits.²⁰

Second, the delimitation of maritime areas is governed by the principles and rules of public international law. However, having stated the role of public international law, Prescott and Schofield go on to emphasise: “In this context it is clear that geographical factors, and in particular coastal geography, are fundamental to international law as it pertains to maritime boundary delimitation”.²¹ Further, they suggest that it is physical coastal geography, and not economic, social or demographic coastal geography, that is important. In short, in this instance, physical geography provides the basis; international law the legal relationship only.²²

Third, Prescott and Schofield emphasise a significant difference between land and sea boundaries. In their view, the role of colonial powers was instrumental in establishing the land boundaries of the states which emerged as empires disappeared.

¹⁸ Victor Prescott and Clive Schofield, *Maritime Political Boundaries*, 2nd ed (Leiden: Martinus Nijhoff, 2004).

¹⁹ *Ibid.*, p.215.

²⁰ This was first actively promoted by the Pacific republics of South America.

²¹ Prescott and Schofield, *Maritime Political Boundaries*, p.6.

²² *Ibid.*, p.7. This view was taken in the *Gulf of Maine Case* [1984] ICJ Reports 246, and in the *Anglo-French Case*, HMSO Misc. No.15, 1978, Cmnd 7438, where the Court said it was “the geographical and other features which establish the legal framework”. Quoted in Malcolm Evans, *Relevant Circumstances and Maritime Delimitation* (Oxford: Clarendon Press, 1989), p.122.

This was not the case with sea boundaries, where “very few countries have inherited sea boundaries from the colonial period”.²³

These three points give weight to the considerable doubt as to whether *uti possidetis* should ever be applied to maritime boundaries. There are other causes for doubt. In large part, current maritime boundaries post-date the colonial epoch and the 3 nm limit or even a 5 nm limit. Though set in law, they are fundamentally dependant on physical geography, not political demarcations. In short, they are not inherited from the colonial period. They do not divide states or ex-colonies in the same way as do territorial boundaries. The relevance of *uti possidetis* is highly doubtful. So far I have considered maritime boundaries in general; we must now consider the particular case of boundaries where there are groups of islands or archipelagos. Here there is an added element of complexity: in what circumstances does the boundary go around the whole, and when does it go around constituent parts? Rather like ‘boundary’ the word ‘archipelago’ is frequently used without the sufficient examination we need to give it.

6.2 Archipelagos

The word ‘archipelago’ comes through Latin from Greek, and was originally used to describe a sea, not islands. It was the previous name given to what is now called the Aegean Sea.²⁴ It was then generally taken to describe a sea with islands in it. It was a description of water, not land. The moment of the inversion to being a description of the islands rather than of the sea is uncertain.²⁵ However, it can be accepted that its general usage is now as a descriptor of a group of islands, not of the sea in which the group is situated.

²³ Ibid., p.215.

²⁴ Arkhi + pelagos = the chief sea.

²⁵ The Oxford English Dictionary only gives this as a third and subsidiary meaning.

The next question is of its status as a technical term (or not) in law and geography. In law, as Derek Bowett remarks: “Prior to the Hague Conference of 1930, little attention was directed to any special treatment of groups of islands”.²⁶ By 1929, there was discussion of special consideration for coastal groups where the islands were not more than 6 nm apart. The topic came to the fore in the *Fisheries Case*,²⁷ where the argument concerned rights to fish in the distinctive geography of the Norwegian coastline. The Norwegian claim that the Norwegian coast for these purposes was the outer limit of the *skjaergaard*, a combination of headlands and offshore islands, was upheld. The court noted the long usage and economic activity of the local population, which could legitimately be taken into account. This decision helped to clarify the circumstances of coastal islands and waters that could be considered ‘inland’, but was of no help in the case of mid-ocean island groups.

In 1953, the Third Report of the International Law Commission proposed that the term ‘group of islands’ should be determined to mean “three or more islands enclosing a portion of the sea when joined by straight lines not exceeding five miles in length, except that one such line may extend to a maximum of 10 miles.”²⁸ It is noteworthy that, in this proposal, the islands are quite close together, and that the term ‘archipelago’ is eschewed.²⁹ This proposal was only discussed in 1955, when it was deleted from the final draft “as the Commission was unable to overcome the

²⁶ Derek Bowett, *The Legal Regime of Islands in International Law* (Dobbs Ferry, NY: Oceana Publications, 1979), p.73.

²⁷ *Fisheries Case (United Kingdom v Norway) (Judgment)* [1951] ICJ Reports 116.

²⁸ *Yearbook of the International Law Commission* (1954), vol.2, p.5. I note here the re-appearance of the 5 nm proposal, discussed earlier.

²⁹ It is also noteworthy that in the approximately contemporaneous *Minquiers and Ecrohos Case* [1953] ICJ Reports 47, between France and the UK, concerning small islands in the Channel Islands where the legal argument could have been in terms of groups of islands, archipelagos and propinquity, no mention was made of these concepts. The argument was in terms of title, of the acts of William Longsword, Duke of Normandy, and the Abbé Piers of Val-Richer in 1203, and of current practices such as the positioning of buoys.

difficulties involved.”³⁰ At the 1960 Conference the outcome was the same, and as Bowett notes: “The development of the law relating to archipelagos after 1960 therefore depended upon state practice”.³¹ He goes on:

It is difficult to find in state practice any uniformity which would enable clear distinctions to be made between one formation of islands and another (i.e. which do, and which do not, qualify as an ‘archipelago’ or which would enable clear rules to be postulated about the base-lines of those which would qualify, *prima facie*, as archipelagos.³²

Bowett suggests that the only valid criterion is proximity,³³ but this does not really advance the argument. Little further help and more difficulties are provided by the Informal Composite Negotiating Text (ICNT) of the 1977 Law of the Sea Conference, Art.46(b), which defined an archipelago thus:

Archipelago means a group of islands, including parts of islands, inter-connecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

This begs the main question, of when do islands form ‘a group’, and introduces a number of subsidiary questions. Of these, the first is to decide how closely interrelated these islands have to be to qualify as ‘so closely’? Second, is the intrinsic entity formed primarily ‘geographical’, ‘economic’ or ‘political’? Are all three required for an intrinsic entity, or is there a hierarchy between them? Third, by whom are they ‘historically regarded as such’? Fourth, is there ambiguity in the relationship between the two clauses? Is the ‘historical regard’ an alternative to or a subsidiary of the ‘intrinsic entity’? This definition amounts to little more than a description on the basis of: ‘we will know one when we see it’. Once again, an apparent legal definition turns out to be a recitation of geographic and other characteristics.

³⁰ *Yearbook of the International Law Commission*, vol.2 (1956), p.270.

³¹ Bowett, *Islands in International Law*, p.81.

³² *Ibid.*, pp.81–2.

³³ *Ibid.*, p.83.

In the absence of satisfactory legal definition, we must, following Bowett, revert to state practice, particularly the practice of the self-describing archipelagic states. Since the Law of the Sea Conference, states have been active in this regard. The first to move was Indonesia, the largest wholly ‘archipelagic’ state in the world. In 1960, it passed Act No.4 by which:

Considering (1) that the geographical configuration of Indonesia as an archipelagic state which consists of thousands of islands has its own characteristics and peculiarities; (2) that since time immemorial the Indonesian archipelago has constituted one entity and (3) that in the interest of the territorial integrity of the Indonesian State all the islands and waters lying between those islands should be regarded as a single unit... Art.1 enacts that (1) the Indonesian waters consist of the territorial waters and the internal waters of Indonesia...

The second consideration must be questioned. Indeed, the separatist movements throughout the ‘archipelagic State’ at various times since 1950 have questioned it.³⁴ Its statement in the Act could be taken as a buttress against secessionists as much as a statement about Indonesian history or internal waters. There is the implication that the period of Dutch rule, when there was one entity is ‘time immemorial’. In fact, before the Dutch, there were Sultanates and, earlier, numerous kingdoms.³⁵ However, the principle of *uti possidetis* is not proclaimed or mentioned.³⁶

³⁴ There have been two main periods of ‘secessionist’ movements in Indonesia, in the 1950s and in the last two decades of the century. They have involved South Maluku (Seram, Ambon and Buru islands in particular, with a government-in-exile of the Republic of South Moluccas, complete with a ‘Head of State’ in the Netherlands to this day); Aceh; West Papua (Irian Jaya); the Permesta uprising in Sulawesi in 1957; and Timor L’Este. See Edward Aspinall and Mark Berger, “The Break-up of Indonesia? Nationalisms after Decolonisation and the Limits of the Nation-State in Post-Cold War Southeast Asia,” *Third World Quarterly*, vol.22, no.6 (2011), pp.1003-24. The motivations were variegated; the form was secessionist throughout. The secessionist position was stated by the Acehnese leader de Tiro: “This land is yours only for one reason and for one count: because you are Acehnese (sic). If you denounced that truth by accepting another false name like ‘Indonesians’ — that Javanese nonsense — then you have forfeited your patrimony”. Tengku Hasan de Tiro, *The Price of Freedom: The Unfinished Diary* (Aceh: NLF Information Department, 1984), p.44.

³⁵ MC Ricklefs, *A History of Modern Indonesia: c.1300 to the Present* (Bloomington, Indiana: Indiana University Press, 1981); Mary Zurbuchen, “Historical Memory in Contemporary Indonesia,” in Mary Zurbuchen (ed), *Beginning to Remember: The Past in the Indonesian Present* (Singapore: Singapore University Press, 2005). Ricklefs quotes Goenawan Mohamad concerning the 1928 Youth Pledge when people from the many regions and ethnic groups of the archipelago agreed to “forget” their disparate

The Philippines followed in similar vein. In their Act of 17 June 1961, The Philippines cited historical (the US/Spanish Treaties of 1898 and 1900), economic and strategic justifications.³⁷ Others to go down the same path were Fiji and Tonga, using varied arguments in differing proportions to back their claims. Geography, history, economic considerations and the integrity of the state were the substrata of the claims.³⁸ In terms of geography, the apparently simple notion of an archipelago being formed as a geographical/geological entity has proved difficult: sometimes archipelagos have been claimed and accepted where there is indeed an entity, sometimes where there is not. On the one hand, Fiji and Tonga can claim some geological/geophysical ‘wholeness’; on the other, Indonesia cannot. As Robert Hodgson points out, Sumatra, Java and Borneo can be seen as one geophysical entity while the eastern islands of Indonesia form a completely different one.³⁹ This is also the case in the Comores: Mayotte has no geological/geophysical connection to the other islands; there is an ocean trench between the islands and they were formed in different volcanic eruptions, separate in both space and time.⁴⁰ Hiran Jayewardene, while considering the difficulties of the geographical/geophysical claims, admits that they have some cogency, especially when combined with claims based upon political integrity. He concludes: “each case must be assessed on its merits and with reference to the particular factors emphasised by the claimant as central to the claim.”⁴¹

origins to make themselves part of the new “imagined community” of Indonesia. Ricklefs, *Modern Indonesia*, p.13.

³⁶ It might be implied by the different outcome for Timor L’Este.

³⁷ O’Connell suggests that there is no historical evidence that Spain exercised jurisdiction over this sea area before 1898 or that the USA did so thereafter. DP O’Connell, “Mid-Ocean Archipelagos in International Law,” *British Yearbook of International Law*, vol.45 (1971), p.25.

³⁸ These claims are examined in detail by Hiran Jayewardene, *The Regime of Islands in International Law* (Dordrecht: Martinus Nijhoff, 1990), pp.107–12.

³⁹ Robert Hodgson, *Islands: Normal and Special Circumstances* (Washington, DC: US Department of State, 1973), p.24. See also Jayewardene, *Regime of Islands*, p.111.

⁴⁰ Fontaine, *Mayotte*, p.7.

⁴¹ Jayewardene, *Regime of Islands*, p.111.

While the presence or absence of geological connections can add to or detract from the argument of whether a group of islands has the status of archipelago, it cannot be the whole argument: the archipelago cannot be defined in these terms alone. We are returning to ‘the facts as emphasised by the claimant’. As we have found before, and will again: an attempt is made at an objective legal construct. The decision as to what is to fall within the construct has then to be made in extra-legal terms of geographical/geophysical features. These, in turn, prove inadequate and a further retreat has to be made to the historical/economic and, in the end, to the claim of the claimant based on the claimant’s self-perception. The element of subjectivity is more overt; the apparent objectivity has not been achieved. We have, however, come some distance from the ICNT of the Law of the Sea Conference. From ‘we know one when we see it’, there has been a move to ‘we are one when we see ourselves as one, and can prosecute our claim in such a way that no-one objects’. There is, at the very least, a shift of emphasis.

Long before the Law of the Sea Conference, Tonga was the first⁴² island group to define itself and its waters, pre-dating the colonial period. By Royal Proclamation in 1887, King Tubou I set out in terms of degrees of longitude and latitude the boundaries of his Kingdom: “Whereas it seems expedient to us that we should limit and define the extent and boundaries of our Kingdom.”⁴³ In 1968, Tonga’s 1887 boundaries were re-affirmed at the UN without challenge. Despite King Tubou’s methodology being rather different to that of modern practice, he led the way. His system was, however,

⁴² Arguably the second; the King of Hawaii proclaimed neutrality to the full extent of his jurisdiction, including “the waters ... and channels dividing said islands ...” on 16 May 1854. Quoted in Jayewardene, *Regime of Islands*, p.113.

⁴³ Quoted in Sherry Broder et al., “Ocean Boundaries in the South Pacific,” *University of Hawaii Law Review*, vol.4 (1982), p.11.

followed by the Republic of the Maldives, when it defined its EEZ in rectangular form in 1964.⁴⁴

Fiji's Maritime Spaces Act⁴⁵ was gazetted on 27 November 1981. Under s.4(i), "The archipelagic waters of Fiji comprise all areas of sea contained within the baselines established under the provisions of this section". By s.9(i), "The sovereignty of Fiji extends beyond its land territory and internal waters over its archipelagic waters and territorial seas and to the airspace thereover as well as to the seabed and subsoil thereunder." By s.9(iii), "the exercise by Fiji of its sovereignty and sovereign rights ... is subject to the rules of international law", including by s.10(i) rights of innocent passage, navigation, overflight and cable-laying. There has been no international consternation regarding the internal and archipelagic waters, but the external 200 nm limit overlaps with numerous neighbours' claimed boundaries.

As Broder et al. show, there are enough overlaps of 200 nm limits in the South Pacific to fuel many a potential dispute.⁴⁶ So far, none has occurred. The island nations are not so fearful of incursions by small boat from their neighbours; it would seem they are more mindful of protecting themselves from the depredations of large fishing boats from faraway nations, at least without adequate financial compensation.

There are many other examples that could be cited, but a pattern is clear. These are declarations of sovereign borders by mid-ocean 'archipelagic' states that once were colonies. They perceive and define themselves in a particular way that includes both external territorial and archipelagic waters. The states that made these declarations see the waters claimed as archipelagic to be vitally important to their welfare and that of their peoples. It is, in effect, the water that keeps the islands together. The islands are all in the one piece of water. The Fijians and the Tongans are close to the ancient

⁴⁴ Constitution of the Republic of Maldives, 1964, Art.1.

⁴⁵ Act No.18 1977; Act No.15 1978.

⁴⁶ Broder et al., "Ocean Boundaries," p.3.

Greeks in their concept of an archipelago. As the Fijian delegate to the 1974 Caracas Conference said:

The sea and the land of Fiji were interdependent. The sea was regarded as an essential link between the islands of the archipelago; it was not only a roadway but a source of sustenance for many Fijians. Archipelagic peoples were farmers of the seas and the sea-bed; the control of the sea was as important to them as control of the land was to continental states.⁴⁷

The speaker is speaking for and about the ‘farmers of the sea’. This leads to a more general point (consonant with our discussion of Jayewardene’s writings⁴⁸): we are finding our way to a form of self-description as a defining factor in whether islands form a group or an archipelago or not. If this is the case, then there needs to be a consideration of who is the ‘self’ that is self-describing. We will come back to this.

There may be an alternative scenario, that the inhabitants of a group of islands do not see themselves in such a relationship with the waters that separate their islands. Possibly the state that has full or part sovereignty over the islands may not portray itself in such a way, or wish to make such a declaration. Such a self-perception is not inevitable or compulsory. In some places the inter-island sea may be seen as a farm or a highway; in others it may be seen as a barrier that divides. It is also possible that there is a difference in perception when the inner sea or lagoon is separated from the next zone of outer sea, still between the islands, by a reef. If the proportion of subsistence gained within the reef is high, and the reef is hard and dangerous to exit, it could be that the perception of the ‘archipelagic’ waters beyond the reef is different. In short, the ‘farm’ may be within the reef and not in the wider expanse of waters between the islands.

As we have seen, legal definition has effectively failed to do other than depend upon geographic description. The geographic has been bracketed with, or has fallen

⁴⁷ Third UN Conference on the Law of the Sea, Caracas 21 June 1974, quoted in Broder et al., “Ocean Boundaries,” p.9.

⁴⁸ Jayewardene, *Regime of Islands*.

back on, the political, the economic and the historical. The notion of a ‘group’ of islands or an ‘archipelago’ remains hard to grasp. It is not simply a matter of the geographic/geophysical, a method of analysis not necessarily available to the residents. Even if geological structures may well be better analysed by scientists from afar and not by the local people, it would seem that it is more a matter of how the populations of the islands, or the over-arching states, view their relationship to the intervening water. Do they see the waters as separating or bonding? Are they a barrier or a highway? Is the sea a ‘no-man’s-sea’ or a common resource? There is no simple and absolute division; only a spectrum that is evidenced by practice and attitude.

At one end of the spectrum, the Tongans and Fijians are examples of the highly archipelagic, with fluid and constant travel from island to island, both within and beyond their own group of islands.⁴⁹ Not only do they act in this way; this is how they see themselves. The Comoriens are towards the other end, with historically relatively little travel between islands,⁵⁰ and little concept that the sea between the islands has been, or is, a jointly-held resource. To go back in Comorien history,⁵¹ the intervening waters were to be crossed for razzia and invasion of other islands.⁵² In large part, each island lived within its reef where there was one, frequently in fear of its neighbours. In more recent history, the waters marked separate development. The centrifugal has been far more evident than the centripetal.⁵³ In the most recent times, the ‘Balladur’ visa has acted even more against archipelagic togetherness and inter-island travel, with the waters being used as a barrier, not an internal sea. Even among the three islands of the

⁴⁹ Nicholas Thomas describes how both populations, after long voyages to found their societies in new archipelagos maintained patterns of constant inter-island travel within the archipelago and beyond. Nicholas Thomas, *Islanders: The Pacific in the Age of Empire* (New Haven: Yale University Press, 2010), p.12.

⁵⁰ Fasquel, *Mayotte*, p.34 describes their fairly minimal trade.

⁵¹ This history was described in Ch.2.

⁵² Martin, *Comores* describes both the inter-island raiding and the isolated existence on each island in the nineteenth century.

⁵³ Post-1975, the attempts at secession by Anjouan and Moheli are evidence of this tendency.

Union, there have been attempts to secede. Despite the label of ‘archipelago’ ascribed to them from afar, there is little indication that the inhabitants of the four islands have seen themselves as holders of a common destiny surrounding mutually held and enjoyed water.⁵⁴

My point here is to reiterate the argument that a group of islands, ‘archipelago’ or not, cannot be invariably construed as an entity for the reason only that they were once and relatively briefly delineated as a colony. *Uti possidetis* cannot be seen as the defining rule of self-determination or nation-formation in these island circumstances. The principle of *uti possidetis* may seem uncomfortable as the definer of boundaries between territories on continent landmasses; attempts to bond supposed island groups takes it a stage too far. To apply it to former colonies of islands grouped together for supposed administrative convenience, at some particular past time and in circumstances where boundaries were never considered, must surely lie beyond the point where the principle has any purpose or coherence.

Occasional reference to an archipelago by representatives of the colonial power is insufficient. This is particularly true when a four-island *territoire* was only one of many differing attempts over time to find a satisfactory solution to the administrative conundrum.⁵⁵ Moreover, the insistence on *uti possidetis* boundaries to prevent friction with neighbouring states (the *raison d’être* of the principle) has no relevance: there are no neighbouring states. In this case the only possible candidates as neighbours are Madagascar, Mozambique or the Seychelles. None of them is a neighbour to the Comores in the sense that Burkina Faso and Mali are neighbours, as in the Boundaries Case.

⁵⁴ The confusion surrounding the use of the word ‘archipelago’ is further evidenced by a member of the *Assemblée Nationale* asking a question concerning immigration to Mayotte from the « *archipel des Comores* », meaning the other three islands. M Lionel Tardy, *Assemblée Nationale*, 11 March 2014.

⁵⁵ See Ch.2.

If we return to the argument that was outlined at the beginning of this chapter, which forms the basis of the Comorien claim to Mayotte, we can now see some more of its weaknesses. There is, first, the difficulty that while ‘archipelago’ as a legal concept has undoubtedly grown and developed, particularly with reference to the expansion of maritime boundaries and claims on intra-archipelagic waters, it has done so mainly in the period after the 1975 break-up between Mayotte and the other islands of the Comores. Before that, it was used as a non-specific geographical descriptor.

Second, in a geophysical sense, the islands of the Comores do not make up an archipelago. There is a deep trench between Mayotte and the other islands. The volcanic eruptions which formed the islands occurred at very different times. The islands are not of one geophysical piece.

Third, the geographical sense of an archipelago is, as we have seen, at best weakly defined and elides into a discussion of economics and politics and the self-perception of whoever is claiming that descriptor. It therefore calls for an examination of the view of the population concerning the water that lies between the islands. Do they view it as joining or separating them? The Comores do not appear as strong candidates for archipelagic status geographically if this is the criterion.

Fourth, if the islands formed a unity within a common boundary, there must indeed have been a common boundary. Yet, in the case of the Comores there is no evidence of one. If France had followed the Kings of Hawaii and Tonga and claimed a boundary, then the description of the islands as surrounding common territorial water and forming an archipelago would be better evidenced. In fact, France first registered the maritime boundary of Mayotte on 9 December 1972, and then re-registered it in 1977 (along with that of St Pierre et Miquelon) by Decree No. 77-1067 by the method

of straight baselines.⁵⁶ The Republic of Comoros registered its claim on 5 June 1982 by Law No. 82-005. It claimed archipelagic status, and a Territorial Sea with a 12 nm limit measured from straight baselines. It also claims an EEZ of 200 nm.⁵⁷ This was ratified on 21 June 1994.⁵⁸ These are the technicalities. The islands are far further apart than any 3 nm, 5 nm or 12 nm boundary would have them as contiguous. All in all, the often-assumed ‘Comores Archipelago’ is not a strong construct. It is widely used as a descriptor, especially from far away, and little examined.

Before examining outcomes in other archipelagic former colonies, it is instructive to examine the self-descriptions of small island populations more generally. Since about 1990 a field of study of small islands has developed, with considerable emphasis on the concepts of Self-perception and Self-description. The discussion will lead us away from the Comores temporarily, but we will return to place the islands and especially Mayotte within this context.

6.3 Small Islands and Archipelagos: Self-Perception

In 1958, when Mayotte first asked for *département* status, there was no particular interest, in geo-political terms, in small islands. They had not achieved the status of a field of study, despite there having long been a generalised non-academic interest in small islands.⁵⁹ However, by the 1990s, small islands were attracting attention beyond being “the confetti of Empire.”⁶⁰ They now assumed importance in

⁵⁶ Robert W Smith (ed), “National Claims to Maritime Jurisdiction,” *Limits in the Seas*, No.36 (Washington, DC: US Department of State, 25 May 2000), p.55.

⁵⁷ Vivian Lewis Forbes, *The Maritime Boundaries of the Indian Ocean Region* (Singapore: Singapore University Press, 1995), p.130.

⁵⁸ Smith, “National Claims to Maritime Jurisdiction,” p.30.

⁵⁹ “Eden without apples” encapsulates one aspect of their popular perception. David Pitt, *Tradition and Economic Progress in Samoa: A Case Study of the Role of Traditional Social Institutions in Economic Development* (London: Oxford University Press, 1970), quoted by Godfrey Baldacchino, “Innovative Development Strategies from Non-Sovereign Island Jurisdictions? A Global Review of Economic Policy and Government Practices,” *World Development*, vol.34, no.5 (May 2006), p.858.

⁶⁰ A description coined by J-C Guillebaud, *Les confettis de l’empire* (Paris: Seuil, 1976).

their own right.⁶¹ Not only were they becoming self-aware as a group, they were becoming the subject of academic study. On the one hand, writers such as Aldrich and Connell⁶² and George Drower,⁶³ studying the decline of Empire, were finding themselves for the most part discussing islands. Worriers about ‘micro-states’ found themselves, for the most part, looking at islands.⁶⁴ Scholars concerned with population migration were seeing their importance.⁶⁵ On the other, islands were self-consciously coming together. In 1991, the Alliance of Small Island States (AOSIS) was formed with 39 founding members. In 1994, under the auspices of the UN, the Barbados Plan of Action for Small Island Developing States (SIDS) was formulated, with a follow-up meeting in Mauritius in 2005. A name, ‘Nissology’, was coined for the study of islands.⁶⁶ The International Small Islands Studies Association (ISISA) was set up in 1992 based in Hawaii, with, since 2005, an active website.⁶⁷ The University of Prince Edward Island’s Island Studies Program, under the leadership of Godfrey Baldacchino, the most-published author in the new discipline, has been the seed-bed for many studies in the field, and home to *Island Studies Journal*.

⁶¹ Problems of definition arise, both of islands and small islands. Is Australia an island? (Too big?) Is Rockall an island? (Too small?) Are Singapore and Granite Island islands? (both are joined to mainlands). Are Mont St Michel and Lindisfarne? (both are joined to mainlands at low tide). Stephen Royle writes that in ancient Scottish law, an island had to be of a size to pasture one sheep. Royle: “Island Spaces and Identities: Definitions and Typologies” in Baldacchino, “Development Strategies,” p.48.

⁶² Aldrich and Connell, *The Last Colonies*.

⁶³ Drower, *Britain’s Dependent Territories*.

⁶⁴ For example, Sheila Harden et al., *Small is Dangerous: Micro States in a Macro World* (London: Francis Pinter, 1985).

⁶⁵ Thomas, *Islanders*, p.12.

⁶⁶ Christian Depraetere and Arthur Dahl: “Island Locations and Classifications,” in In Godfrey Baldacchino (ed), *A World of Islands: An Island Studies Reader* (Charlottetown, Canada: Institute of Island Studies, 2007), p.99. Grant McCall defines Nissology as “the study of Islands on their own terms”. Grant McCall, “Nissology: A Proposal for Consideration,” *Journal of the Pacific Society*, vol.17, nos.2–3 (October 1994), pp.1–14. Antonis Balasopoulos prefers his own neologism ‘nesology’ which he claims caters for the aesthetic and geopoetic as well as the geopolitical. Antonis Balasopoulos, “Nesologies: Island Form and Postcolonial Geopolitics,” *Postcolonial Studies*, vol.11, no.1 (March 2008), p.9. Few, if any, have taken up Balasopoulos’ word.

⁶⁷ isisa.maui.hawaii.edu.

The literature divides into two (usually identifiable) streams: mainlanders writing about small islands and islanders doing the same.⁶⁸ It is the latter who are in the better position to enunciate the sheer differentness of islands. By examining the work of both streams, I wish to throw light on and explain the viewpoint and behaviour of the Mahorais.

There are two words usually used to characterise islands. These are ‘insularity’ and ‘islandness’. The problem with ‘insularity’ is that it has, over time, moved from the analytical to the pejorative. The tendency has been to move from ‘of the nature of islands’ through ‘cut-off and remote’ to ‘narrow-minded’. As this tendency has accelerated, the second word, ‘islandness’, has gained in popularity among scholars; it is apparently analytical and neutral.⁶⁹

The tendency among mainlanders writing about islands is to assume, sooner or later, that their subjects are possessors of characteristics in common.⁷⁰ The most widely researched and compared characteristics are vulnerability, resilience and the predominant source of income. Vulnerability and resilience relate particularly to SIDS but can be characteristic of non-state islands also. They are measures of the risks

⁶⁸ Godfrey Baldacchino, “Studying Islands: On Whose Terms? Some Epistemological and Methodological Challenges to the Pursuit of Island Studies.” *Island Studies Journal*, vol.3, no.1 (2008), pp.37–56.

⁶⁹ Eve Hepburn, “Recrafting Sovereignty: Lessons from Small Island Autonomies?,” in Alain-G Gagnon and Michael Keating (eds), *Political Autonomy and Divided Societies: Imagining Democratic in Complex Settings* (Basingstoke, UK: Palgrave Macmillan, 2012), p.122. Also Elaine Stratford et al., “Envisioning the Archipelago,” *Island Studies Journal*, vol.6, no.2 (2011), pp.113–130.

⁷⁰ This is at its clearest in comparative studies. Examples may be found in the literature on comparative economic situations in small islands, such as Jerome McElroy and Courtney Parry, “The Characteristics of Small Island Tourist Economies,” *Tourism and Hospitality Research*, vol.10 (2010), pp.315–28. The classic economic analyses of Geoff Bertram and co-workers, especially Bernard Poirine, do go against this trend, emphasising particularity and saying: “Common elements of ‘islandness’ may serve to define island economies as a general class, but there clearly exist several distinct ‘species’ within that class and a corresponding menu of strategic options open to islander communities”. Geoff Bertram and Bernard Poirine, “Island Political Economy,” in Godfrey Baldacchino (ed), *A World of Islands: An Island Studies Reader* (Charlottetown, Canada: Institute of Small Island Studies, 2007), p.325. It is noteworthy that Bertram and Poirine are both island-based (NZ and Tahiti) whereas McElroy and Parry are in Indiana.

facing the island⁷¹ and their ability to withstand them, generally by social solidarity⁷² and economic strategy/income sources.⁷³ The islander writers will hold that the main thing they have in common is that all islands are different.⁷⁴ For them the grouping of ‘islandness’ as a common theme is more difficult, and if done at all must be done with the greatest care. The insights will come from particularity, not from common characteristics. The islander writers who are still resident on the island will be, unsurprisingly, reluctant to analyse their own society in depth and detail. As David Weale says, they will have grown up in a “straitjacket of community surveillance”.⁷⁵ They will not readily disclose ‘inside’ information or their sources and will prefer the oral and non-attributable to the written and the explicit.⁷⁶ Islander writers may write more readily from a distance.

Thus there are two levels to the discussion. First, small islands in general are a special class of geo-political objects; second, each island is particular within that class. The first level may be evident to all students of small islands; the second is, in all likelihood, seen more clearly by the small island native. These two insights do not contradict each other. To identify the level of discussion, the treatment of archipelagos

⁷¹ Measured mathematically and listed by Lino Briguglio with a Vulnerability Index score. Lino Briguglio, “Small Island Developing States and Their Economic Vulnerabilities,” *World Development*, vol.23, no.9 (1995), pp.1615–32.

⁷² Baldacchino is pre-eminent here, linking the concept to ‘social capital’. Godfrey Baldacchino, “The Contribution of ‘Social Capital’ to Economic Growth: Lessons from Island Jurisdictions,” *Round Table*, vol.94, no.378 (January 2005), pp.31–46. HF Srebrnik, “Identity, Culture and Confidence in the Global Economy,” in Godfrey Baldacchino and David Milnes (eds), *Lessons from the Political Economy of Small Islands: The Resourcefulness of Jurisdiction* (Basingstoke, UK: Macmillan, 2000).

⁷³ Geoff Bertram has studied SIDS’ economies and developed the concept of ‘Migrant-Remittance and Aid-Funded Bureaucracy’ (MIRAB) in a series of papers with co-authors. Geoff Bertram, “Introduction: The MIRAB Model in the Twenty-First Century,” *Asia-Pacific Viewpoint*, vol.47, no.1 (April 2006), pp.1–21; Geoff Bertram and RF Watters, “The MIRAB Economy in South-Pacific Micro-States,” *Pacific Viewpoint*, vol.26, no.3 (2006), p.497.

⁷⁴ The islander non-writers, the general population, will get on with life, feeling perhaps as Baldacchino suggests “bemused and perplexed” at their characterization as ‘non-viable’ or ‘dwellers in paradise’. Baldacchino, “Studying Islands,” p.42.

⁷⁵ David Weale, *Them Times* (Charlottetown, Canada: Island Studies Press, 1992), p.9, quoted in Baldacchino, “Studying Islands,” p.43.

⁷⁶ Baldacchino, “Studying Islands,” p.43.

may well come as a litmus test.⁷⁷ There may be an initial assumption of similarity between the islands. On the other hand, there may be a starting point of taking each individually. Do we begin: “The Comores Islands are an archipelago in the western Indian Ocean ...”; or do we begin: “Mayotte, Anjouan, Grande Comore and Moheli are the four major islands in what has been described as the Comores Archipelago in the western Indian Ocean ...”? The subject matter remains the same; it is the approach or focus that is different. From the internal perspective, that of the local population, the self-perception may be of a society existing archipelagically on islands in a common sea. On the other hand, the self-perception may be of societies on islands separated by sea where ‘insularity’ or ‘islandness’ are the key words. There will be a more complicated set of circumstances where, in a group of islands, some islanders see themselves in one of these lights, while their counterparts on other islands in the group see themselves otherwise. There will be further difficulties when the populations at large see themselves in one way and the political elite in another. These difficulties will need to be faced when identifying a ‘population’ that will be the ‘self’ in a particular self-determination and are at their most problematic in the case of a group of small islands.

The concept of ‘social capital’ is a tool which may help the analysis. By studying the networks and employment of social capital, it may be possible to gauge the extent of the ‘population’. Social capital is, as we shall see, evident in small islands. Does it cross the waters between islands? If it does, then we can truly speak of the ‘population’ of a group of islands. SIDS have been found to be high in social

⁷⁷ It is worth returning to the development of the word: Is an archipelago a sea dotted with islands (the earlier Greek use of the word) or islands that dot a sea (current use)? The former, with its emphasis on the sea, would seem to allow for greater differentness among the islands. Stratford et al., “Envisioning the Archipelago,” p.114.

capital,⁷⁸ which is defined by the OECD as: “networks, together with shared norms, values and understandings that facilitate co-operation within and among groups”.⁷⁹

Baldacchino describes it in these terms:

What is understood by *social capital* is the resourcefulness of a people to respond positively, collectively and responsibly to an identified challenge – be it political (such as a diplomatic crisis), economic (the loss of terms of trade of a key export item), labour-related (major job losses) or social (landings of illegal immigrants).

It could well be argued that this description is of a social force that is reactive only. Social capital is more than a reaction to circumstances and events; it can bring about joint proactivity as well. Later, Baldacchino seems to accept this, quoting Srebrnik approvingly: “The cornerstone of economic success is the creation of a society suffused with trust and social co-operation amongst its members”.⁸⁰ While conceding that there are potential “conceptual, methodological and ideological headaches” in explaining economic success in terms of trust and values and cooperation,⁸¹ he quotes Armstrong and Read, “Being an island does not seem to be the handicap to economic performance that one would intuitively expect”,⁸² and suggests that Social Capital might hold the key.

Despite everything that might go wrong (the vulnerabilities), there was generally, within small islands, as Baldacchino explains, a high level of social solidarity. The populations of small islands do not ‘bowl alone’.⁸³ Small and separated islands have within them complex social networks; small islanders may spend their

⁷⁸ Baldacchino, “Social Capital,” pp.31–46.

⁷⁹ Ibid., p.32. He continues (at pp.32–3): “... social capital serves as the cultural asset or ‘social glue’ which permits stakeholders to work for the (often long-term and fuzzy) national interest while over-riding (often short-term and tangible) sectarian ones.”

⁸⁰ Baldacchino, “Social Capital,” p.33, quoting Srebrnik, “Global Economy,” p.56.

⁸¹ Baldacchino, “Social Capital,” p.33.

⁸² Harvey W Armstrong and Robert Read, “Insularity, Remoteness, Mountains and Archipelagos: A Combination of Challenges Facing Small States” (Conference Paper, Victoria University of Wellington, New Zealand, 23 February 2004).

⁸³ Robert D Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon and Schuster, 2000). See also Putnam, “The Prosperous Community: Social Capital and Public Life,” *American Prospect*, no.13 (1993), pp.35–42.

lives relating to, being involved with, and talking about, a fairly small number of people, but this will increase rather than lessen the complexity of the relationships. Baldacchino gives an example with his study of a soap-factory, a small industry workplace in rural Fiji.⁸⁴ Baldacchino is describing a place very distant geographically, but it could be Mayotte. In (traditional) Mayotte, work is for the most part co-operative; help is given and returned.⁸⁵ Family linkages are multiple and complex.⁸⁶ A tradition of matrilineality focuses the networks. Village life is all-important; this is where decisions are made and voices are heard, subject to complex lines of seniority.⁸⁷ As in Baldacchino's Fiji, there is nowhere to hide;⁸⁸ no possibility of escaping obligations.⁸⁹ He points out that the small social scale of the Fiji island-world means that human interactions are mediated by the likelihood of meeting the same people again (and again). This, he suggests, makes all participants eager to avoid conflict; this is itself a social norm which may be considered excellent, or to in-coming believers in individualism, frustrating.⁹⁰ To the great benefits of a high level of social capital there may also be a downside (at least to a 'western' outsider). There are at least three ways that this may occur. An individual may be reticent or lack the ability to take decisions or responsibility.⁹¹ Alternatively, it may show in felt responsibilities to the family or village or other 'social capitalists', to share and bring benefits to them. This may

⁸⁴ Godfrey Baldacchino, "A Double Dose of Unitarism: Employment Relations in a Small Firm in a Small Island State," *International Journal of Employment Studies*, vol.7, no.2 (1999), p.112.

⁸⁵ Said Ahamadi, *Mayotte, j'écris ton nom* (Mamadzou : Menaibuc, 2009), p.290.

⁸⁶ Wilfrid Bertile, *Mayotte à l'heure de la départementalisation* (Paris: L'Harmattan, 2012), p.54.

⁸⁷ Fontaine, *Mayotte*, p.72.

⁸⁸ Erving Goffman's notion of a 'Total Institution' comes to mind. Erving Goffman, *Asylums* (New York: Basic Books, 1961), Ch.1, "Characteristics of Total Institutions." To paraphrase Goffman, worlds are distinct entities, with their own linguistic, legal, ethical and cultural practices.

⁸⁹ Harvey W Armstrong and Robert Read, "The Determinants of Economic Growth in Small States," *Round Table*, vol.92, no.368 (January 2003), pp.99–124. We are close to the 'straitjacket of community surveillance' suggested by Weale. See below, n.94.

⁹⁰ Baldacchino, "Employment Relations," p.112. As the owner/manager of the company is quoted (at p.113): "Indeed if you leave the Fijians by themselves to take a difficult decision, they will eventually come to adopt a solution which is the most equitable and where any losses are evenly distributed – intended mainly not to hurt anyone's feelings."

⁹¹ This may have implications when western-style voting is occurring and an individual exercise of choice is considered meritorious. It is strongly linked to an awareness of status within the community.

evolve as 'clientelism'.⁹² Thirdly, it may provide potential for manipulation or domination if and when an elite emerges.⁹³

Beside the social sense, there is also a 'sense of place'. This engenders and is engendered by what Weale describes as "an obvious sense of alterity with the rest of the world beyond the horizon."⁹⁴ Baldacchino adds that holding the same sense of place forms a bond.⁹⁵ For example, it is notable that the traditional African people of the Turks and Caicos Islands are named 'the Belongers'. The bond is there from the sense of place. On the other hand, places beyond the horizon have not been part of everyday thought.⁹⁶ This brings us back to the notion that the self-perception, the self-identification, of an islander may be as just that: an islander. The notion of 'archipelago-dweller' may well come a long way behind.

If it does not and the popular self-perception is of an archipelago-dweller, then the 'population' is of the island-group; any self-determination should then be conducted by this population-as-a-whole. If "I am Comorien" comes before "I am Mahorais" or "I am Anjouannais", "I am Mohelien" or "I am Grand-Comorien", then it is clearly the Comorien population that is the 'self'. There are island-groups or island-chains where this is clearly the case.⁹⁷ As we have seen, in the Comores it is not.⁹⁸

⁹² As Baldacchino says, of Fiji: "Nepotism and discrimination are not dirty words here, but basic criteria for employment". Baldacchino, "Employment Relations," p.111.

⁹³ Baldacchino, "Social Capital," p.34.

⁹⁴ Weale, *Them Times*, p.9.

⁹⁵ Baldacchino, "Employment Relations," p.110.

⁹⁶ This will now be changing, with increased emigration, including of family members. Frequently the family may decide which members will go. All tertiary students leave to pursue their studies. Skype and Western Union are changing the character of 'beyond the horizon'. John Connell, "Island Migration," in Godfrey Baldacchino (ed), *A World of Islands: An Islands Study Reader* (Charlottetown, Canada: Institute of Island Studies), p.455.

⁹⁷ Tuvalu, Kiribati and the Grenadines would be examples.

⁹⁸ See Ch.2.

6.4 Secession and Separation in a Small Island Context

I have suggested that in some groups of islands, the islanders' self-perception has led to identification with an archipelago model, and that in some groups it has not. This difference may be influenced by the populations' attitude to the sea that lies between the islands. Where the sea is seen as a 'highway' or a 'farm', the island group is likely to see itself as archipelagic or a unity; where it is seen as a barrier there are likely to be stronger feelings towards separatism and secession. Where each island is enclosed in a lagoon within a reef, this may be stronger still. I have placed the Comores towards the non-archipelagic end of this spectrum. Is further guidance to be found in the practice in the South Pacific, home to many an archipelago, or elsewhere, or in the theoretical considerations of Small Island Theory?⁹⁹

More specific guidance may be found in the South Pacific. For example, Tuvalu and Kiribati, once one colony and two ethnicities as the Gilbert and Ellice Islands had within that grouping more than two archipelagos. They have now peacefully separated into two of the smallest states on the planet.¹⁰⁰ David McIntyre clearly indicates the differences between the two. The Gilbertese are Micronesian and largely Catholic; the Ellice Islanders, numerically the minority, are Polynesian and for the most part Protestant.¹⁰¹ Their call for separation was based on a desire to protect

⁹⁹ This topic will be considered at greater length shortly. In the meantime, see, e.g., Stratford et al., "Envisioning the Archipelago," pp.113–30. Here, "the paper's goal is to (re)inscribe the theoretical, metaphorical, real and empirical power and potential of the archipelago: of seas studded with islands; island chains; relations that may embrace equivalence, mutual relation and difference in signification." (p.113) The original meaning of the word 'archipelago' was a sea with islands in it, the original being the Aegean, rather than a collection of islands in a sea. See also Baldacchino, "Studying Islands," pp.37–56.

¹⁰⁰ W David McIntyre, "The Partition of the Gilbert and Ellice Islands," *Island Studies Journal*, vol.7, no.1 (2012), pp.135–46.

¹⁰¹ *Kiribati: Aspects of History* (Suva: Institute of Pacific Studies, 1979). Prepared for the occasion of the Independence of Kiribati, this book, written by a committee/workshop of local writers, is an important source for information about Kiribati (Gilbert Islands) and the separation from Tuvalu (Ellice Islands). One author (Uriam Timiti) points out (at p.176): "Great Britain's lack of wisdom in joining the two very different races under a single government in the first place".

their identity.¹⁰² The British at first objected and denied their request, but after a UN-observed referendum, accepted the outcome. Sir Anthony Kershaw, the British minister responsible found a population with “a calmly stated but unanimous insistence on separation”.¹⁰³

The Foreign and Colonial Office (FCO) in London described the separate Tuvalu as a “financial, economic and administrative nonsense”.¹⁰⁴ However, when it came to the vote, on a turnout of 88%, 92% were in favour of separation. Only the Ellice Islanders were polled: The Gilbertese acquiesced in their departure without having any poll or plebiscite. This is, in logic, a more extreme case than the island-by-island count in the Comores. There was no polling of a ‘population as a whole’, taking the old colony as one. There was no mention of *uti possidetis*. In the outcome, the Ellice Islanders did not lose what Macdonald describes as a “relatively privileged position”¹⁰⁵ and the two states¹⁰⁶ have subsequently maintained friendly relations. Of course, being later in date, the Gilbert and Ellice Islands separation was not available as a precedent for the Comores. However, some lessons may be drawn: that there could be flexibility regarding the severance of former colonies;¹⁰⁷ and that the UN would countenance divisions into small new states, at least where there was agreement

¹⁰² Ibid., p.173.

¹⁰³ McIntyre, “Gilbert and Ellice Islands,” p.143.

¹⁰⁴ Quoted in *ibid.*, p.143.

¹⁰⁵ Barrie Macdonald, *Cinderellas of the Empire* (Canberra: ANU Press, 1982), p.245.

¹⁰⁶ Kiribati is now a republic; Tuvalu has Queen Elizabeth as head of state.

¹⁰⁷ The point was well made by Macdonald: “Two decisions taken by the British government: the first, in the 1890’s, sought to bring two diverse peoples under a common administration, and the second, eighty years later, allowed each to seek its own identity as an independent nation. This latter move represented an important departure from the precedents of decolonisation and a belated realisation that problems of scale and of fragmentation might, on balance, be less costly in both financial and human terms than the subjugation of minority interests in the name of territorial integrity.” Macdonald, *Empire*. There were other differences: the Protestant ethos of the London Missionary Society (LMS) had had an influence in the Ellice Islands, with a great emphasis on education and savings. These qualities along with a greater sobriety than the Gilbertese, “made the Ellice islanders appear ‘to act more like Europeans’, a trait that for Gilbertese, might well have led to family and community censure and even ridicule” (*ibid.*, p.250). Also, the Gilberts had been subject to Japanese occupation (with schools largely closed), while the Ellice Islands had been a US base (*ibid.*, pp.246–7). The educational progress of Toaripi Lauti, later first Prime Minister of Tuvalu — from the islands to Fiji and thence to secondary school in New Zealand is reminiscent of that of Younoussa Bamana to schools in Anjouan and Madagascar.

on all sides and no party was complaining. The ethos and the outcome were very different. As Macdonald writes:

The Ellice Islanders soon came to be regarded (even by the British government) as the initiators of separation and this interpretation was given greater currency by the ‘sweet reasonableness’ approach of the Gilbertese leaders who adhered to their own position — also clarified in the late 1960s — that the future of the Ellice Islands was for Ellice Islanders to decide.¹⁰⁸

‘Sweet reasonableness’ would seem to be the ingredient present in the Pacific, but lacking in the Indian Ocean. Here, neither party’s self-perception involved being attached in a unitary state to the other. They were able to part without either feeling hard-done-by or diminished. Macdonald concludes by saying:

In the years leading up to the transference of power, the colonial administration neither perceived the strength of the emerging movement for separation nor realised that for more than seventy years colonial policies had directly and indirectly contributed to the sentiment that lay behind it ... Throughout the twentieth century it was only British rule that the Islanders had in common.¹⁰⁹

Apart from the body of opinion in London that thought the separation ill-advised, no protest was raised elsewhere. Geoff Bartram and Ray Watters raised doubts about the economy, the policy of development and the ability to pay for it,¹¹⁰ not about the “capable bureaucracy and recent able and responsible leadership”.¹¹¹ They pointed out that “only Tuvaluans can decide whether the costs of becoming ‘modern’ are worth it in an atoll environment”, and concluded that aid will have to continue indefinitely if this program is to be successful, as the move to ‘modernity’ is more expensive in the setting of small, remote islands.¹¹²

¹⁰⁸ Ibid., p.252. The independence of the Gilbertese as Kiribati became a more complicated issue, with the extended litigation of the Banabans of Ocean Island against the British Phosphate Company becoming a cause for delay.

¹⁰⁹ Ibid., p.259.

¹¹⁰ Geoff Bartram and Ray Watters: *New Zealand and its small Island Neighbours: A Review of New Zealand Policy towards the Cook Islands, Niue, Tokelau, Kiribati and Tuvalu*. Wellington: Institute of Policy Studies 1984 Paper 84/01 p.284.

¹¹¹ Ibid., p.296.

¹¹² Ibid., p.297.

The case of Tuvalu/Kiribati gives credence to the view that islands and archipelagos are different, both to each other¹¹³ and to territories on larger landmasses. It is also an example of the non-application of *uti possidetis*. The comparison with the Comores is inescapable. Both the Comores/Mayotte and Kiribati/Tuvalu were joined as colonial administrative units by faraway colonial administrators having little or no understanding of the social structures or self-perceptions of very traditional societies. Both constructs have ended in schism.

Two other archipelago secession cases are to be found in the Caribbean. These are Anguilla/St Kitts/Nevis, which are post-British colonies, and Aruba, post-Dutch. The first, a British construct which ended in the embittered secession of Anguilla, would definitely ring Comorien bells. Both could be seen as the herding together as political entities, of islands with greatly differing cultures and no love for each other, for essentially metropolitan and colonial administrative convenience. As Colin Clarke notes, “although St Kitts is visible from Anguilla, flat Anguilla is invisible from St Kitts, and there is political symbolism in that physical fact”.¹¹⁴ He goes on to describe the Anguillans in terms of poverty, religiosity, a strong sense of belonging, and the absence of any ties to the people of St Kitts, the larger island. He quotes an Anguillan petition of 1873, ignored then and since by the British:

the interests of Anguilla, its resources and capabilities of development are not understood ... by the legislative body of St Christopher who are utter strangers

¹¹³ Macdonald writes: “Long ago the island communities of the Central Pacific were virtually independent polities, recognising a cultural affinity with their near neighbours but in most cases existing apart from them ... Dialects, material culture and customary law may have varied only slightly from island to island, but a man from Tabiteuea saw himself as a Tabiteuean not a Gilbertese; a man from Nanumea was a Nanumean not an Ellice Islander or a Tuvaluan ... Gradually however the people were brought together by their shared experiences following from contact with the West ... above all by colonialism ... Just as it was colonialism that brought the islanders together, so it was colonialism or rather the decolonisation that was the corollary of it that inevitably drove them apart”. Macdonald, *Empire*, p.274. His final words are: “Beneath it all, in both Kiribati and Tuvalu, there is something immutable about the individual’s ties to his kin and to his land, and a supreme identification with the island on which both are to be found.” *Ibid.*, p.275.

¹¹⁴ Colin G Clarke, “Political Fragmentation in the Caribbean: The Case of Anguilla,” *Canadian Geographer*, vol.15. no.1 (March 1971), p.19.

to us, ignorant of the community, careless of their wants, and therefore unequal to discharge ... the most important duties of legislation for us ... [T]his legislative dependence on St Kitts can in no sense be called a legislative union, has operated and continues to operate most injuriously against us, and is mutually disliked.¹¹⁵

In the government formed in the wake of the 1966 Constitution, the government came wholly from St Kitts constituencies, the opposition from the two members for Nevis and Anguilla. It was not a viable solution.¹¹⁶ The comparison may be made with the relationship of Mayotte and Moheli with Grande Comore and Anjouan. The Anguillan dislike of the Chief Minister, Robert Bradshaw, is also reminiscent of the Mahorais and Mohelien opinion of Ahmed Abdallah.¹¹⁷ Clarke points out that the charge of neo-colonialism which was being made against St Kitts was not levelled at the UK:

Being a dependant of Britain was quite different from being a ‘colony’ of St Kitts. Indeed, a direct relationship with Britain had been the constant desire of the Anguillan people.¹¹⁸

Meanwhile, nearby, the former colonies of the Dutch empire were having their problems also. Here, the case of Aruba and the Netherlands Antilles¹¹⁹ is more complicated. For a start, the Netherlands Antilles is not an archipelago, but has been treated more or less as one; perhaps a ‘quasi-archipelago’. It consists of six islands: Curacao, Aruba, St Maarten (half an island), Saba, Bonaire and St Eustatius, scattered in the Caribbean. These with Surinam (on the mainland of South America) were the

¹¹⁵ Despatch of 23 August 1873; Colonial Office 71/192.

¹¹⁶ The show-down began soon after, at an inter-island beauty queen competition where shots were fired.

¹¹⁷ VS Naipaul: “The people of Anguilla have hated Robert Bradshaw ever since, angered by their indifference, he has said he would turn the island into a desert, and make the Anguillans suck salt.” Quoted in Clarke, “Political Fragmentation,” p.19. There was a comparable case in the Cook Islands in 1978, when Penrhyn Island threatened to seek independence as a rejection of the government of Sir Albert Henry, widely considered to be corrupt, nepotistic and determined to disadvantage Penrhyn. Penrhyn is also the furthest island from the capital, Rarotonga. Nihi Vini, “Penrhyn: The Peoples Choice,” in Ron Crocombe et al., *Cook Island Politics: The Inside Story* (Auckland: Polynesian Press., 1979), p.192.

¹¹⁸ Clarke, “Political Fragmentation,” p.21. A referendum upheld the UDI by 1813 votes to 5. The near-unanimity eclipses even that of Mayotte.

¹¹⁹ This is the subject of Steven Hillebrink’s magisterial book, to which I am greatly indebted, not only for matters concerning this particular case, but also his discussion of Self-Determination, with reference to the UN and more generally. Hillebrink, *The Right to Self-Determination*.

Dutch colonies in that region. Surinam(e) became independent in 1975. From 1955, after much discussion, the islands were grouped under the one name, Netherlands Antilles, in a complicated relationship with Suriname and the (European) Netherlands. Each of the three was a ‘Country’ (Landen) or constituent part of a legal entity named the ‘Kingdom’ of the Netherlands, which was responsible for, inter alia, foreign affairs and defence. Caribbean representatives, from Suriname and each island, sat on the Council of Ministers of the Kingdom, but were always outnumbered by the representatives of the European Netherlands, which, to make things still more complicated, was a member of the EEC (later the EU).

In many aspects of life the Antilles had autonomy, but an autonomy delineated by The Hague, which kept much control. They were not independent, but to some, in some ways, appeared to be — at least sufficiently to release the Netherlands from the UN requirement of NSGT reporting. They were not part of the ‘mother-country’ Netherlands, and they did not match the UN criteria for ‘Free Association’. They were a *sui generis* and complex construction that matched no international paradigm. In 1955, by dint of a certain amount of ‘smoke and mirrors’, general lack of understanding of the mechanism and a favourable US/Brazilian draft Resolution, the Netherlands Antilles and Surinam were removed from the UN NSGT list as if they had self-determined their way to independence.¹²⁰ Surinam was a ‘Country’ in its own right, and when it chose independence, there was little difficulty. Aruba, when it subsequently wished to secede from the Netherlands Antilles ‘Country’, did not seek independence; it wanted to be a ‘Country’ in its own right within the Kingdom — it wanted to leave the other islands to have its own relationship with the other parties. After much (acrimonious) debate, it was accommodated; separate from the others, but

¹²⁰ When the Resolution was passed, the abstentions were in an absolute majority. The date was 1955, before there were sub-Saharan members of the GA, and in an epoch when not offending the USA was a major consideration.

not separate from the Kingdom. No issue was raised at the UN or elsewhere. Subsequently, Curacao and St Maarten wished to travel the same path, thereby leaving the tiny Bonaire, Saba and St Eustatius to be the rump of Netherlands Antilles, and a very doubtfully-viable economic entity. The suggestion has been made that these three should integrate totally into the (European) Netherlands. So far the populations have shown no enthusiasm; St Eustatius was the one population that in the last round of referenda voted that it was happy with the status quo. It may be that they will follow the path of Mayotte into integration; in a way *faute de mieux*.

For the most part, these difficulties and differences have lain between the islands. They are six islands with apparently similar views but an inability to agree. None wanted outright and total independence; none (save St Eustatius) was happy with the status quo. The majority view on the majority of islands was that each wanted a link (especially the link of nationality; secondarily the link of EU OCT status) to the Netherlands, but not to each other. Aruba had achieved this quasi-independence, at least within the Caribbean. Curacao (larger) and St Maarten (more prosperous and enjoying a fairly-relaxed land border with St Martin [French COM¹²¹ and thus a part of the EU]) wanted it too. Such demands are hard to meet within the traditional UN scheme of things where the norm, as we have seen, remains independence, or within the Dutch scheme of things, where ‘country’ status within the Kingdom might work for the larger islands, but there is the difficulty of finding some special lifeline to be thrown to the three small islands, Bonaire, Saba and St Eustatius. For these a ‘country’ status individually would be expensive and difficult to maintain. Their quest for self-determination has not really been resolved.

¹²¹ *Collectivité d’Outre-mer.*

Illustrated by these cases, my argument, to re-state it, is that a number of islands, archipelago or not, cannot invariably be construed as an entity for the reason only that they were once delineated as a colony. With islands, the outside world may have had a practice of urging the centripetal. From afar, it may appear to make sense. Locally the centrifugal will often win. Where there is locally an absence of a self-perception as ‘archipelagic’, of being a single population straddling an internal sea, enforcement of unity from afar will not be successful. A colonial regime may enforce it; the plan and structure for independence may promote it; however, a supposed unity that is not endorsed locally is unlikely to last. The Federation of the West Indies’ failure to endure could be taken as an example. It was, it must be said, an attempt at something on a larger scale, where there was an even more complex set of relationships,¹²² and British control had never really been relaxed before the collapse of the enterprise.¹²³ The politicians could not agree and were often put in a position of competing for investment; the populations were never really invited to agree. It was a construct on a different scale.

The groupings of smaller islands of the Caribbean are nearer the scale of the Pacific and Indian Ocean islands I have discussed here. Examples are the Caymans, the Turks and Caicos (TCI), the Grenadines¹²⁴ and the British Virgin Islands (BVI).¹²⁵ Gordon Lewis, writing in 1968, grouped them “by reason of their minuscule

¹²² Gordon K Lewis, *The Growth of the Modern West Indies* (New York: Modern Reader Paperbacks, 1968), Ch.14. As Lewis writes (at p.343): “The recognition of the seminal truth that only a unified Caribbean, politically and economically, can save the region from its fatal particularism is at least a century old”. Perhaps the next half-century since he wrote has shown that the ‘particularism’ is not in fact ‘fatal’ and should be accepted as a part of the foundations of the society.

¹²³ British control, or at the very least influence, was evident at the Conferences that preceded the Federation. *Ibid.*, pp.350–1.

¹²⁴ The Grenadines are an archipelagic string of islands and cays, stretching south from the main island, St Vincent towards Grenada.

¹²⁵ The British Virgin Islands form one of the most prosperous island groups of the Caribbean, with a strong tourist trade and an expanding role in Financial Services/ tax haven.

economies, their anomalous constitutional status and their barren isolation”.¹²⁶ This may well have been the case at that time and to an outsider. They also have in common that, within each of these small societies, there are strong bonds and social capital. For example, in the TCI, the Belongers, the long-time population¹²⁷ with its origins in the salt-trade, are now becoming outnumbered by the non-islander incomers¹²⁸ but maintain strongly their way of life. The Belongers share a largely African culture based in Christianity, sea-faring and fishing, a tolerant welcome to tourists¹²⁹ and an easy-going attitude to work.¹³⁰ There is a strong sense of identity¹³¹ in this community, especially on Grand Turk Island, home to the capital and at a distance from most of the tourist resort developments.

These islands and groups are only examples. The study of Small Islands and the building of a conceptual framework continue to develop. Despite the opinion of some theorists in this field, for example Elaine Stratford¹³² and Eve Hepburn,¹³³ that the work of ‘Small Island Studies’ is at an early stage, awareness of the specificity of small islands has come a long way since 1975, when there was no thought to consider the *Affaire Comores* in this light.

Over the same period, the invocation of *uti possidetis* in the post-colonial world has diminished. The surge in awareness and discussion of the principle following its application by the Badinter Commission in the former Republic of Yugoslavia was not

¹²⁶ Lewis, *Modern West Indies*, p.330.

¹²⁷ 90% of the Belongers have African origins, the balance of mixed race.

¹²⁸ John Kersell, “Government Administration in a Very Small Microstate: Developing the Turks and Caicos Islands,” *Public Administration and Development*, vol.8 (1988), p.173.

¹²⁹ John B Gatewood and Catherine M Cameron: “Belonger Perceptions of Tourism and its Impacts in the Turks and Caicos Island” (Report, based upon work supported by the US National Science Foundation under Grant No. BCS-0621241, August 2009), p.27, <http://www.lehigh.edu/~jbg1/Perceptions-of-Tourism.pdf>.

¹³⁰ Kersell, “Government Administration,” p.177.

¹³¹ This is particularly strong in relation to sport. Cricket dominates, followed by football, where there is more enthusiasm than success. TCI are presently ranked 203 (and last) in the FIFA ratings.

¹³² Stratford et al., “Envisioning the Archipelago,” p.115.

¹³³ Hepburn, “Recrafting Sovereignty,” p.128.

replicated in the area where it was supposed to be imperative, namely, the post-colonial. This has been particularly true with regard to islands and groups of islands. At least where the parties have not invoked the principle, it has remained undemanded by others. The Gilbert and Ellice Islanders were told that their divorce was ill-advised. They were not told it could not be done. In the Caribbean, *uti possidetis* was not the language of any discussion. This, it may well be thought, would be the case in the Comores of today. It should have been, I argue, in the 1970s.

In summary, returning to the argument laid out at the beginning of this chapter, the archipelago that Mayotte is supposed to be a part of is a highly doubtful entity, whether in law, geography or self-perception. There is great difficulty in holding that *uti possidetis* can be applied to island groups. It is, therefore, better to reject the notion that Mayotte was subject to the principle of *uti possidetis*. If this position is accepted, the presumptions made by the OAU and the UN subsequent to 1975 were erroneous. Had the Comores been able to show, and to argue on the basis of, a self-perceived unity of population across the four islands, sharing archipelagic territorial waters, working together and mutually employing social capital as a resilient four-island economy, their argument would have been strong. However, this is just what they could not show. Instead, their case was made to depend on an assumed tenet of international law that has been shown to be much weaker and less applicable than was supposed. It might be said, in response, that ‘that was then, this is now’. What was plausible, a call to a particular response in 1975, is not how things stand in 2014, when there are both a scrutiny of the issues and a range of possible outcomes that are wider and more flexible. In other, later, and somewhat similar cases, the separation of islands within groups has been found to be a possible and workable model, as have incorporations in larger states. The events of 1975 in the Comores caught the high tide

of decolonisation, when a questioning of the theoretical substructure was never undertaken; interpretation was only later to become more nuanced.

Baldacchino, writing on sovereignty and ‘upside down decolonisation’,¹³⁴ provides evidence for this trend towards a more nuanced interpretation. He writes:

This behaviour is neither unusual nor paradoxical. The politics of “upside-down decolonisation” are the norm in today’s small non-independent territories ... Yet the value-laden discourse of mainstream political science, along with the scrutiny of the United Nations Special Committee on Decolonization, belie an enduring obsession with the mantra of sovereignty as an intrinsically laudable, and almost historically unavoidable, evolutionary route.¹³⁵

The Mahorais were early travellers along the path of the ‘upside-down’ rather than that of the ‘enduring obsession’. Nowadays, their behaviour would not be seen as unusual, paradoxical or contrary to international law.

¹³⁴ Described as “the active and dogged pursuit of extended colonial relationships”, this was a term first applied to the Netherlands Antilles. Rosemarijn Hoefte and Gert Oostindie, “Upside-Down Decolonisation,” *Hemisphere*, vol.12 (1989), pp.28–31.

¹³⁵ Baldacchino, “Micropolity Sovereignty,” p.53.

CHAPTER 7

CONCLUSION

The *départementalisation* of Mayotte is significant on several levels. It is, first, a remarkable story of a political project where the aim was achieved after more than fifty years of unwavering effort. Second, it illustrates changes that have developed over that period in the interpretation of international law. Third, the story shows the potential difficulties when a reading of international law is in opposition to a domestic constitutional interpretation. Fourth, it demands an examination of theories and assumptions — notably, regarding *uti possidetis*, archipelagos and the definition of boundaries — that have previously remained unexamined in this context of small islands. Fifth, it shows itself as an inadvertent precursor for a model of ‘upside-down decolonisation’ that has been adopted and accepted elsewhere. Sixth, it brings into focus an international dispute that remains unresolved. Seventh, it provides a case study for the difficulties of integrating an impoverished traditional society into a large and complex first-world state. For these reasons, Mayotte, with its self-determination to the status of *département*, is significant. It is instructive to expand each above point in turn.

1. It is surprising that such a long-running international political saga is so little-known, commented on or analysed in Anglophone circles. It could be suggested that it is because it lies outside the American, British or Australian sphere of interest. This is particularly surprising in the last case; Australia frequently claims to be an integral participant in the Indian Ocean and its affairs. It is hoped that this thesis may provide information about events that are ongoing in the presumed Australian backyard. Australia may also find value in considering circumstances that have some

analogy with its own quasi-colonialist past and relationships with small islands such as Christmas Island or, further afield, Bougainville.¹

2. International law may give the appearance of accreting without changing. Both in judgements of the ICJ and in Resolutions of the United Nations, the new are added but the old are not expressly removed or over-ruled. The *Affaire Mayotte* provides a marker that indicates that international legal attitudes have indeed changed over fifty years. Decolonisation is still a central part of the law, but the permissible routes to its achievement have multiplied. Self-determination remains problematic in the largely post-decolonisation era, embroiled as it is with the issue of territorial integrity; however, the routes to its achievement may have increased, at least in the proclamations of extra-UN gatherings such as Helsinki and Algiers. The *départementalisation* of Mayotte has been accepted without demur. In the world at large, the number of claimants of self-determination has not declined; however, more are minorities and fewer are colonies. More are reaching solutions other than outright independence.

3. The processes of the separation of Mayotte from the Republic, now Union, of the Comores were widely criticised internationally and said to be illegal. In the UN, France, without support in the General Assembly, was obliged to use its veto in the Security Council. However, the only judicial consideration has been by the *Conseil Constitutionnel*, which interpreted the matter entirely in terms of the French Constitution. It is open to question whether, if the case had been considered by the ICJ, the same conclusion would have been reached — that it was entirely a matter of domestic constitutional law. There is an important point of law here, central to this thesis.

¹ Bougainville has challenging similarities to Mayotte.

4. A study of the *Affaire Mayotte* makes it clear that certain commonly employed terms and assumptions are in need of re-examination before they can be usefully employed when considering small islands and groups of islands. Notions usually applied to large landmasses, such as ‘boundaries’ and the legal principle of *uti possidetis*, are cases in point. ‘Archipelago’ is a commonly-used descriptor, often without precision as to the meaning of the term.

5. There has been a trend, particularly in small island polities, towards what has been described as ‘upside-down’ decolonisation, where the small island has been more anxious to maintain a link, to the point on occasion of integration, with the erstwhile-coloniser. This political phenomenon may occur against the wishes of the colonial power. Mayotte provides an early case study of this phenomenon, from the days before it was widely identified and named. It is not claimed here that this was the intention of the people of Mayotte; it is rather argued that they followed the path they did for other reasons. However, it is still important for anyone wishing to understand ‘upside-down’ decolonisation to have knowledge of the *Affaire Mayotte*.

6. Mayotte is currently named in the Constitutions of two sovereign states as a part of the territory of each state. This presents difficulties on two levels. First, it is inherently destabilising and unsatisfactory as a matter of international law. While no resolution is in sight, or even under discussion, all international lawyers can agree that it would be better if it were not so. At the second, and practical, level, it makes the co-operation urgently needed between the islands of the Comores so much more difficult to achieve. This is particularly true in the case of inter-island movement of peoples and trade. It also affects, for example, participation in regional sporting events. As Mayotte develops its status as a *Région* rather than as a simple *département*, it will increase its ability to participate in inter-island and regional events and discussions rather than

needing the *République* to act on its behalf. However, this will not resolve the issue from the Comorien point of view, apparently being asked to meet and negotiate with a part of itself. Difficulties abound in an area where the need for practical co-operation is great.

7. Mayotte, as a DOM of France, is in the process of a transformation of incredible difficulty and interest. The work is ongoing of bringing a small, remote island with a village-based traditionalist African-Malgache Muslim society into the organizational and social framework of a large European state, with all its ramifications for healthcare, labour law, social security and educational systems as well as its strong attachment to *laïcité* (secularity). The hope is still there that this melding can be effected without the destruction of the Mahorais society. The implications of this are of great significance, but are beyond the scope of the present study.

These are seven reasons why Mayotte is significant and an understanding of the issues concerning the legal status of Mayotte is important. This thesis has not sought to answer all these questions; rather it provides a context, in which Mayotte and the self-determination to the status of *département* that it has now achieved, may be understood. The arguments of the 1970s placed the Comores and France as the two protagonists. In this thesis I have placed Mayotte at the forefront. By changing the angle of the discussion to a different perspective, I have re-presented it in a form that could assist in the finding of present-day solutions.

The conclusions of this thesis are several. They are: first, that the course of action undertaken by Mayotte was determined by its history and by longstanding difficult relations with its neighbouring islands; by its perception of life as a potential minority participant in a Comores of four islands; and by a form of Path-determination.

Départementalisation, though in the end acceded to by France, was not fundamentally a French plan or initiative. A ‘French’ Mayotte could be painted as being advantageous to France, and may indeed prove to be so, but evidence of French planning to bring this about is lacking. It is rather that France was under pressure from Mayotte to agree to *départementalisation*: in other words, Mayotte was the main protagonist.

Second, the thesis suggested that while the separation of Mayotte was seen to be contrary to the international law of the time, based as it was on a certain understanding of the concept of self-determination and its relationship to the process of decolonisation, this point of view has notable weaknesses and is disputable. This widely-held view sees France as having been in breach of its international obligations when it apparently ignored the doctrine of *uti possidetis* and legislated for an island-by-island consultation, contrary to the concept of self-determination (as a result of decolonisation) held by the UN Committee of 24. It ignores the French view of the centrality of France’s Constitution and its interpretation by the *Conseil Constitutionnel*. It is my argument that the validity of this earlier view depends on an interpretation of self-determination and *uti possidetis* that probably always was too narrow, and fifty years on is demonstrably so. The position changes when Mayotte is placed at the centre of the discussion and the consultation of Mayotte is seen as self-determination.

Third, this thesis argued that the principle of *uti possidetis* is weaker than it appears, when applied to the boundaries of mainland states; further, it is incoherent and unsuitable when applied to groups of small islands, incorrectly described as archipelagos.

In summary, gulfs or gaps are the recurring motifs in a discussion of Mayotte. First, there is the gap between the idea and the reality, the ‘Utopian’ and the ‘Realist’.

Then there is the gap between how things were in 1958 and the circumstances of 2011; between the past, so recent and traditional, and the very different social template of the future. There is the gap between the French view of *départementalisation*, with an emphasis on structures and systems, not least on *fiscalité*, the tax-base; and the Mahorais belief that they could adapt, rather than be changed. There is the gap between the French perspective and the Comorien, indicated by the competing claims to the territory of the two Constitutions. There is the literal and metaphorical gulf between the islands, that is frequently crossed by *Kwassa-Kwassa* overloaded with ‘illegal’ migrants, and rarely, if ever, by political leaders. There is now the gap between Art.1 of the Comorien Constitution and current reality.

Two further gaps are significant: the lack of knowledge in the world at large (particularly the Anglophone world) of what has happened and what is happening in Mayotte, and the lack of academic discussion and analysis of these events.

The future remains unclear, and proposals for any re-orientation or re-making of relationships between Mayotte and the Union of Comores are scant. Ali Ahmed Abdallah suggests a form of joint sovereignty of Comores and France.² To my mind this is not feasible. Self-determination requires some positive intention on the part of the ‘population’. There is no current evidence that the people of Mayotte would acquiesce in, let alone consent to, even half-Comorien sovereignty. There is no evidence that under the French Constitution Art.53 there would be either Mahorais consent for a ‘half-cession’ or the constitutional ability for France to agree to such an arrangement. It would seem more likely that one day, with suitable support, the Union of Comores could alter its Constitution and forego its claim, which would at least allow the legal position to match current reality. Such a change will be hard to achieve

² Abdallah, *Le statut juridique de Mayotte*.

and it will require international support that will itself be a *volte-face*. However, one day, the dilemma will have to be faced. Mayotte may have achieved the status of *département* that it has long sought. There are many other issues that remain to be resolved.

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APPENDIX 1

MAYOTTE: *DRAMATIS PERSONAE*

Ahmed Abdallah Abderemane

Ahmed Abdallah was born in 1918 in Anjouan, the son of a wealthy and minor-noble family with extensive plantations and an import-export business for rice and vanilla. His secondary schooling was at the Regional school at Majunga in Madagascar. He returned to Anjouan in 1940 to work in the family business. In 1945, he campaigned for Saïd Mohamed Cheikh and became a disciple and friend. In 1946, he was elected to the *Conseil General*, of which he became President in 1950. In 1953, he became a representative of Comores in the *Assemblée Nationale*. From 1959 to 1972, he was a *Sénateur*. In 1972, he followed Saïd Mohamed Cheikh as President of the *Conseil*. In December of that year the Chamber of *Députés* voted a resolution giving him the power to negotiate independence ‘in friendship and cooperation with France’ After the negotiations which are central to this thesis, Ahmed Abdallah returned to Moroni to oversee the decision of the *Conseil* that constituted the unilateral declaration of independence, and to be confirmed as President and chief of state.

One month later, on 3 August 1975, while Ahmed Abdallah was in Anjouan, a coup occurred, orchestrated by Bob Denard. Ahmed Abdallah was imprisoned, then placed under house arrest and finally exiled via Mayotte to France. Ali Soilihi was installed.

In 1978, Bob Denard orchestrated another coup, bringing back Ahmed Abdallah apparently in triumph. The triumph was short-lived, though the Presidency lasted through deteriorating conditions, the failed coup of 1985 and the savage reprisals of the mercenaries, until November 1989. It ended when Ahmed Abdallah met his death, apparently assassinated by order of Bob Denard.

An Anjouannais hagiographer¹ saw in him ‘an ocean’ of human qualities: he was elegant, cordial, and courageous with a ‘feeling for life, for love and for friendship’. He was not seen in this light in Mayotte where he was hated. He was proudly illiterate and an inveterate donor of gifts that in another time could have been construed as graft.

Ahmed Abdallah held the monopoly for the importation of rice, the basic food of Comoriens, to all four islands, and made a fortune from it. He had extensive landholdings in Mayotte worked mainly by an Anjouannais workforce. He was also close to Saïd Mohamed Cheikh. These were three reasons for his unpopularity in Mayotte, apart from political differences.

Younoussa Bamana

Younoussa Bamana was probably the most significant individual in the modern history of Mayotte. He was born in Kani-Be in 1935 and was brought up by his great-aunts on Petite-Terre, where schooling was available. He gained entrance to the Lycée Gallieni in Antananarivo at the age of 12, and subsequently qualified as a teacher. He was posted to Anjouan. He later returned to Mayotte and in 1969 became Principal of the school at Sada. In 1958, he had been elected to the Conseil in Moroni. In 1971, he was re-elected, representing UDIM, and subsequently MPM, of which he became Secretary-General in 1974. In 1975, he was the first *Préfet* of the separated Mayotte and the only local person to hold that office. He was the only elected *Préfet* in the history of the post — it normally being a State appointment. Bamana was President of the *Conseil General* from 1977–2004.

¹ Anonymous, but writing for the *Federation des Associations Domoniennes en France*. 26 Novembre 2000. Domoni was Ahmed Abdallah’s home town in Anjouan.

He described himself as: “fisherman and countryman, polygamist, as was normal, the father of twenty children, a sincere Muslim but maintaining a distance from the more rigorous precepts of the Qu’ranic discipline ...” Boisadam, who was both an admirer and a friend and dedicated his book to Bamana, describes him as: “the cement of the Mahorais popular movement, the one who, in the debates with France, maintained a cautiousness in the Départementalist claims that was without doubt typically Mahorais”.²

Bamana went on to become a *Sénateur*, but failed in his attempt to be re-elected in 2004, having fallen out with his long-time co-worker Marcel Henry. In 2006, he was designated *President d’Honneur* of the *Conseil General*. He died in 2007 after a period of failing health. He was renowned for his integrity and the simplicity of his lifestyle. Bamana was the authentic voice of the Mahorais, and was never for a moment suspected of advancing his own business or other interests in the struggle for *département* status. As Bruno de Villeneuve writes: “Given the nickname ‘the Sage’, Bamana was always respected, listened to, rarely criticised. After his death, thousands of people came to render him one last homage in the village of his birth, Kani-Be.”³

Saïd Mohamed Cheikh

Saïd Mohamed Cheikh was the first major political figure of the modern era in the Comores. He was also the first qualified medical practitioner. He was born in 1904 into a family of Notables and was educated in Madagascar, where, after sojourns in Grand Comore and Moheli, he practised medicine, mostly with lepers, for many years. He was elected a *Député* in 1945 by 3404 voters from a population of 120,000. He travelled to Paris, where at first he lived in isolation and poverty, and worked closely

² Boisadam, *Mais que faire de Mayotte?*, p.103 (my translations).

³ de Villeneuve, *Mayotte de A à Z*, p.37 (my translation).

with Felix Houphouet-Boigny on the *Loi* outlawing forced labour. At home he became popular for these efforts and for proposing the break-up of large estates, particularly in Anjouan. These efforts were of less significance in Mayotte and Moheli where the social structures and land-holding were different. From 1951, Cheikh became more involved in the domestic politics of Comores, with the development of the political parties: 'Whites' and 'Greens'. From 1955, Cheikh, becoming ever more powerful, turned against independence as he became closer to de Gaulle. This led to increased opposition at home. His life was becoming complicated, with a wife and two mistresses in France and two wives in Comores, and many children, recognised and unrecognised in both places. He saw, with jealousy, his old friends becoming Presidents of independent nations, and aspired to a similar position for himself. In 1962, he was elected President of the *Conseil*, a post he held until his death. As he aged, he became increasingly remote and autocratic and inclined to see any opposition, from any quarter, as an attack on him and his position. He died in March 1970 after a month in a coma.

He is the subject of an excellent biography: Mahmoud Ibrahime, *Saïd Mohamed Cheikh (1904–1970): Parcours d'un Conservateur* (Moroni : KomEdit, 2008).

Bob Denard

Born Gilbert Bourgeaud, 'Colonel' Bob Denard was also known as Saïd Mustapha M'Hadjou. He was born near Bordeaux in 1929. He joined the French Navy in 1945 after working as a mechanic in the local garage, which he subsequently bought from the proceeds of his African adventures. He was sent to Vietnam and served until 1952, when he resigned and joined the police force in Morocco. Both periods of

service ended in disciplinary proceedings. *The Guardian*, in its obituary, describes him as “a dapper former marine commando”, which is incorrect on all points. After a period as a kitchen equipment salesman, he went to Congo to fight for Moïse Tshombe, where he acquired his rank of Colonel and was wounded. Subsequently, he was involved in mercenary activities in Yemen, Zimbabwe, Iran (Kurdistan), Benin, Gabon, Angola and Comores. Others add Libya, Vanuatu and Chad. The myths surrounding Denard are many and no two accounts concur.

His first intervention in Comores was the removal of Ahmed Abdallah and his replacement by Ali Soilihi in August 1975. His second was the removal of Ali Soilihi and his replacement with Ahmed Abdallah. The mercenaries sailed from Lorient, Brittany in a boat financed by mortgaging the garage. This time the mercenaries effectively took power, through their control of the Presidential Guard, which became the prime instrument of repression of the population.

As aid from France and elsewhere dried up, funds and support were forthcoming from South Africa, keen to establish a staging post for circumventing international sanctions. In 1979, as opponents of Ahmed Abdallah gathered, France came to his aid in the shape of Jacques Foccart.⁴ Meanwhile, Denard made a comfortable life for himself, turned to Islam and married again (and again: seven wives in all). After the death of Abdallah, Denard retired to South Africa, whence he was taken to France to face court proceedings that were lengthy but essentially inconclusive. Having developed Alzheimer's, he died in his native Medoc in 2007.

Denard has been the subject of a considerable literature, including biographies by Pierre Lunel and Samantha Weinberg: Pierre Lunel, *Bob Denard : Le roi de fortune*

⁴ Lunel, *Bob Denard*, p.528.

(Paris: Editions No 1, 1991); Samantha Weinberg, *Last of the Pirates: In Search of Bob Denard* (London: Pantheon, 1995).

Jacques Foccart

Born in France in 1913, Jacques Foccart came from a family long engaged in the banana trade in Guadeloupe, where he spent much time. In 1940 in London, he became involved with Charles de Gaulle, to whom he became confidante, driver and aide. This relationship continued for all the time de Gaulle was in power, under the Fourth and Fifth Republics. Foccart was known to be the only man who could see the General any and every day without appointment. He became de Gaulle's expert on Africa, 'M. Africa', a role that was continued under subsequent Presidents. He developed the *Réseaux Foccart* ('Foccart networks') which became the arteries of power in French Africa, deep in the shadows. To him have been attributed 'Foccartism' and 'the Foccart Syndrome' (the title of a recent book); the description given to him is 'man of the shadows'. He has even had a character in super-hero comics named after him. 'Foccartism', it is suggested, combines the existence of a specific place beside the President for a 'M. Africa', secrecy, power, and a smell of scandal. Foccart died in 1997.

The debate over his influence and his legacy continues. Useful sources include Jacques Foccart, *Foccart parle : entretiens avec Philippe Gaillard* (Paris: Fayard, 1995), and Jean-Pierre Bat, *Le syndrome Foccart : La politique française en Afrique de 1959 à nos jours* (Paris: Gallimard, 2012).

Adrien Giraud

Adrien Giraud was born in 1936. While being one of the main players in the MPM, his strength was not front-line politics but party organization. He was (and is) the owner of one of the two main hotels and his power base has been the business community through his presidency of the *Chambre professionnelle*, the Chamber of Commerce. He was elected *Sénateur* in 2004, but failed to gain re-election in 2011 having suffered considerable criticism of his previous performance. Like Marcel Henry, Giraud is *métis*, Catholic, a wealthy man and in retirement.

Marcel Henry

Marcel Henry was born in 1926. He was the great-nephew of Georges Nahouda, one of the four representatives of Mayotte on the post-1946 *Conseil General*. At the age of 20 he travelled to Moroni with Nahouda to act as his secretary and interpreter. In 1958, he became the Secretary of the *Congrès des Notables de Mayotte* under Nahouda's Presidency. This developed in 1959 into the *Union pour la Défense des Interêts de Mayotte* (UDIM) and in 1966 into the *Mouvement Populaire Mahorais* (MPM).

In 1977, Henry was elected as a *Sénateur*, and continued to be re-elected for every term. In 1995, he introduced Henri Jean-Baptiste (a Martiniquais) to the people of Mayotte, who voted him in as the other *Sénateur*; such was the influence of Henry. He retired from the *Sénat* at the end of his term in 2004, having sat as a member of the *Groupe de l'Union Centriste*. His *Sénat* seat was taken by his old colleague Adrien Giraud.

The MPM split in 1999 on the issue of a response to the French government proposal to transform Mayotte into a « *Collectivité à Vocation Départementale* ».

Henry and Jean-Baptiste refused to join with the other political leaders in signing, viewing the proposal as a method of delaying genuine Départementale status. They instead started a new party, the *Mouvement Départementale de Mayotte* (MDM), which was increasingly opposed to Younoussa Bamana and more particularly Mansour Kamardine. This could be interpreted as a division between the older *métis* leadership and the younger more autochthone; also between those who demanded *départementalisation* immediately and those who were willing to accept a prolonged period of preparation. Partly, also, the division was on the basis of personalities.

Marcel Henry now lives in retirement in Pamandzi. He became a wealthy man through his business ventures, particularly his dominant role in the employment of waterfront labour. He was unusual in being not Muslim, but nominal Catholic.

On 16 May 2014, the renovated airport of Dzaoudzi-Pamandzi was renamed Marcel Henry Airport in his honour.

Martial Henry

Dr Martial Henry is the cousin of Marcel Henry. He was educated at the Lycée Gallieni at Tananarive where the only other Mahorais student was Younoussa Bamana. He then went to Paris to study medicine. He returned to Moroni where he was the junior doctor in general medicine 1963–66 and then to Mayotte where he was one of two doctors and set up the first urgent surgery unit in Dzaoudzi, and in 1968 to Anjouan. There, again one of two doctors, he performed 1200 operations with general anaesthetic in less than two years. In 1970, he was appointed Minister of Health in the Saïd Ibrahim administration. When Ahmed Abdallah came to power, there was no place for Henry, and he went to Rennes for further medical study. In 1974, he returned to Mayotte at the time of the separation to work with his old friend Bamana. His main

projects were the building of the *Centre Hospitalier* (CHM) at Mamadzou and community hospitals and medical centres, with the principle that no Mahorais should be more than one hour on foot from basic medical care. He also introduced vaccination and public hygiene programs, and gave weekly radio broadcasts on health matters, especially family planning and peri natal hygiene, in French and Shimaore; he was also a member of the *Conseil General* and for lengthy periods its vice-president. He ‘retired’ to private practice in Pamandzi, but has also been President of the Board of the CHM for more than 30 years and is now active in the promotion of medical care throughout the Indian Ocean region.

Principal source: *Agence de Santé Océan Indien*, October 2013.

Prince Saïd Ibrahim

Saïd Ibrahim, son of the Sultan Saïd Ali, was born in 1911 in Tananarive. He worked his way up in the Indigenous Administration system, and made the pilgrimage to Mecca before a prolonged stay in Cairo. He returned to the Comores in 1951 and entered politics, in opposition to SM Cheikh. Having modified his stance, he became Minister of Finance in 1957. In 1959, he was elected a *Député* in Paris. He was also, from 1958–70 President of the *Assemblée Territoriale* in Moroni. After the death of Cheikh he was elected President of the *Conseil*, a role in which he was more reticent about independence than those around him. Mahmoud Ibrahim describes him as lacking good health and conciliatory by nature. He made the last inter-Comorien attempts to reconcile with Mayotte. He died in Paris in 1975 after a long illness, having indicated his support for the removal of Ahmed Abdallah.

Source: Mahmoud Ibrahim, “Prince Saïd Ibrahim (1911–1975)” (Mwezinet), <http://www.comores-online.com/mwezinet/histoire/princesaid.htm>.

Mansour Kamardine

Mansour Kamardine was born in 1959 in Sada. He studied at primary school and left to join the police. He subsequently became an Inspector, and at the age of 23 was elected *Maire* of Sada, his home town. He was the youngest *Maire* in France. In 1991, he resigned to resume his studies, gaining a degree in Law at the University of La Réunion. He became an *avocat*, then leader of the Bar in Mamadzou. In 2002, he was elected to represent Mayotte in the *Assemblée Nationale*, standing for the UMP. He lost his seat in 2007 to a candidate of MDM. He stood again in 2012 but was again beaten. From 2002–08, he was Vice-President of the *Conseil General*.

In February 2011, his death by suicide was widely reported. He had been accused of betraying Islam by his support for the abolition of polygamy. However, he continued an active life in politics and at the Bar of Mamadzou, not least in the important case of the *Affaire Roukia*, where a group of (white) policemen were accused of trafficking in drugs so as to cause the death of a young female student by heroin overdose.⁵

He is married with six children. Boisadam notes his political flexibility, joining and rejoining parties, making and breaking alliances, which laid Kamardine open to accusations of opportunism.⁶

Mansour Kamardine is the subject of a biography: Thierry Watelet, *Mansour Kamardine: Hussard noir de la République* (Paris: Editions Orphie, 2007). Kamardine is the author of *Discours de la République pour Mayotte* (Paris: Éditions Orphie, 2007) and *J'assume* (Paris: Editions Orphie, 2008). He has also written a number of articles

⁵ *Liberation*, 9 August 2011.

⁶ Boisadam, *Mais que faire de Mayotte?*, p.252.

for legal journals. He is alone amongst the politicians of Mayotte as a published author.

Ali Soilihi

Ali Soilihi or Soilih was born in 1932 at Majunga, Madagascar (a town for the most part populated by Comoriens). He was educated there and gained a Diploma in Agronomy. He then worked for two years in Anjouan before going to France to study Tropical Agriculture and Development Studies. After graduating, he became Director of SODEC, *Société de Développement Economique des Comores*, in Moroni. In 1967, he was elected depute for the 'Green' party and in 1970 became Minister for Equipment and Tourism under Saïd Ibrahim. He then went into opposition to Ahmed Abdallah with Saïd Ibrahim and the *Umma Mranda*.

On 3 August 1975, he took power by *coup d'état* with the help of Bob Denard and, it is believed by many, but without evidence, the help or connivance of France. In January 1976, he became President of the Revolutionary Council. Soilihi's programme was a revolutionary modernisation of Comorien society, heavily influenced by the Chinese Cultural Revolution. This included the abolition of traditional celebrations such as the *Grand mariage* and the emancipation of women and children. There was to be a decentralisation of administration into 34 *Moudirias* on the model of Chinese people's communes. The new systems were enforced by militias, the *Commandos Mwassi* of *lycée* students, which were increasingly arbitrary, erratic and brutal. There was widespread international disapproval and aid was cut back; the quality of life plunged from what was already a low level.

On 13 May 1978, Bob Denard conducted a second coup, bringing the return of Ahmed Abdallah. Ali Soilihi died in mysterious circumstances on 29 May 1978.

APPENDIX 2

DOCUMENTATION

- A The United Nations and the Comores
1. “Admission of the Comoros to Membership in the United Nations,” UN General Assembly Resolution 3385 (XXX), 30th session, 2402nd plenary meeting, 12 November 1975.
 2. “Question of the Comorian Island of Mayotte,” UN General Assembly Resolution 31/4, 31st session, 39th plenary meeting, 24 October 1976.
- B The Debate Concerning the Consultation of Mayotte
1. *Loi 75-1337*, 31 December 1975, *Consultation de la population de Mayotte*.
 2. *Conseil constitutionnel : Saisine par 60 Députés*, Décision 75-59 DC, 30 décembre 1975.
 3. *Conseil constitutionnel : Décision 75-59 DC*, *Journal officiel République Française*, 3 janvier 1976.
- C Union des Comores
1. *La constitution comorienne*.
 2. Law 82-005 Relating to the Delimitation of the Maritime Zones of the Islamic Federal Republic of the Comoros. 6 May 1982.
- D Baseline Claims
1. Madagascar
 2. Mozambique
 3. Fiji
 4. France: Overseas Departments and Dependencies. Source: United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, “National Claims to Maritime Jurisdictions,” *Limits in the Seas*, No.36 (8th Revision), p.55.
 5. “Comoros: Archipelagic and Other Maritime Claims and Boundaries,” *Limits in the Seas*, no.134.
 6. “France: Note verbale dated 23 December 2011 in Respect of the List of Geographical Coordinates Deposited by the Comores,” *Law of the Sea Bulletin*, no.78 (2012) p.35. (French note to the UN in response to Comores’ baseline claims.)

Rights of the Palestinian People: AFGHANISTAN, CUBA, CYPRUS, GERMAN DEMOCRATIC REPUBLIC, GUINEA, HUNGARY, INDIA, INDONESIA, LAO PEOPLE'S DEMOCRATIC REPUBLIC, MADAGASCAR, MALAYSIA, MALTA, PAKISTAN, ROMANIA, SENEGAL, SIERRA LEONE, TUNISIA, TURKEY, UKRAINIAN SOVIET SOCIALIST REPUBLIC and YUGOSLAVIA.

3385 (XXX). Admission of the Comoros to membership in the United Nations

The General Assembly,

Having received the recommendation of the Security Council of 17 October 1975 that the Comoros should be admitted to membership in the United Nations,¹⁴

Having considered the application for membership of the Comoros,¹⁵

Reaffirming the necessity of respecting the unity and territorial integrity of the Comoro Archipelago, composed of the islands of Anjouan, Grande-Comore, Mayotte and Mohéli, as emphasized in resolution 3291 (XXIX) of 13 December 1974 and other resolutions of the General Assembly,

Decides to admit the Comoros to membership in the United Nations.

*2402nd plenary meeting
12 November 1975*

3386 (XXX). Report of the International Atomic Energy Agency

The General Assembly,

Having received the report of the International Atomic Energy Agency to the General Assembly for the year 1974/1975 and the addendum thereto,¹⁶

Aware that the statement of the Director General of the International Atomic Energy Agency of 12 November 1975¹⁷ provides additional information on the main developments in the Agency's activities,

Recognizing that in the course of 1975 it was made abundantly clear that further measures should be taken towards the full realization of the goal of an international non-proliferation policy,

1. Takes note of the report of the International Atomic Energy Agency and of the addendum thereto;

2. Notes that the annual report of the International Atomic Energy Agency will henceforth be based on the calendar year for the purpose of simplifying the evaluation of programme implementation;

3. Welcomes the action taken by the International Atomic Energy Agency to increase further the level of the target for voluntary contributions to the general fund of \$5.5 million in 1976 and the continuing increase of total contributions of member States towards the realization of targets;

4. Notes with appreciation the increased and continuing emphasis which the International Atomic Energy Agency places in its technical assistance programme on the introduction of nuclear power and its technology in

¹⁴ *Official Records of the General Assembly, Thirtieth Session, Annexes, agenda item 22, document A/10302.*

¹⁵ A/10293-S/11848. For the printed text, see *Official Records of the Security Council, Thirtieth Year, Supplement for October, November and December 1975.*

¹⁶ International Atomic Energy Agency, *Annual Report, 1 July 1974-30 June 1975* (Vienna, July 1975) and corrigendum and addendum; transmitted to the members of the General Assembly by notes of the Secretary-General (A/10168 and Corr.1 and Add.1).

¹⁷ *Official Records of the General Assembly, Thirtieth Session, Plenary Meetings, 2403rd meeting, paras. 2-40.*

developing countries for the peaceful needs of these countries, in particular the series of training courses on nuclear power project planning and implementation;

5. Notes with satisfaction the intensification of work of the International Atomic Energy Agency, in accordance with its statute, in the fields of reactor safety and reliability, the disposal of radio-active waste, the safeguarding and physical protection of nuclear facilities and materials, and the comprehensive studies of fuel cycle facilities, including the possibility of establishing regional fuel cycle services;

6. Commends the International Atomic Energy Agency for its implementation of General Assembly resolutions 2829 (XXVI) of 16 December 1971 and 3213 (XXIX) of 5 November 1974 regarding nuclear explosions for peaceful purposes and, in this connexion, for establishing the Ad Hoc Advisory Group on Nuclear Explosions for Peaceful Purposes to identify possible applications of peaceful nuclear explosions and to study safety, environmental and economic aspects as well as the legal implications and the procedures for assistance in carrying out peaceful explosion projects;

7. Urges all States to continue to co-operate with the International Atomic Energy Agency and to take all necessary measures to enhance the recognized efforts of the Agency in the fulfilment of its tasks in the various fields of the peaceful uses of atomic energy;

8. Requests the Secretary-General to transmit to the Director-General of the International Atomic Energy Agency the records of the thirtieth session of the General Assembly relating to the Agency's activities.

*2403rd plenary meeting
12 November 1975*

3391 (XXX). Restitution of works of art to countries victims of expropriation

The General Assembly,

Aware of the paramount aims of the United Nations and particularly of its faith in fundamental human rights and in the dignity and worth of the human person,

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples,¹⁸

Recalling the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its sixteenth session, on 14 November 1970,¹⁹

Recalling General Assembly resolution 3187 (XXVIII) of 18 December 1973 concerning the restitution of works of art to countries victims of expropriation, in which the Assembly, inter alia, invited the Secretary-General, in consultation with the United Nations Educational, Scientific and Cultural Organization and Member States, to submit a report to the Assembly at its thirtieth session on the progress achieved,

Taking note of the report of the Secretary-General,²⁰

Noting with interest the steps taken by certain States towards the restitution of works of art to countries victims of expropriation in accordance with resolution 3187 (XXVIII),

¹⁸ Resolution 1514 (XV).

¹⁹ United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Sixteenth Session, vol. I, Resolutions, pp. 135-141.*

²⁰ A/10224.

31/1. Admission of the Republic of Seychelles to membership in the United Nations

The General Assembly,

Having received the recommendation of the Security Council of 16 August 1976 that the Republic of Seychelles should be admitted to membership in the United Nations,²

Having considered the application for membership of the Republic of Seychelles,³

Decides to admit the Republic of Seychelles to membership in the United Nations.

*1st plenary meeting
21 September 1976*

31/3. Observer status for the Commonwealth Secretariat at the United Nations

The General Assembly,

Noting the desire of the States members of the Commonwealth for co-operation between the United Nations and the Commonwealth Secretariat,

1. *Decides* to invite the Commonwealth Secretariat to participate in the sessions and the work of the General Assembly and of its subsidiary organs in the capacity of observer;

2. *Requests* the Secretary-General to take the necessary action to implement the present resolution.

*33rd plenary meeting
18 October 1976*

31/4. Question of the Comorian island of Mayotte

The General Assembly,

Recalling that the people of the Republic of the Comoros as a whole, in the referendum of 22 December 1974, expressed by an overwhelming majority its will to accede to independence in conditions of political unity and territorial integrity,

Considering that the referendums imposed on the inhabitants of the Comorian island of Mayotte constitute a violation of the sovereignty of the Comorian State and of its territorial integrity,

Considering that the occupation by France of the Comorian island of Mayotte constitutes a flagrant encroachment on the national unity of the Comorian State, a Member of the United Nations,

Considering that such an attitude on the part of France constitutes a violation of the principles of the relevant resolutions of the United Nations, in particular of General Assembly resolution 1514 (XV) of 14 December 1960 concerning the granting of independence to colonial countries and peoples, which guarantees the national unity and territorial integrity of such countries,

1. *Condemns* and considers null and void the referendums of 8 February and 11 April 1976 organized in the Comorian island of Mayotte by the Government of France, and rejects:

² Official Records of the General Assembly, Thirty-first Session, Annexes, agenda item 26, document A/31/176.

³ A/31/173-S/12164. For the printed text, see Official Records of the Security Council, Thirty-first Year, Supplement for July, August and September 1976.

(a) Any other form of referendum or consultation which may hereafter be organized on Comorian territory in Mayotte by France;

(b) Any foreign legislation purporting to legalize any French colonial presence on Comorian territory in Mayotte;

2. *Strongly condemns* the presence of France in Mayotte, which constitutes a violation of the national unity, territorial integrity and sovereignty of the independent Republic of the Comoros;

3. *Calls upon* the Government of France to withdraw immediately from the Comorian island of Mayotte, an integral part of the independent Republic of the Comoros, and to respect its sovereignty;

4. *Invites* all Member States to render effective assistance, individually and collectively, to the Comorian State and to co-operate with it in all fields with a view to enabling it to defend and safeguard its independence, the integrity of its territory and its national sovereignty;

5. *Appeals* to all Member States to intervene, individually and collectively, with the Government of France to persuade it to abandon once and for all its plan to detach the Comorian island of Mayotte from the Republic of the Comoros;

6. *Calls upon* the Government of France to enter into negotiations immediately with the Government of the Comoros concerning the implementation of the present resolution.

*39th plenary meeting
21 October 1976*

31/6. Policies of apartheid of the Government of South Africa⁴

A

THE SO-CALLED INDEPENDENT TRANSKEI AND OTHER BANTUSTANS

The General Assembly,

Recalling its resolution 3411 D (XXX) of 28 November 1975 condemning the establishment of bantustans by the racist régime of South Africa,

Taking note that the racist régime of South Africa declared the sham "independence" of the Transkei on 26 October 1976,

Having considered the report of the Special Committee against Apartheid⁵ and its special reports,⁶

1. *Strongly condemns* the establishment of bantustans as designed to consolidate the inhuman policies of apartheid, to destroy the territorial integrity of the country, to perpetuate white minority domination and to dispossess the African people of South Africa of their inalienable rights;

2. *Rejects* the declaration of "independence" of the Transkei and declares it invalid;

3. *Calls upon* all Governments to deny any form of recognition to the so-called independent Transkei and to refrain from having any dealings with the so-called independent Transkei or other bantustans;

⁴ See also sect. I above, foot-note 9.

⁵ Official Records of the General Assembly, Thirty-first Session, Supplement No. 22 (A/31/22).

⁶ Ibid., Supplement No. 22A (A/31/22/Add.1-3).

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RÉPUBLIQUE FRANÇAISE

CONSULTATION DE LA POPULATION DE MAYOTTE

LOI n° 75-1337 du 31 décembre 1975

relative aux conséquences de l'autodétermination des Îles des Comores

EXPOSÉ DES MOTIFS

Fidèle au principe d'autodétermination la France a offert aux populations des Comores, par les lois du 23 novembre 1974 et du 3 juillet 1975, la possibilité de choisir l'indépendance dans l'unité et dans le respect de la personnalité de chaque île.

Les représentants de trois des îles à la Chambre des députés des Comores ont décidé de s'écarter de la voie définie par le législateur en proclamant le 6 juillet l'indépendance immédiate alors que les représentants de Mayotte manifestaient leur désir de se conformer à la loi.

Pour tenir compte de cette situation de fait et dans l'esprit de la loi du 3 juillet 1975, le Gouvernement a préparé un projet de loi organisant la consultation de la population de Mayotte.

Ce texte, qui propose également que les autres parties de l'archipel cessent de faire partie de la République française, offre une nouvelle chance à l'unité en prévoyant que les Mahorais n'auraient à se prononcer sur le statut de leur île au sein de la République que s'ils écartaient l'appartenance de Mayotte à l'État comorien.

Telle est l'économie du texte qui est présenté au Parlement.

L'Assemblée nationale et le Sénat ont adopté.

Le Président de la République promulgue la loi dont la teneur suit :

ARTICLE PREMIER

Dans les deux mois qui suivent la promulgation de la présente loi, et dans l'esprit de l'article 2 de la loi n° 75-560 du 3 juillet 1975, la population de Mayotte sera appelée à se prononcer sur le point de savoir si elle souhaite que Mayotte demeure au sein de la République française ou devienne partie du nouvel État comorien.

ARTICLE 2

Pièce
h of W Si la population choisit, à la majorité des suffrages exprimés, que Mayotte devienne partie du nouvel État

comorien, Mayotte cessera, dès la proclamation définitive des résultats, de faire partie de la République française.

ARTICLE 3

Si la population de Mayotte exprime le désir, à la majorité des suffrages exprimés, de demeurer au sein de la République française, elle sera appelée, dans les deux mois qui suivent la proclamation définitive des résultats, à se prononcer sur le statut dont elle souhaite que Mayotte soit dotée.

ARTICLE 4

Seront admis à participer à la consultation prévue à l'article premier de la présente loi ainsi que, le cas échéant, à celle prévue à l'article 3, les électeurs et électrices régulièrement inscrits sur les listes électorales de Mayotte révisées, conformément aux textes électoraux en vigueur, au plus tard quinze jours avant le scrutin.

Seront admis à voter par procuration les électeurs et électrices inscrits sur les listes électorales de Mayotte qui se trouveront dans l'une des situations visées à l'article L 71 du Code électoral. Ces votes par procuration seront exercés conformément aux articles L 72 à L 78 et L 11 du Code électoral.

ARTICLE 5

I. Une commission dénommée « Commission de contrôle des opérations électorales » est instituée.

Cette commission est composée de 12 magistrats de l'ordre judiciaire désignés par le premier président de la Cour de cassation. Elle élit son président en son sein.

II. La commission a pour mission de veiller à la liberté et à la sincérité de la consultation. Elle contrôle la conformité des opérations d'organisation du scrutin aux lois et règlements en vigueur.

La commission dispose de tous pouvoirs d'investigation sur pièces et sur place. Toutes facilités lui sont accordées pour l'exécution de sa mission.

Elle requiert, le cas échéant, les autorités compétentes pour que soient prises toutes mesures susceptibles d'assurer la régularité des opérations d'organisation ou de déroulement du scrutin.

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Elle peut, en ce qui concerne les listes électorales, saisir directement l'autorité judiciaire de toute demande d'inscription ou de radiation qui lui paraîtrait fondée dans le cadre de la législation et de la réglementation en vigueur.

III. La commission a notamment pour rôle :

a. De dresser la liste des partis politiques pouvant, dans les conditions qui seront fixées par décret, participer à la campagne électorale;

b. De faire apposer sur les panneaux réservés à cet effet et de faire parvenir à chaque électeur la propagande électorale ainsi que les documents destinés à l'éclairer sur le sens et la portée de la consultation;

c. De veiller à la régularité de la composition des bureaux de vote ainsi qu'à celle des opérations de vote, de dépouillement des bulletins et de dénombrement des suffrages et de garantir aux électeurs ainsi qu'aux partis en présence le libre exercice de leurs droits, notamment par l'intermédiaire de délégués auprès des présidents de bureaux de vote qu'elle désigne à cet effet.

IV. Après la clôture du scrutin, la commission se réunit afin de dresser un rapport sur le déroulement de la consultation, qu'elle communique à la commission de recensement et de jugement.

ARTICLE 6

Une commission de recensement et de jugement composée d'un conseiller d'État, président, d'un conseiller à la Cour de cassation et d'un conseiller-maître à la Cour des comptes est instituée.

La commission de recensement et de jugement a pour mission :

1^o De centraliser les procès-verbaux des bureaux de vote;

2^o De statuer sur les requêtes visant à contester les résultats, que peut introduire devant elle tout électeur régulièrement inscrit sur les listes électorales, dans les quatre jours suivant le jour du scrutin, ainsi que sur les observations portées aux procès-verbaux;

3^o D'arrêter, à titre définitif, les résultats des bureaux de vote, de les proclamer et de les publier dix jours au plus tard après le jour du scrutin, après avoir examiné l'ensemble du contentieux et pris connaissance du rapport de la commission de contrôle prévu à l'article précédent.

ARTICLE 7

Les dépenses des consultations prévues aux articles premier et 3 de la présente loi seront imputées au budget de l'État.

ARTICLE 8

Les îles de la Grande Comore, Anjouan et Mohéli

cessent, à compter de la promulgation de la présente loi, de faire partie de la République française.

ARTICLE 9

L'entrée en vigueur des articles 8 à 11 inclus de la loi n° 75-560 du 3 juillet 1975 est reportée soit à la date de la promulgation définitive des résultats de la consultation prévue à l'article premier de la présente loi si Mayotte cesse de faire partie de la République française, soit, dans le cas contraire, à la date de la clôture du scrutin prévue à l'article 3 de la présente loi.

Par dérogation aux dispositions des articles 8 à 11 inclus de la loi n° 75-560 du 3 juillet 1975, cette date déterminera le point de départ du délai de deux ans pendant lequel les personnes concernées pourront souscrire la déclaration de reconnaissance de la nationalité française à laquelle ne seront pas astreints les Français de statut civil de droit local originaires de Mayotte, si Mayotte demeure au sein de la République française.

ARTICLE 10

« Mayotte » est entendu, dans la présente loi, comme comprenant la Grande Terre ainsi que les îles et îlots qui y sont rattachés.

ARTICLE 11

Des décrets en Conseil d'État fixeront, en tant que de besoin, les modalités d'application de la présente loi.

Fait à Paris le 31 décembre 1975.

Valéry GISCARD D'ESTAING.

Par le Président de la République :

Le Premier Ministre,
Jacques CHIRAC.

Le Ministre d'État,
Ministre de l'Intérieur,
Michel PONIATOWSKI.

Le Ministre des Affaires étrangères,
Jean SAUVAGNARGUES.

Le Ministre
de l'Économie et des Finances,
Jean-Pierre FOURCADE.

Le Ministre de la Défense,
Yvon BOURGES.

Le Secrétaire d'État
aux Départements
et Territoires d'Outre-Mer,
Olivier STIRN.

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Saisine par 60 députés

Décision n° 75-59 DC du 30 décembre 1975

Loi relative aux conséquences de l'autodétermination des îles des Comores

Saisine par 60 députés

Conformément aux dispositions de l'article 61 de la Constitution, nous avons l'honneur de déférer au Conseil Constitutionnel la loi relative aux conséquences de l'autodétermination des îles des Comores.

Nous estimons que cette loi est contraire à la Constitution pour les motifs suivants.

Depuis que les îles de la Grande-Comore, d'Anjouan et de Mohéli ont été érigées en protectorat Français, elles ont été réunies avec l'île de Mayotte pour former un territoire unique.

Le premier texte intervenu dans ce domaine est le décret du 9 septembre 1889. Depuis cette date, l'unité politique et administrative de l'archipel des Comores n'a jamais été remise en cause par aucun texte, malgré la multiplicité des dispositions intervenues au sujet des Comores ; loi du 9 mai 1946, loi du 17 avril 1952, décret du 22 juillet 1957, loi du 22 décembre 1961, loi du 3 janvier 1968.

Chaque fois que le législateur ou le pouvoir réglementaire est intervenu, il l'a fait en considérant que l'archipel des Comores constituait un territoire unique. On peut même estimer que le législateur s'est clairement prononcé à ce sujet en adoptant la loi du 9 mai 1946. En effet, cette loi procédait d'une proposition de loi d'un élu des Comores qui indiquait, dans son exposé des motifs : "c'est la religion musulmane qui donne à l'archipel sa forte unité, renforcée par un dialecte unique, le swaheli".

Ainsi, il apparaît que la République Française n'a jamais remise en cause l'unité territoriale de l'archipel des Comores tandis que l'opinion publique internationale a constamment considéré que les quatre îles des Comores formaient un territoire unique dépendant de la République Française et administré, en dernier lieu, dans les conditions prévues par les articles 72 et suivants de la Constitution.

C'est d'ailleurs en se fondant sur ce principe fondamental de l'unité du Territoire des Comores que le Gouvernement Français et le Conseil de Gouvernement Comorien ont conclu, le 15 juin 1973, un accord amorçant le processus d'accession du territoire à l'indépendance tandis qu'au cours de la campagne pour les élections présidentielles, M GISCARD D'ESTAING s'est engagé à poursuivre ce processus sans remettre en cause l'unité dudit territoire.

C'est dans cet esprit qu'a été mise en oeuvre, à la fin de l'année 1974, la procédure prévue par l'article 53 de la Constitution et qui visait à recueillir le consentement des populations intéressées par l'accession de ce territoire à l'indépendance.

En vertu de la loi du 23 novembre 1974, les populations de l'archipel des Comores ont été invitées à se prononcer sur le point de savoir si elles souhaitent que leur territoire accède à l'indépendance. Dans l'ensemble des îles, une réponse positive a été apportée, le 22 décembre 1974, à la question ainsi posée.

Par une loi du 3 juillet 1975, le Parlement de la République, dépositaire de la souveraineté nationale, a admis, à la suite de ce vote, le principe de l'accession du territoire à l'indépendance (cf art 1er). Même si les autres dispositions de la loi précitée n'ont pas été respectées, ce fait ne porte aucune atteinte au principe susvisé. Au demeurant, le Gouvernement de la République aurait pu s'opposer à la proclamation unilatérale de l'indépendance par les autorités locales comoriennes. Il n'a pas cru devoir le faire, estimant sans doute que la volonté des populations, exprimée par le Parlement de la République, avait été manifestée d'une manière claire lui interdisant d'intervenir en sens contraire. Toutefois, le Gouvernement de la République s'il a renoncé à la souveraineté de la France sur les îles de la Grande-Comore, de Mohéli et d'Anjouan, a estimé devoir maintenir la souveraineté sur l'île de Mayotte qui a, paradoxalement et ainsi que l'histoire nous l'enseigne, été celle qui a servi de base à la création politique et administrative de l'archipel des Comores (CF le décret de 1889 qui instituait le territoire de Mayotte et ses dépendances).



Ainsi, et bien que le territoire de l'archipel des Comores se soit trouvé, pour la première fois depuis 1889, amputé d'une de ses îles, la France ne s'est pas opposée à la création du nouvel Etat Comorien, qui a été reconnu par de nombreuses puissances étrangères et qui a été récemment admis à l'ONU sans que la France manifeste son opposition à cette admission.

Mais l'opinion publique internationale ne semble pas avoir admis ce changement de doctrine de la part de la France puisque, pour la plupart des Etats étrangers, le nouvel Etat Comorien procède de l'ancien archipel français des Comores constitué en 1889 et jamais remis en cause par la France depuis cette date.

Dans ces conditions, nous considérons qu'en se maintenant à Mayotte et en engageant, par la loi qui vous est soumise, une nouvelle procédure d'accession à l'indépendance pour Mayotte, le Gouvernement et le Parlement effectuent une démarche contraire au Préambule de la Constitution de 1946, repris et confirmé par le Préambule de la Constitution de 1958, qui stipule que "La République Française, fidèle à ses traditions, se conforme aux règles du droit public international". Or, le droit public international comporte notamment la Charte des Nations Unies, ratifiée par la France et dont l'archipel des Comores est maintenant partie prenante en tant que membre de l'ONU.

En outre, la loi soumise à votre examen est contraire à une autre disposition du même préambule selon laquelle la République Française "n'emploiera jamais ses forces contre la liberté d'aucun peuple". Or, en se maintenant à Mayotte contre la volonté de la majorité de la population des Comores et d'une partie importante des électeurs de Mayotte, la France méconnaît incontestablement cette disposition, et cette méconnaissance se trouve maintenant inscrite dans la loi soumise à votre examen.

Certains pourraient soutenir, pour justifier une interprétation contraire et pour soutenir la conformité de la loi susvisée, que les quatre îles des Comores sont séparées entre elles, par des eaux internationales qui font, de chacune d'elles, une entité particulière. Mais on ne voit pas pourquoi, dans ces conditions, tous les textes intervenus depuis 1889 ont regroupé les quatre îles dans un même territoire. En outre, un problème équivalent pourrait être soulevé à l'égard d'autres territoires, comme la Corse, séparée de la métropole par des eaux internationales et qui, pourtant, est soumise au même régime que les départements de France continentale tandis qu'à l'occasion des consultations électorales (référendum notamment) les suffrages de la Corse n'ont jamais été isolés pour justifier un traitement particulier à l'égard de cette île.

C'est pourquoi, en demandant au Parlement de voter la loi relative à l'autodétermination de Mayotte et en obtenant l'accord du Parlement, le Gouvernement a méconnu la Constitution.

En outre, sur le plan international, le maintien de la France à Mayotte, contre toutes les règles constitutionnelles en vigueur, place notre pays dans une situation difficile et injustifiable très lourde de conséquences pour l'avenir.

Par ailleurs, en prévoyant de demander à la population de Mayotte si elle souhaite faire partie du nouvel Etat Comorien, la loi qui vous est déférée constitue une intervention dans les affaires intérieures d'un Etat étranger, qui se trouve bien entendu contraire au préambule de la Constitution.

En outre, en prévoyant de demander à la population de Mayotte de définir le statut dont elle souhaite être dotée, la loi n'est pas conforme à l'article 74 de la Constitution.

En effet, selon ces dispositions, l'organisation des Territoires d'Outre-Mer est "modifiée par la loi après consultation de l'assemblée territoriale intéressée".

Or, cette consultation n'a pas été préalablement effectuée.

Au demeurant, on ne voit pas comment le Gouvernement pourrait maintenant solliciter et obtenir l'avis de la Chambre des Députés des Comores, dès lors que cette assemblée est devenue celle d'un état indépendant et qu'elle ne saurait donc, par ses délibérations, régler désormais le sort d'un territoire de la République.

Toute autre aurait été la situation de Mayotte si elle s'était préalablement érigée en territoire d'Outre-Mer distinct des trois autres îles et si elle avait de ce fait disposé d'une assemblée territoriale qui lui soit propre.

Les termes de l'article 74 de la Constitution ne permettent pas d'engager des procédures de modification de l'organisation des territoires d'Outre mer lorsque ces modifications n'intéressent qu'une fraction d'un même territoire.

La loi qui vous est déférée, en tant qu'elle prévoit une procédure de choix d'un nouveau statut pour Mayotte et, simultanément, qu'elle consacre l'accession à l'indépendance des trois autres îles, interdit la mise en oeuvre de l'article 74 de la Constitution et se trouve donc de ce fait non conforme.

Aussi, pour ces divers motifs, nous avons l'honneur de vous demander de bien vouloir déclarer la loi relative aux conséquences de l'autodétermination des îles des Comores non conforme à la Constitution.

B(3)



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Décision n° 75-59 DC du 30 décembre 1975

Loi relative aux conséquences de l'autodétermination des îles des Comores

Le Conseil constitutionnel,

Saisi le 17 décembre 1975 par MM Alain VIVIEN, Gaston DEFFERRE, André GUERLIN, Alex RAYMOND, Pierre LAGORCE, Alain BONNET, Fernand SAUZEDDE, Jacques-Antoine GAU, Maurice ANDRIEU, Alain SAVARY, Antoine GAYRAUD, Louis DARINOT, Robert CAPDEVILLE, Louis BESSON, Christian LAURISSERGUES, André BOULLOCHE, Raoul BAYOU, Joseph FRANCESCHI, Robert AUMONT, Guy BECK, Pierre JOXE, André DELEHEDDE, Pierre MAUROY, Jean BERNARD, Maurice MASQUERE, Yves ALLAINMAT, Marcel MASSOT, Henri LAVIELLE, Henri MICHEL, Georges FRECHE, André GRAVELLE, André BILLOUX, Jean MASSE, Claude DELORME, Jean-Pierre CHEVENEMENT, Pierre GAUDIN, Maurice LEGENDRE, Paul ALDUY, Jean-Pierre COT, Gilbert SCHWARTZ, Guy DUCOLONE, Mme Hélène CONSTANS, M Lucien VILLA, Mme Jacqueline CHONAVEL, MM Roger GOUHIER, René LAMPS, Dominique FRELAUT, Roger COMBRISSON, Pierre CHARLES, Jack RALITE, Yves LE FOLL, Paul BALMIGERE, Claude WEBER, Pierre ARRAUT, Gilbert MILLET, Emile JOURDAN, Claude MICHEL, députés à l'Assemblée nationale, dans les conditions prévues à l'article 61 de la Constitution, du texte de la loi relative aux conséquences de l'autodétermination des îles des Comores, telle que cette loi a été adoptée par le Parlement ;

Vu la Constitution ;

Vu l'ordonnance du 7 novembre 1958 portant loi organique sur le Conseil constitutionnel, notamment le chapitre II du titre II de ladite ordonnance ;

Oùï le rapporteur en son rapport ;

1. Considérant que l'article 53, dernier alinéa, de la Constitution, dispose : "Nulle cession, nul échange, nulle adjonction de territoire n'est valable sans le consentement des populations intéressées" ;
2. Considérant que les dispositions de cet article doivent être interprétées comme étant applicables, non seulement dans l'hypothèse où la France céderait à un État étranger ou bien acquerrait de celui-ci un territoire, mais aussi dans l'hypothèse où un territoire cesserait d'appartenir à la République pour constituer un État indépendant ou y être rattaché ;
3. Considérant que l'île de Mayotte est un territoire au sens de l'article 53, dernier alinéa, de la Constitution, ce terme n'ayant pas dans cet article la même signification juridique que dans l'expression territoire d'Outre-Mer, telle qu'elle est employée dans la Constitution ;
4. Considérant, en conséquence, que cette île ne saurait sortir de la République française sans le consentement de sa propre population ; que, dès lors, les articles premier et 2 de la loi déferée au Conseil constitutionnel font une exacte application de l'article 53, dernier alinéa, de la Constitution ;
5. Considérant que cette loi n'a pour objet, dans aucune de ses dispositions, de définir ou de modifier l'organisation particulière d'un territoire d'Outre-Mer ; qu'en conséquence l'article 74 ne saurait recevoir application dans le cas de l'espèce ;
6. Considérant que l'île de Mayotte fait partie de la République française ; que cette constatation ne peut être faite que dans le cadre de la Constitution, nonobstant toute intervention d'une instance internationale, et que les dispositions de la loi déferée au Conseil constitutionnel qui concernent cette île ne mettent en cause aucune règle du droit public international ;
7. Considérant que le Préambule de la Constitution du 27 octobre 1946, confirmé par celui de la Constitution du 4 octobre 1958, déclare que la République française n'emploiera jamais ses forces contre la liberté d'aucun peuple ;
8. Considérant qu'aucune des dispositions de la loi déferée au Conseil constitutionnel ne tend à l'emploi des forces de la République contre la liberté de quelque peuple que ce soit ; que, bien au contraire, son article 8 dispose "les îles de



la Grande Comore, d'Anjouan et de Mohéli", dont les populations se sont prononcées, à la majorité des suffrages exprimés, pour l'indépendance, "cessent, à compter de la promulgation de la présente loi, de faire partie de la République française" ;

9. Considérant que les autres dispositions de ce texte ne sont contraires à aucune disposition de la Constitution ;

10. Considérant qu'il résulte de tout ce qui précède que la loi relative aux conséquences de l'autodétermination des îles des Comores ne contredit aucune disposition du Préambule de la Constitution, aucun des textes auquel ce Préambule fait référence, ni aucun article de la Constitution ;

Décide :

Article premier :

Les dispositions de la loi relative aux conséquences de l'autodétermination des îles des Comores déferée au Conseil constitutionnel ne sont pas contraires à la Constitution.

Article 2 :

La présente décision sera publiée au Journal officiel de la République.

Journal officiel du 3 janvier 1976, p. 182

Recueil, p. 26

ECLI:FR:CC:1975:75.59.DC

C(1)

NOTE:

This appendix is included on pages 260-265 of the print copy of the thesis held in the University of Adelaide Library.

Law No. 82-005 relating to the delimitation of the maritime zones
of the Islamic Federal Republic of the Comoros of 6 May 1982

Deliberating in accordance with the Constitution, adopted at its meeting of 6 May 1982 the following law:

SECTION I
THE LEGAL STATUS OF THE ARCHIPELAGIC WATERS
OF THE COMOROS,
OF THE AIRSPACE OVER THE ARCHIPELAGIC WATERS
AND OF THEIR BED AND SUBSOIL

Article 1

The sovereignty of the Comorian State extends to the waters enclosed by the baselines, described as archipelagic waters, regardless of their depth or distance from the coast.

The "Comorian" State extends its sovereignty to the airspace over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.

Article 2

The right of innocent passage through the archipelagic waters of the Comoros must be respected. The Comoros may, however, suspend temporarily in its waters the right of innocent passage if such suspension is essential for the protection of its security.

SECTION II
THE LEGAL STATUS OF THE TERRITORIAL SEA OF THE COMOROS

Article 3

Limit of the territorial sea of the Comoros

The Comoros limits its territorial sea to 12 nautical miles measured from baselines. The inner limit of the territorial sea is a line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 4

Rights, jurisdiction and duties of the Comoros in the territorial sea

The sovereignty of the Comoros extends, beyond its land territory and internal or archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

This sovereignty extends to the airspace over the territorial sea as well as to its bed and subsoil.

Article 5
Right of innocent passage in the territorial sea

Ships of all States, whether coastal or land-locked, shall enjoy the right of innocent passage through the territorial sea of the Comoros, which means that passage shall be continuous and expeditious and not prejudicial to the peace and good order or the security of the Comoros. The right of innocent passage may be regulated or suspended by decree in accordance with international law. In the territorial waters of the Comoros, submarines must remain on the surface and show their flag.

SECTION III:
LEGAL REGIME OF THE
EXCLUSIVE ECONOMIC ZONE OF THE COMOROS

Article 6
Limit of the exclusive economic zone of the Comoros

The exclusive economic zone is delimited on one side, by the outer limit of the territorial sea and, on the other side, by a line every point of which is at a distance of 200 miles from the nearest point on the baseline or equidistant from the baselines of the Comorian coast and those of the coasts of the foreign countries opposite it, save as otherwise specifically agreed.

Article 7
Rights, jurisdiction and duties of the Comoros in the exclusive economic zone

In its exclusive economic zone:

(a) The Comoros shall have sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the seabed and its subsoil and of the waters superjacent to the seabed, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.

(b) The Comoros shall have jurisdiction with regard to:

Marine scientific research;
Preservation of the marine environment;
Prevention of marine Pollution.

The conduct of scientific or technical research shall be subject to licensing by the Comorian State.

(c) All Comorians may fish freely in the exclusive economic zone of the Comoros.

Article 8
Rights and duties of other States in the exclusive economic zone of the Comoros

(a) In the exclusive economic zone of the Comoros, all States shall enjoy the freedom of navigation and

overflight and of the laying of submarine cables and pipelines, provided that such freedoms are compatible with the provisions of the Convention on the Law of the Sea (no threat to the peace).

(b) Third States shall have regard to the rights and duties of the Comoros and comply with the laws and regulations enacted by it in accordance with the rules of international law.

(c) Conflict resolution: where a conflict arises between the interests of the Comoros and any other State or States, the conflict shall be resolved on the basis of equity, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

Article 9

Conservation of living resources in the exclusive economic zone of the Comoros

(a) The allowable level of exploitation of living and mineral resources in the exclusive economic zone shall be determined by decree.

(b) The Comoros shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation.

As appropriate, the Comoros and the subregional, regional and global organizations concerned (...) is not endangered by over-exploitation.

(c) The Comoros shall determine its capacity to exploit the living and mineral resources of the zone. Where it does not have the capacity to attain the allowable level of exploitation, it shall, through agreements, give other States access.

Article 10

Violations of the provisions of this Law and of the provisions of regulations adopted to give it effect shall be punishable by a fine of between 10 million and 80 million CFA Francs and/or temporary seizure of the vessel.

Article 11

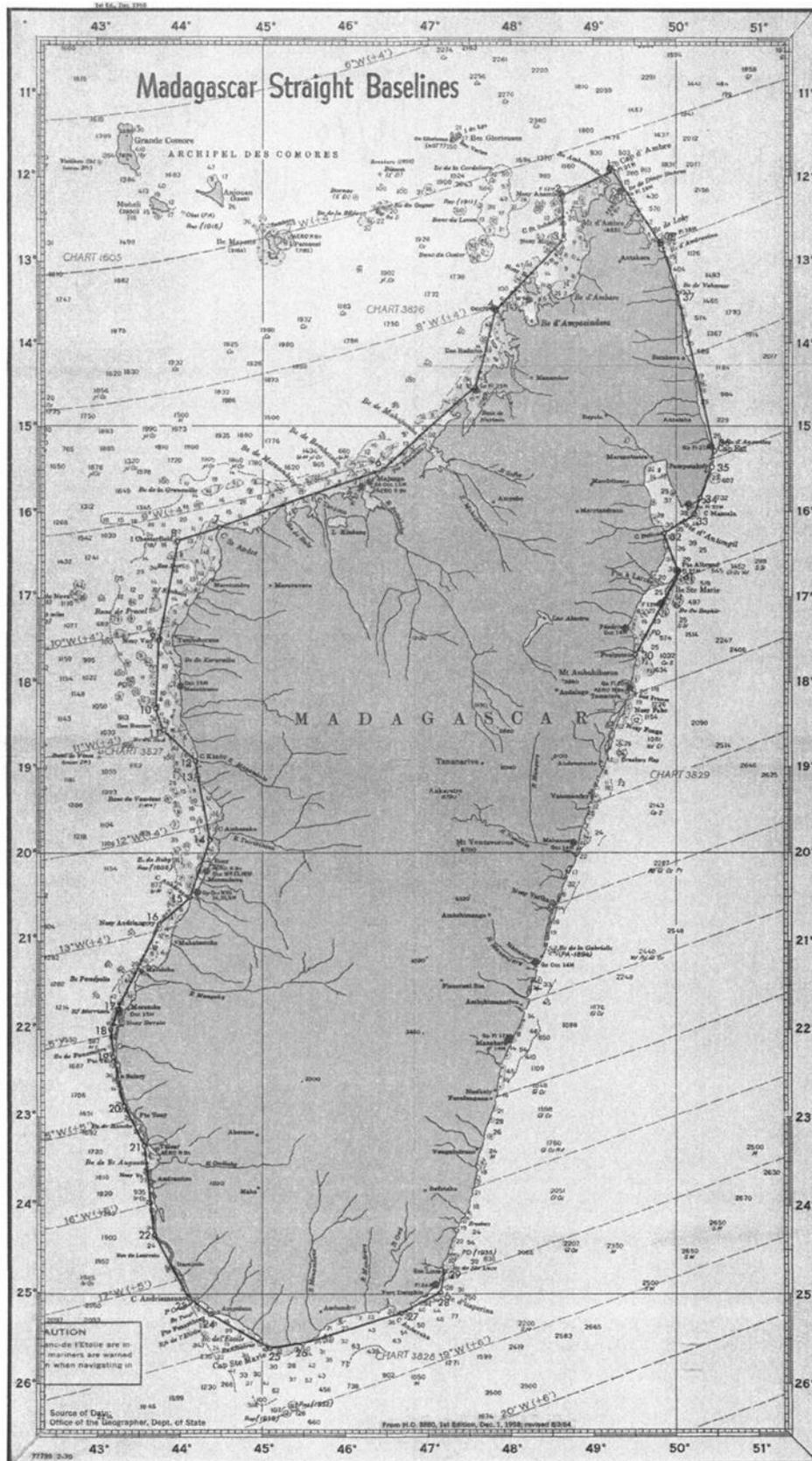
Law No. 71-1060 of 24 December 1971 relating to the delimitation of French territorial waters is hereby repealed in the Comoros.

Order No. 78-003/DPM of 20 July 1978 specifying the limits of Comorian territorial waters is hereby repealed.

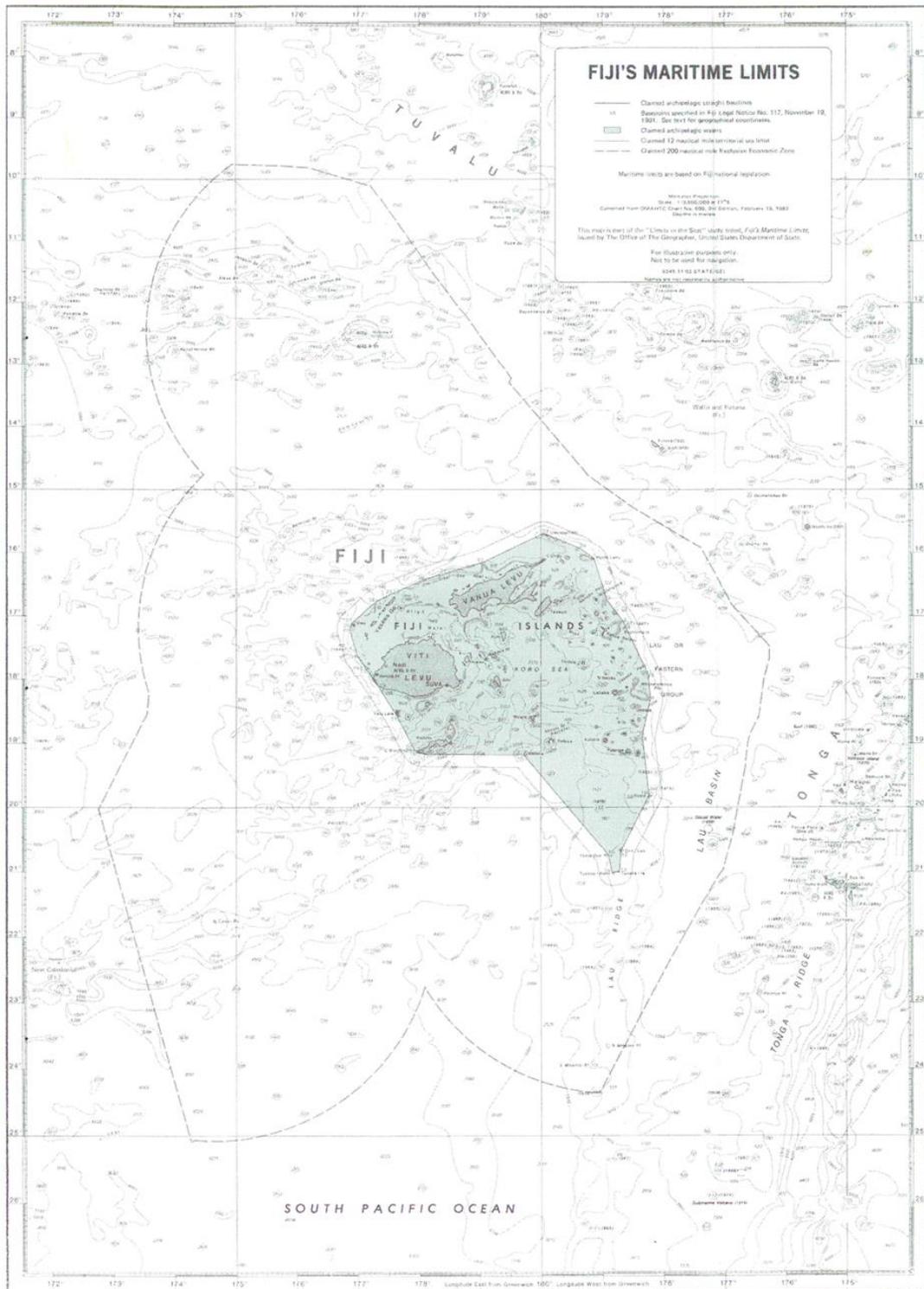
This law shall be applied as the law of the State.

Moroni, 6 May 1982.

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D(3)



D(4)

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France: Overseas Departments and Dependencies

Claim	Date	Source	Limits	Notes
Territorial Sea	12-24-71	Law No. 71-1060	12 nm	Assumed to apply to overseas departments and dependencies. Boundary agreement with Canada (St. Pierre & Miquelon) EIF; see LIS No. 57.
	3-27-72			
Archipelagic, straight baselines, and historic claims	6-29-71	Decree		Straight baselines: French Guiana.
	9-12-72	Decree No. 77-1067		Straight baselines: Mayotte.
	9-12-72	Decree No. 77-1068		Straight baselines: St. Pierre & Miquelon.
	1-11-78	Decree No. 78-112		Straight baselines: French Southern and Antarctic Lands (Kerguelan).
Contiguous zone Continental shelf EEZ/Fishing/ Pollution zones	7-16-76	Law No. 76-655		Enabling legislation for EEZ.
	2-25-77	Decree No. 77-169	200 nm	EEZ: St. Pierre & Miquelon.
	2-25-77	Decree No. 77-170	200 nm	EEZ: French Guiana.
	2-09-78	Decree	200 nm	EEZ: Kerguelen Islands.
	2-12-78	Decree	200 nm	EEZ: New Caledonia, French Polynesia, Wallis & Futuna, Tromelin Is., Glorious Arch., Clipperton, Juan de Nova, and the Europa Bassas.
	3-06-78	Decree No. 78-276		EEZ: Guadeloupe.
	3-06-78	Decree No. 78-277		EEZ: Martinique.
Maritime Boundaries	1-11-80			Wallis & Futuna: agreement with Tonga EIF.
	4-02-80			Reunion: agreement with Mauritius EIF; see LIS No. 95.
	1-30-81			French Guiana: agreement with Brazil EIF.
	3-04-81			Martinique: agreement with St. Lucia EIF.

Dans les zones de bruit modéré (zones dites C lorsqu'il y a un plan) il convient d'interdire les programmes de constructions de logements groupés sous forme de lotissements ou de zones d'aménagement concerté. Seules des constructions individuelles peuvent être admises à la triple condition qu'elles soient permises par les règlements d'urbanisme, qu'elles se situent en milieu urbanisé et que leur desserte soit assurée à partir des équipements publics existants. En outre, ces constructions doivent présenter une isolation acoustique à l'égard des bruits extérieurs au moins égale au niveau d'isolation qui sera prescrit par le permis de construire.

Les équipements publics de superstructure ne peuvent être admis en zones de bruit modéré et, à titre exceptionnel, dans les zones de bruit fort, que s'ils sont indispensables aux populations existantes, s'ils ne peuvent être localisés dans les zones moins bruyantes et à la condition que les bâtiments soient insonorisés.

Les équipements de superstructure et les constructions à usage d'habitation nécessaires à l'activité aéronautique civile ou militaire peuvent toutefois être admis en zones de bruit modéré et, à titre exceptionnel, dans les zones de bruit fort, lorsqu'ils ne peuvent être localisés dans les zones moins bruyantes et à la condition que les bâtiments soient insonorisés.

Le permis de construire doit mentionner dans ses considérants la situation de la construction au regard de son exposition au bruit. Le certificat d'urbanisme doit signaler l'existence de la nuisance et, le cas échéant, la nécessité de respecter les règles d'isolation phonique.

Décret portant nomination au conseil d'administration de la société concessionnaire française pour la construction et l'exploitation du tunnel routier du mont Blanc.

Par décret en date du 22 septembre 1977, M. Bernard (Yves), inspecteur des finances, sous-directeur à la direction de la prévision au ministère de l'économie et des finances, est nommé, pour une période de trois ans à compter du 25 mai 1977, en qualité de représentant de l'Etat au conseil d'administration de la société concessionnaire française pour la construction et l'exploitation du tunnel routier sous le mont Blanc.

Modification de l'arrêté du 2 juin 1977 relatif aux prêts accordés par les sociétés de crédit immobilier en vue de l'acquisition, l'aménagement, l'assainissement et la réparation d'habitations.

Le ministre délégué à l'économie et aux finances et le secrétaire d'Etat auprès du ministre de l'équipement et de l'aménagement du territoire (Logement),

Vu le code de l'urbanisme et de l'habitation, notamment le titre I^{er} du livre II;

Vu l'arrêté du 2 mars 1973 modifié relatif aux prêts accordés par les sociétés de crédit immobilier en vue de l'aménagement, l'assainissement et la réparation d'habitations;

Vu l'arrêté du 13 novembre 1974 fixant la rémunération des organismes d'habitations à loyer modéré pour certaines de leurs interventions;

Vu l'arrêté du 5 février 1975 modifié relatif aux opérations d'accession à la propriété dans le cadre de la législation sur les habitations à loyer modéré;

Vu l'arrêté du 2 juin 1977 relatif aux prêts accordés par les sociétés de crédit immobilier en vue de l'acquisition, l'aménagement, l'assainissement et la réparation d'habitations;

Vu l'avis en date du 12 juillet 1977 du conseil supérieur des habitations à loyer modéré (comité permanent),

Arrêtent :

Art. 1^{er}. — Le deuxième alinéa de l'article 4 de l'arrêté du 2 juin 1977 susvisé est modifié comme suit :

« Soit pour l'acquisition en vue de l'amélioration d'habitations qui constituent ou constitueront leur résidence principale, celle de leur conjoint ou celle de leurs ascendants ou de leurs descendants. »

Art. 2. — Le directeur du Trésor et le directeur de la construction sont chargés, chacun en ce qui le concerne, de l'exécution du présent arrêté, qui sera publié au *Journal officiel* de la République française.

Fait à Paris, le 8 septembre 1977.

Le ministre délégué à l'économie et aux finances,

Pour le ministre et par délégation :

Le sous-directeur,
R. DE MAULDE.

Le secrétaire d'Etat auprès du ministre de l'équipement et de l'aménagement du territoire (Logement),

Pour le secrétaire d'Etat et par délégation :

Le directeur de la construction,
J.-M. BLOCH-LAINE.

Administration centrale.

Par arrêté du Premier ministre et du ministre de l'équipement et de l'aménagement du territoire en date du 23 septembre 1977, M. Dupont (Jean-Pierre), administrateur civil, est nommé sous-directeur à l'administration centrale du ministère de l'équipement et de l'aménagement du territoire.

TRANSPORTS

Décret n° 77-1067 du 12 septembre 1977 définissant les lignes de base droites servant à la détermination des lignes de base à partir desquelles est mesurée la largeur des eaux territoriales françaises adjacentes à la collectivité territoriale de Mayotte.

Le Premier ministre,

Sur le rapport du ministre des affaires étrangères, du ministre de l'intérieur, du ministre de la défense et du ministre de l'équipement et de l'aménagement du territoire,

Vu la loi n° 71-1060 du 24 décembre 1971 relative à la délimitation des eaux territoriales françaises, notamment son article 1^{er};

Vu le décret n° 67-451 du 7 juin 1967 portant extension de la zone de pêche interdite aux navires étrangers, notamment ses articles 2 et 5;

Vu le décret n° 71-659 du 11 août 1971 relatif à l'extension dans le territoire des Comores du décret n° 67-451 du 7 juin 1967,

Décète :

Art. 1^{er}. — Les lignes de base droites servant à la détermination des lignes de base à partir desquelles est mesurée la largeur des eaux territoriales françaises adjacentes à la collectivité territoriale de Mayotte sont celles joignant les points A, B, C, D, E et F, G, H, I, J, K, L et M, N, O, P, Q, R, S, T et U correspondant aux coordonnées suivantes :

Point A. — Corne Nord-Ouest du Grand Récif du Nord-Est (latitude 12° 36' 85 S; longitude 45° 08' 95 E).

Point B. — Limite Nord du Récif du Nord (latitude 12° 34' 85 S; longitude 45° 05' 70 E).

Point C. — Latitude 12° 34' 80 S; longitude 45° 04' 80 E.

Point D. — Latitude 12° 34' 90 S; longitude 45° 04' 10 E.

Point E. — Corne Nord-Ouest du Récif corallien entourant l'île M'Zamboro (latitude 12° 37' 90 S; longitude 45° 01' 05 E).

Point F. — Corne Nord du pâté de corail se trouvant au Nord de la passe des Iles Choizil (latitude 12° 39' 10 S; longitude 44° 57' 10 E).

Point G. — Limite Ouest du même récif (latitude 12° 39' 70 S; longitude 44° 56' 90 E).

Point H. — Limite extérieure d'un pâté de corail au Nord de la Grande-Passe de l'Ouest (latitude 12° 43' 15 S; longitude 44° 59' 10 E).

Point I. — Latitude 12° 43' 85 S; longitude 44° 59' 00 E.

Point J. — Latitude 12° 44' 90 S; longitude 44° 59' 05 E. 15 S; longitude 44° 59' 25 E).

Point K. — Corne Nord d'un pâté de corail au Sud de la passe du Morne Rouge (latitude 12° 52' 80 S; longitude 44° 57' 05 E).

Point L. — Corne Sud du récif corallien situé au Nord de la passe aux Bateaux (latitude 12° 58' 05 S; longitude 44° 58' 80 E).

Point M. — Corne Nord-Ouest du récif du Sud (latitude 12° 59' 15 S; longitude 44° 59' 25 E).

Point N. — Corne Est du récif du Sud (latitude 13° 00' 35 S; longitude 45° 14' 50 E).

Point O. — Partie extérieure du récif M'Sanga Tshoté (latitude 12° 58' 60 S; longitude 45° 13' 40 E).

Point P. — Pâté de corail au Nord de la passe Saziley du Milieu (latitude 12° 56' 55 S; longitude 45° 13' 20 E).

FRENCH OVERSEAS DEPARTMENTS AND DEPENDENCIES

SUMMARY OF CLAIMS

TYPE	DATE	SOURCE	LIMITS	NOTES
TERRITORIAL SEA	Dec 71	Law No. 71-1060	12nm	Referred to "the territorial waters of France." Assumed to apply to both mainland and all French dependencies.
ARCHIPELAGIC, STRAIGHT BASELINES, & HISTORIC CLAIMS	Jun 71	Decree		Straight baselines for French Guiana.
	Sep 72	Decree No. 77-1067		Straight baselines for Mayotte.
	Sep 72	Decree No. 77-1068		Straight baselines for St. Pierre and Miquelon.
	Jan 78	Decree No. 78-112		Straight baselines for French Southern and Antarctic Lands (Kerguelen Islands).
	Apr 99	Decree No. 99-234		Straight baselines for Martinique and Guadeloupe.
	May 2002	Decree No. 2002-827		Straight baselines for New Caledonia.
FISHING ZONE/EEZ	Jul 76	Law No. 76-655		Enabling legislation for 200nm zone, assumed to apply to both mainland and all French dependencies.
	Feb 77	Decrees (No. 77-169, 170)	200nm	EEZ: St. Pierre and Miquelon; French Guiana.
	Feb 78	Decrees (various)	200nm	EEZ: Kerguelen Islands, New Caledonia, French Polynesia, Wallis and Futuna, Tromelin Islands, Glorious Archipelago, Clipperton, Juan de Nova, the Europa Bassas, Mayotte, Reunion, and French Southern and Antarctic Islands.
	Mar 78	Decrees (No. 78-276, 277)	200nm	EEZ: Guadeloupe; Martinique.
MARITIME BOUNDARIES	Mar 72	Agreement		St. Pierre and Miquelon: fisheries zone agreement with Canada EIF. See LIS No. 57.
	Jan 80	Agreement		Wallis and Futuna Islands: maritime boundary agreement with Tonga EIF.
	Apr 80	Agreement		Reunion: EEZ boundary agreement with Mauritius EIF. See LIS No. 95.
	Jul 80	Agreement		Guadeloupe and Martinique: maritime boundary agreement with Venezuela. EIF
	Jan 81	Agreement		Dept. of Guyane (French Guiana): maritime boundary agreement with Brazil EIF.
	Mar 81	Agreement		Martinique: maritime boundary agreement with St. Lucia EIF.

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United States Department of State
*Bureau of Oceans and International
Environmental and Scientific Affairs*

Limits in the Seas

No. 134

Comoros:

Archipelagic and other Maritime Claims and Boundaries



LIMITS IN THE SEAS

No. 134

COMOROS

ARCHIPELAGIC AND OTHER MARITIME CLAIMS AND BOUNDARIES

March 28, 2014

**Office of Ocean and Polar Affairs
Bureau of Oceans and International Environmental and Scientific Affairs
U.S. Department of State**

This study is one of a series issued by the Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs in the Department of State. The purpose of the series is to examine a coastal State's maritime claims and/or boundaries and assess their consistency with international law. This study represents the views of the United States Government only on the specific matters discussed therein and does not necessarily reflect an acceptance of the limits claimed.

This study, and earlier studies in this series, may be downloaded from <http://www.state.gov/e/oes/ocns/opa/c16065.htm>. Comments and questions should be emailed to LimitsInTheSeas@state.gov. Principal analysts for this study are Brian Melchior and Kevin Baumert.

Introduction

This study analyzes the maritime claims and maritime boundaries of the Union of the Comoros, including its archipelagic baseline claim. Comoros Law No. 82-005 relating to the delimitation of the maritime zones of the Islamic Federal Republic of the Comoros of 6 May 1982 (Annex 1 to this study) took effect July 28, 1982, and established a 12-nautical mile (nm) territorial sea and a 200-nm exclusive economic zone (EEZ).¹ The Law also provided for the use of archipelagic baselines, the coordinates for which were later set forth in Comoros Presidential Decree No. 10-092 of August 13, 2010 (Annex 2 to this study).² The archipelagic baselines are shown on Map 1 to this study. Comoros ratified the United Nations Convention on the Law of the Sea (LOS Convention) on June 21, 1994.³

Basis for Analysis

The LOS Convention contains certain provisions related to archipelagic States. Article 46 provides that an “archipelagic State” means “a State constituted wholly by one or more archipelagos and may include other islands.” An “archipelago” is defined as “a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.”

Only an “archipelagic State” may draw archipelagic baselines. Article 47 sets out geographic criteria to which archipelagic States must adhere when establishing archipelagic baselines (Annex 3 to this study).

Under Article 47.1, an archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago, provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1. In addition, the length of any baseline segment shall not exceed 100 nm except that up to 3 percent of the total number of baselines may have a length up to 125 nm (Article 47.2).

¹ The text of Law No. 82-005 relating to the delimitation of the maritime zones of the Islamic Federal Republic of the Comoros of 6 May 1982, is available from UN Division for Ocean Affairs and the Law of the Sea (DOALOS), at: <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/COM.htm> and DOALOS, *Practice of Archipelagic States* 20-22 (1992).

² The text of the Comoros Presidential Decree No. 10-092 of August 13, 2010 is available from DOALOS, at: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/com_mzn82_2011_e.pdf and *Law of the Sea Bulletin* No. 74, at 16-17 (2010). The Union of Comoros also communicated to the UN Secretary General that “geodetic system used to determine the list of geographical coordinates of points delineating the archipelagic baseline of the Union of the Comoros is the ‘IGN-50’ system, with nautical chart No. 5983 of the Marine Hydrographic and Oceanographic Service as a supporting document.” Available from DOALOS, at: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/com_mzn82_2011_addcorr_e.pdf.

³ United Nations Convention on the Law of the Sea, Montego Bay, opened for signature Dec. 10, 1982, entered into force Nov. 10, 1994, 1833 UNTS 397, available from DOALOS, at: http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm.

Additional provisions of Article 47 state that such baselines shall not depart to any appreciable extent from the general configuration of the archipelago; that such baselines shall not be drawn, with noted exceptions, using low-tide elevations; and that the system of such baselines shall not be applied in such a manner as to cut off from the high seas or exclusive economic zone (EEZ) the territorial sea of another State (Article 47.3 - 47.5).

The LOS Convention further reflects the specific rights and duties given to archipelagic States over their land and water territory. Article 53 allows the archipelagic State to “designate sea lanes . . . suitable for the continuous and expeditious passage of foreign ships . . . through . . . its archipelagic waters and the adjacent territorial sea.” Also, Article 53.12 provides that “[i]f an archipelagic State does not designate sea lanes . . . , the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.”

Analysis⁴

Comoros is an archipelagic State located at the northern end of the Mozambique Channel in the Indian Ocean between northern Mozambique and northern Madagascar. Comoros consists of three main islands and a number of smaller islands and other features. Comoros also claims Mayotte, the sovereignty of which is contested with France (see below).

The archipelagic baseline system of Comoros is composed of 13 line segments, ranging in length from 1.62 nm (segment M-A) to 91.61 nm (segment C-D), with a total length of 345 nm. Comoros has drawn its archipelagic baselines using baseline points on the main islands (including Mayotte) as well as other features.

The archipelagic baseline system of Comoros meets the water-to-land area ratio set forth in Article 47.1:

Total Area = 17,847 square kilometers
 Water Area = 15,612 square kilometers
 Land Area = 2,235 square kilometers⁵
 Water-to-land area ratio = 6.99:1

However, Comoros’ use of baseline point B on Banc Vailheu is not consistent with Article 47.1, in that this feature is not among the outermost islands or drying reefs of the archipelago, nor does it fall under an exception under Article 47.4 relating to low-tide elevations. Banc Vailheu is neither an island nor a low-tide elevation, but rather an underwater feature. There does not appear to be any land or drying reefs in the vicinity of Banc Vailheu.

In accordance with Article 47.2 of the LOS Convention, none of the baseline segments exceed 100 nm in length. Annex 4 to this study lists the lengths of each segment.

⁴ The analysis was conducted in ESRI ArcMap 10, using the Universal Transverse Mercator, Zone 38 South, projection and is based on the World Geodetic System 1984 (WGS84) datum.

⁵ Land area number, which includes Mayotte, may be found in The World Factbook entry for Comoros, at: <https://www.cia.gov/library/publications/the-world-factbook/geos/cn.html>.

The configuration of the baselines does depart to an appreciable extent from the general configuration of the archipelago (Article 47.3), due to the use of baseline point B on Banc Vailheu. Banc Vailheu is more than 10 nm from the closest point on the island of Grand Comore.

None of the baselines appear to be drawn using low tide elevations (Article 47.4). The baselines are not drawn in a way that would cut off from the high seas or EEZ the territorial sea of another State (except France; see below regarding Mayotte) (Article 47.5).

In conclusion, the archipelagic baseline system of Comoros does not appear to be consistent with the LOS Convention. Baseline point B on Banc Vailheu, a submerged feature, is not consistent with either Article 47.1 (specifying that the baselines join the outermost points of the outermost *islands and drying reefs* of the archipelago) or Article 47.3 (requiring that the baselines not depart from the general configuration of the archipelago).

Finally, as noted above, the sovereignty of Mayotte is disputed between Comoros and France. Mayotte is administered as a Department and region of France. Six of the 13 baseline points in Comoros' archipelagic baseline system are used to enclose Mayotte. France has protested this use of baseline points on Mayotte as "not compatible with the status of Mayotte and . . . without legal effect."⁶ In December 2013, by Decree No. 2013-1177, France promulgated baselines, including straight baselines and closing lines, from which the territorial sea of Mayotte is measured.⁷

Territorial Sea, Exclusive Economic Zone, and Continental Shelf

By Law No. 82-005, the archipelagic waters of Comoros comprise those waters enclosed by the archipelagic baselines. Article 3 of the law provides that Comoros' 12-nm territorial sea is measured from the archipelagic baselines. Article 6 of Law No. 82-005 established a 200-nm EEZ measured from the baselines "or equidistant from the baselines of the Comorian coast and those of the coasts of foreign states opposite it." Law No. 82-005 does not address the contiguous zone or continental shelf. On June 2, 2009, Comoros submitted to the Commission on the Limits of the Continental Shelf preliminary information on the limits of its continental shelf beyond 200 nm.⁸

⁶ Note verbale No. 961 to the UN Secretary-General from the Permanent Mission of France to the United Nations, Dec. 23, 2011, *Law of the Sea Bulletin* No. 78, at 35 (2012). Also available from DOALOS at: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn82_2011_fra_re_com_e.pdf.

⁷ Decree No. 2013-1177, dated Dec. 17, 2013, concerning the baselines for measuring the breadth of the territorial sea of the Department of Mayotte, available from DOALOS (pp. 6-8): http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/fra_mzn101_2014.pdf.

⁸ The preliminary information of Comoros is available from DOALOS, at: http://www.un.org/depts/los/clcs_new/commission_preliminary.htm.

Navigation

Articles 2 and 5 of Law No. 82-005 recognize the right of innocent passage through the archipelagic waters and territorial sea of the Comoros. Comoros' law does not mention the right of archipelagic sea lanes passage for all ships and aircraft. The LOS Convention provides that all ships and aircraft enjoy the right of archipelagic sea lanes passage, either through designated sea lanes and air routes or, where no such designations have been made, through the routes normally used for international navigation.

Article 8 of the law provides that, in the Comoros EEZ, the high seas freedoms of navigation and overflight and of the laying of submarine cables and pipelines are available to all States, "provided that such freedoms are compatible with the provisions of the Convention on the Law of the Sea (no threat to the peace)."⁹ The provisions of international law to which the Comoros law refers are reflected in the LOS Convention, Parts V (pertaining to the EEZ); VI (pertaining to the continental shelf, including Article 79 pertaining to submarine cables and pipelines); and VII (pertaining to the high seas).

Maritime Boundaries

Comoros has established maritime boundaries with Mozambique, and has concluded maritime boundary agreements with Tanzania and Seychelles that are not yet in force. As of March 2014, Comoros had not yet established maritime boundaries with Madagascar and perhaps France (Mayotte). The boundaries are shown on Map 2 to this study.

Comoros' maritime boundary agreement with Mozambique, concluded in 2011, established a maritime boundary that separates their respective EEZs and continental shelves.¹⁰ The equidistance boundary is approximately 281 nm in length. It should be noted that Comoros used their archipelagic baselines, along with the baseline point on Banc Vailheu, to delimit the maritime boundary with Mozambique. Around the same time, Comoros, Mozambique, and Tanzania appear to have concluded an agreement on a tri-point where their three boundaries come together. As of March 2014, it appears as though this agreement is not yet in force.

Comoros concluded a maritime boundary agreement with Tanzania and with Seychelles, both in 2012. Around the same time, Comoros, Tanzania, and Seychelles appear to have concluded an agreement on a tri-point where their three boundaries come together. As of March 2014, it appears as though these agreements are not yet in force.

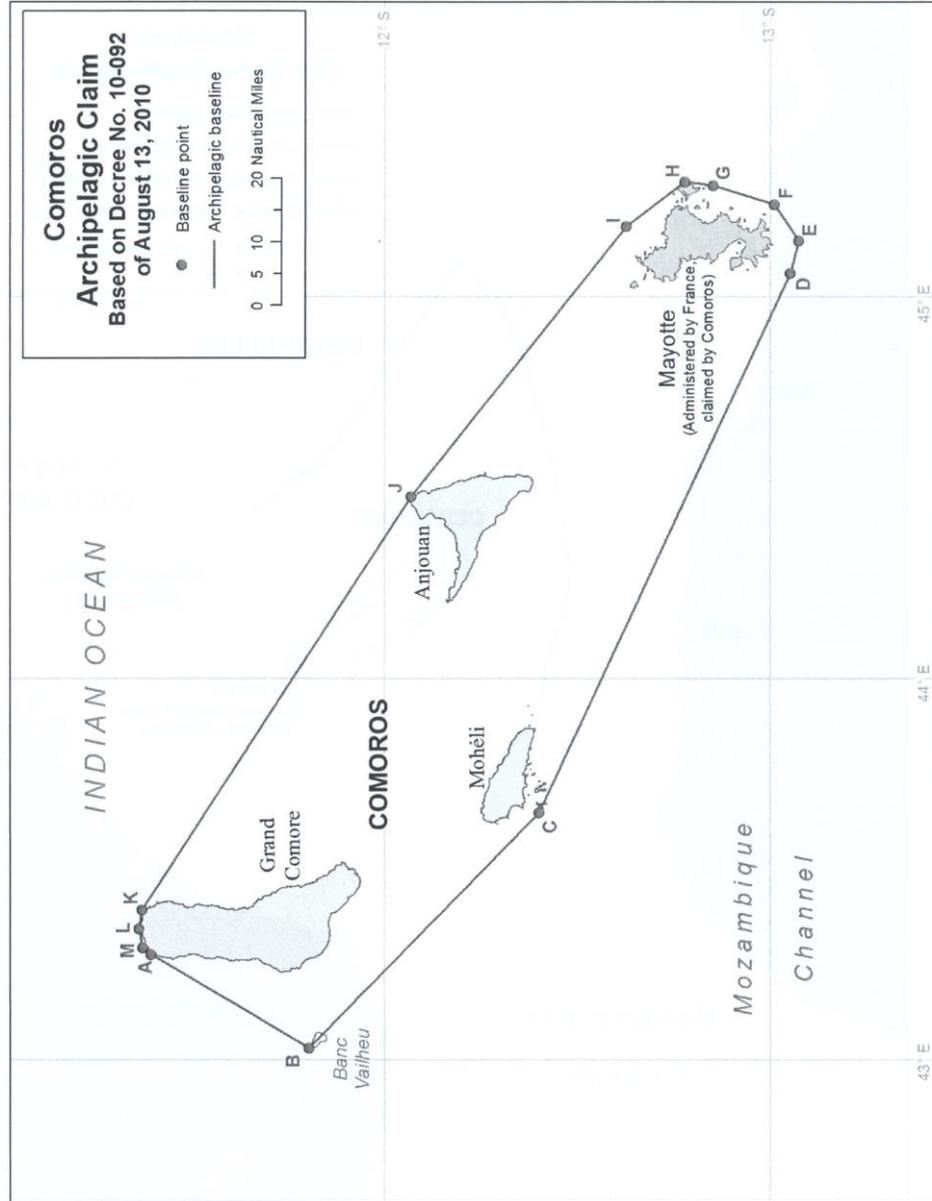
Comoros' undelimited boundaries with Madagascar and perhaps France are complicated by the sovereignty dispute with France over Mayotte and possibly the sovereignty dispute with France and Madagascar over Glorioso Islands. One provision of Law No. 82-005 addresses the situation of undelimited boundaries. Specifically, Article 6 of the law established a 200-nm EEZ measured from the baselines "or equidistant from the baselines of the Comorian coast and those of the coasts of foreign states opposite it, save as otherwise specifically agreed."

⁹ Parenthesis in original.

¹⁰ Agreement on the Delimitation of the Maritime Boundary between the Republic of Mozambique and the Union of the Comoros, Maputo, Dec. 5, 2011, *International Maritime Boundaries*, Report Number 6-26 (2013).

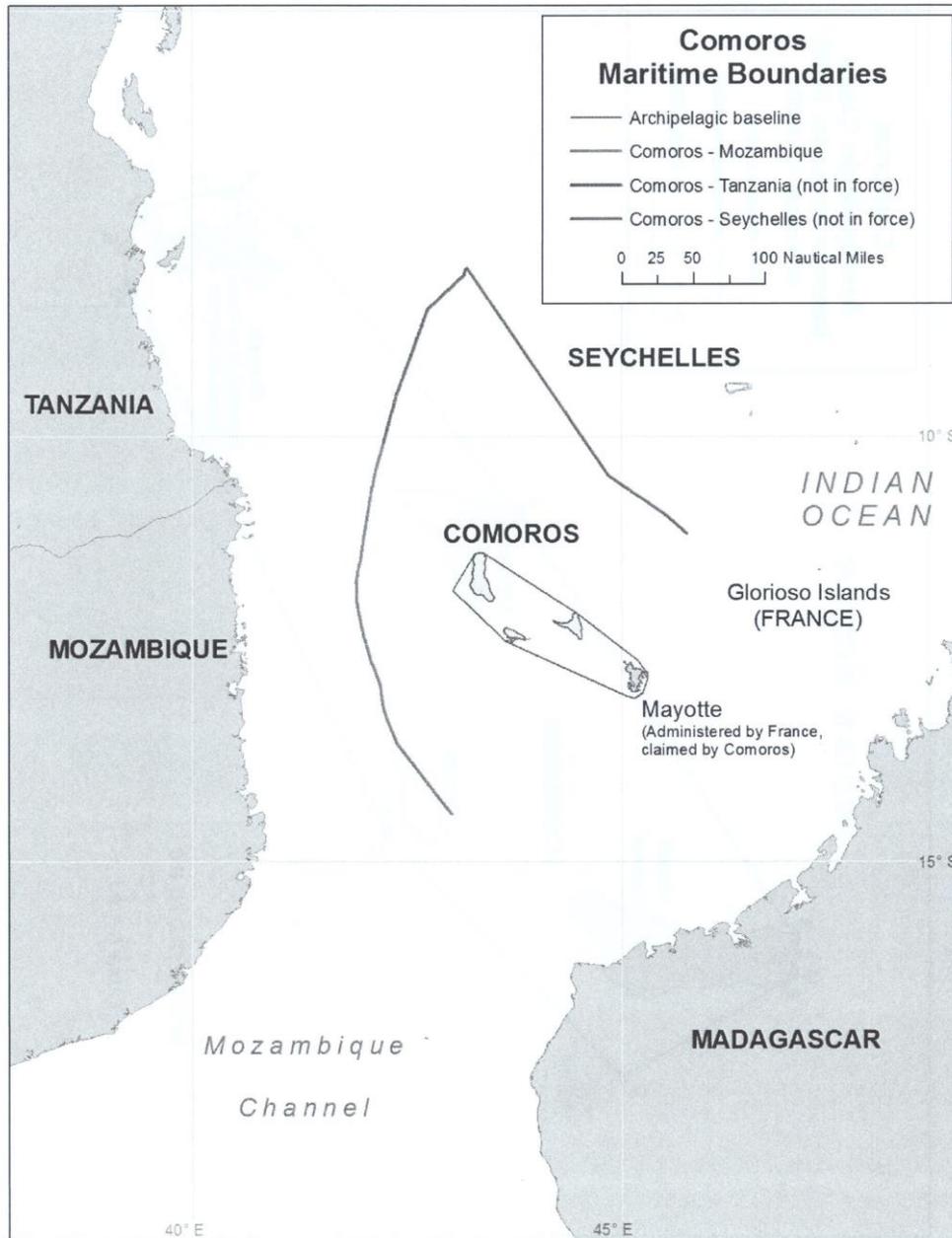
Map 1

Illustrative Map of Comoros' Archipelagic Baselines



Map 2

Illustrative Map of Comoros' Maritime Boundaries



Annex 1

Law No. 82-005 relating to the delimitation of the maritime zones of the Islamic Federal Republic of the Comoros of 6 May 1982

Deliberating in accordance with the Constitution, adopted at its meeting of 6 May 1982 the following law:

SECTION I THE LEGAL STATUS OF THE ARCHIPELAGIC WATERS OF THE COMOROS, OF THE AIRSPACE OVER THE ARCHIPELAGIC WATERS AND OF THEIR BED AND SUBSOIL

Article 1

The sovereignty of the Comorian State extends to the waters enclosed by the baselines, described as archipelagic waters, regardless of their depth or distance from the coast.

The "Comorian" State extends its sovereignty to the airspace over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.

Article 2

The right of innocent passage through the archipelagic waters of the Comoros must be respected. The Comoros may, however, suspend temporarily in its waters the right of innocent passage if such suspension is essential for the protection of its security.

SECTION II THE LEGAL STATUS OF THE TERRITORIAL SEA OF THE COMOROS

Article 3

Limit of the territorial sea of the Comoros

The Comoros limits its territorial sea to 12 nautical miles measured from baselines. The inner limit of the territorial sea is a line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 4

Rights, jurisdiction and duties of the Comoros in the territorial sea

The sovereignty of the Comoros extends, beyond its land territory and internal or archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

This sovereignty extends to the airspace over the territorial sea as well as to its bed and subsoil.

Article 5

Right of innocent passage in the territorial sea

Ships of all States, whether coastal or land-locked, shall enjoy the right of innocent passage through the territorial sea of the Comoros, which means that passage shall be continuous and expeditious and not prejudicial to the peace and good order or the security of the Comoros. The right of innocent passage may

be regulated or suspended by decree in accordance with international law. In the territorial waters of the Comoros, submarines must remain on the surface and show their flag.

**SECTION III:
LEGAL REGIME OF THE EXCLUSIVE ECONOMIC ZONE OF THE COMOROS**

**Article 6
Limit of the exclusive economic zone of the Comoros**

The exclusive economic zone is delimited on one side, by the outer limit of the territorial sea and, on the other side, by a line every point of which is at a distance of 200 miles from the nearest point on the baseline or equidistant from the baselines of the Comorian coast and those of the coasts of the foreign countries opposite it, save as otherwise specifically agreed.

**Article 7
Rights, jurisdiction and duties of the Comoros in the exclusive economic zone**

In its exclusive economic zone:

(a) The Comoros shall have sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the seabed and its subsoil and of the waters superjacent to the seabed, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.

(b) The Comoros shall have jurisdiction with regard to:
Marine scientific research;
Preservation of the marine environment;
Prevention of marine Pollution.

The conduct of scientific or technical research shall be subject to licensing by the Comorian State.

(c) All Comorians may fish freely in the exclusive economic zone of the Comoros.

**Article 8
Rights and duties of other States in the exclusive economic zone of the Comoros**

(a) In the exclusive economic zone of the Comoros, all States shall enjoy the freedom of navigation and overflight and of the laying of submarine cables and pipelines, provided that such freedoms are compatible with the provisions of the Convention on the Law of the Sea (no threat to the peace).

(b) Third States shall have regard to the rights and duties of the Comoros and comply with the laws and regulations enacted by it in accordance with the rules of international law.

(c) Conflict resolution: where a conflict arises between the interests of the Comoros and any other State or States, the conflict shall be resolved on the basis of equity, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

**Article 9
Conservation of living resources in the exclusive economic zone of the Comoros**

(a) The allowable level of exploitation of living and mineral resources in the exclusive economic zone shall be determined by decree.

(b) The Comoros shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation.

As appropriate, the Comoros and the subregional, regional and global organizations concerned [...] are not endangered by over-exploitation.

(c) The Comoros shall determine its capacity to exploit the living and mineral resources of the zone. Where it does not have the capacity to attain the allowable level of exploitation, it shall, through agreements, give other States access.

Article 10

Violations of the provisions of this Law and of the provisions of regulations adopted to give it effect shall be punishable by a fine of between 10 million and 80 million CFA Francs and/or temporary seizure of the vessel.

Article 11

Law No. 71-1060 of 24 December 1971 relating to the delimitation of French territorial waters is hereby repealed in the Comoros.

Order No. 78-003/DPM of 20 July 1978 specifying the limits of Comorian territorial waters is hereby repealed.

This law shall be applied as the law of the State.

Done at Moroni, 6 May 1982.

Annex 2

Decree No. 10-092 of August 13, 2010
Establishing the limits of the territorial sea of the Union of the Comoros

THE PRESIDENT OF THE UNION

CONSIDERING the Constitution of the Union of the Comoros of 23 December 2001,

CONSIDERING the Referendum Act of 23 December 2001 amending the Constitution of the Union of the Comoros, which was promulgated by Decree No 09-066/PR of 23 March 2009,

CONSIDERING the Declaration on the African Union Border Programme and its [endorsement] in its eleventh ordinary session held at Accra, Ghana, from 25 to 29 June 2007,

CONSIDERING Act No. 82-005 of 6 May 1982, concerning the delimitation of the maritime areas of the Federal Islamic Republic of the Comoros,

DECREES THAT

Article 1: The outer limit of the territorial sea of the Union of the Comoros is comprised of lines every point of which is at a distance of twelve (12) nautical miles from the nearest point of the archipelagic baseline as defined in article 2.

Article 2: The straight archipelagic baseline from which the breadth of the territorial sea is measured is an irregular polygon, whose vertices are defined by the geographical coordinates of the outermost points of the islands of Grand Comore, Mohéli, Anjouan, Mayotte and the following drying reefs:

<i>Points</i>	<i>Latitude" South</i>	<i>Longitude" East</i>
A: Mitsamiouli Beach, on North-West of Grand Comore	11°23'30"S	43°16'00"E
B: Blanc Vailheu South-West of Grand Comore	11°48'00"S	43°01'15"E
C: South-West of Mangnougni islet, Mohéli	12°23'54"S	43°38'15"E
D: South-West of the reef south of Mayotte	13°03'00"S	45°03'40"E
E: Southern point of Mayotte	13°04'24"S	45°08'46"E
F: South-Eastern point of Mayotte	13°00'30"S	45°13'30"E
G: Outer edge of reef east of Mayotte	12°51'00"S	45°17'30"E
H: Pamadzi Island	12°46'40"S	45°18'00"E
I: North-Eastern point of Mayotte	12°37'30"S	45°11'00"E
J: North of Anjouan	12°04'00"S	44°28'30"E
K: North-East of Grand Comore	11°22'00"S	43°23'00"E
L: North of Grand Comore	11°21'36"S	43°20'00"E
M: North of Grand Comore	11°22'12"S	43°17'00"E

Article 3: The baseline between two consecutive points is the straight line that joins them and that does not exceed one hundred (100) nautical miles.

Article 4: This decree shall be registered, published in the official gazette of the Union of the Comoros and communicated wherever necessary.

(Signed) Ahmed Abdallah Mohamed **Samba**
 (Seal of Union of the Comoros)

Annex 3**United Nations Convention on the Law of the Sea*****Article 47******Archipelagic baselines***

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.
2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.
3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.
4. Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.
5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.
6. If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those State shall continue and be respected.
7. For the purpose of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or partly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.
8. The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted.
9. The archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

Annex 4**Comoros Archipelagic Baseline Segments**

Baseline Segment	Length (nm)
A to B	28.35
B to C	50.87
C to D	91.61
D to E	5.16
E to F	6.80
F to G	9.89
G to H	4.34
H to I	11.39
I to J	53.22
J to K	76.24
K to L	2.97
L to M	3.00
M to A	1.62

D(6)

35

4. France

Note verbale dated 23 December 2011 in respect of the list of geographical coordinates deposited by Comoros³

BLF/cf

No. 961

The Permanent Mission of France to the United Nations [...] has the honour to transmit the following information:

France notes that, on 7 September 2010, the Government of the Union of the Comoros deposited with the Secretary-General of the United Nations a list of geographical coordinates of points delineating the archipelagic baselines from which the territorial sea of the Union of the Comoros is measured. The baselines form an irregular polygon "whose vertices are defined by the geographical coordinates of the outermost points of the islands of Grand Comore, Mohéli, Anjouan, Mayotte" (article 2 of the Decree) and by 13 drying reefs specified in the Decree, of which five are in Mayotte.

These documents, which appear on the website of the Division for Ocean Affairs and the Law of the Sea of the United Nations, imply that Mayotte falls under the sovereignty of the Union of the Comoros.

France believes that this deposit is not compatible with the status of Mayotte and is without legal effect.

France states that it has complete and full sovereignty over Mayotte. It believes that no other State has the right to assert a claim over the maritime areas adjacent to Mayotte.

The Government of the French Republic requests the Secretary-General to register this declaration and to publish it in accordance with established procedure.

[...]

³ Original: French.