Decolonization: French Territories

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A. Introduction: The Landscape of French Colonies

1 In the 19th and the 20th centuries, the French colonial empire was one of the largest in the world, behind the British and the Spanish colonial empires (see also Decolonization: British Territories; Decolonization: Spanish Territories). At the end of World War II, the French colonial empire mainly comprised the three Indochinese possessions, Vietnam, Cambodia, and Laos; the three North African protectorates and colonies, Algeria, Morocco, and Tunisia (Protectorates and Protected States); numerous colonies in the two colonial unions of French West Africa and French Equatorial Africa; Madagascar; Reunion and the Comoro Islands: as well as the two C-mandates and later trust territories, Togo and Cameroon (former German colonies) (Mandates; United Nations Trusteeship System); and the two A-mandates, Syria and Lebanon (former Turkish territories of the Ottoman Empire).

2 The situation of these territories varied significantly. At the end of the 19th century, Tunisia, Morocco, Vietnam, and Cambodia were independent States which became protectorates on the basis of treaties with France. Within these protectorates, France exercised foreign affairs power partially in its own name and partially in the name of these States. Domestic powers, such as the maintenance of public safety and order, were exercised by French officials who were subject to the supervisory power of a French deputy or commissioner. For instance, in the United States Nationals in Morocco Case, the International Court of Justice (ICJ) clearly stated that commercial or economic equality in Morocco was assured to the United States, 'not only by Morocco, but also by France as the protecting State', and that France, 'in spite of her position as the protector of Morocco', was herself subject to this principle of equality. Therefore, France could not enjoy commercial or economic privileges that were not equally enjoyed by the United States. The Court then declared:

> It is not disputed by the French Government that Morocco, even under the Protectorate, has retained its personality as a State in international law. The rights of France in Morocco are defined by the Protectorate Treaty of 1912. In economic matters France is accorded no privileged position in Morocco. Such a privileged position would not be compatible with the principle of economic liberty without any inequality, on which the Act of Algeciras is based. (at 185)

3 The A-mandate territories in the Near East and the C-mandate territories in Sub-Saharan Africa were based on corresponding mandate treaties with the League of Nations and were subject to international control, initially by the League and later by the United Nations. These territories were administered by France as if they were French colonies and were fully integrated in the French State but with variations. Indeed, it is important to bear in mind that Art. 22 Covenant of the League of Nations ([signed 28 June 1919, entered into force 10 January 1920] [1919] 225 CTS 195) provided that:

> Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone … Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

4 In contrast, the other Sub-Saharan African territories were integrated components of the French Republic and legally subordinated to the departments (*départements*) of metropolitan France. For instance, their inhabitants possessed French citizenship but not all the fundamental rights provided

for in the French constitution, such as the right to vote and to be elected. The said territories were as such governed by French law. For example, with respect to territorial boundaries, the ICJ acknowledged in the Frontier Dispute Case (Benin/Niger) that

> these territorial boundaries were no more than delimitations between different administrative divisions or colonies subject to the same colonial authority. Only at the moment of independence, also called the 'critical date', did these boundaries become international frontiers. Until that time the matter of delimitation was governed by French colonial law, known as 'droit d'outre-mer' (at para. 46).

B. The French Patterns of Decolonization

5 The French conception of decolonization is well described in Judge Luchaire's separate opinion in the Frontier Dispute Case (Burkina Faso/Republic of Mali). Judge Luchaire stressed that, in his opinion, the term 'decolonization' should not be confused with 'accession to independence'. He considered that 'it would be wrong to ignore a certain opinion to the effect that independence is not the opposite of colonization but rather its crowning achievement, especially in cases where it has been obtained, without fighting, from an administering authority which has facilitated the cultural, economic, social and political progress of the inhabitants, such progress being fundamental to any genuine independence' (at 652). Interpreting the Declaration on the Granting of Independence to Colonial Countries and Peoples made by the UN General Assembly on 14 December 1960 (1514 [XV]), Judge Luchaire asserted that the right of self-determination was in reality a 'right of peoples to determine their own future' that was already expressly enshrined in the French Constitution of 1958. Judge Luchaire emphasized that the core of the right of self-determination was the right possessed by all peoples to 'freely determine their political status' (referring to para. 2 of the Declaration on the Granting of Independence to Colonial Countries and Peoples: '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'). From there, he concluded that 'the exercise of that right does not necessarily lead to the independence of a State with the same frontiers as a former colony' (at 652).

6 Under the French conception, the exercise of the right of self-determination could lead to 'independence within the aforesaid geographical framework' or to 'integration into the territory of the administering power with strict equality of rights as between individuals, irrespective of whether their origins lie in the former colony or the former metropolitan State' or to 'merger with a neighboring State on the same conditions of equality', or to 'the voluntary association of the ex-colony with the former metropolis on terms including unqualified respect for the former's personality'. Such patterns of decolonization form the cement of the French conception of decolonization. From the point of view of the French Republic, those patterns have received the blessing of international law through UN General Assembly Resolution 648 (VII) of 10 December 1952, which set forth a list of 'factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of government'. Resolution 648 (VII) made a distinction between 'factors indicative of the attainment of independence', 'factors indicative of the attainment of other separate systems of self-government', and 'factors indicative of the free association of a territory with other components parts of the metropolitan or other country'.

7 The French conception of decolonization also found some sort of legitimacy taking into account State practice and the practice of the United Nations. Indeed, history provides numerous examples of very different options of decolonization. For instance, the area of Togo that used to be under British trusteeship was integrated with the State of Ghana. British and Italian Somaliland became one State of Somalia. Some of the trust territories under United States strategic administration chose independence, while the others opted for association with the United States. The northern part of the area of Cameroon which used to be under British trusteeship was merged with the State of

Nigeria, and the southern part with the territory of Cameroon formerly under French trusteeship (see Northern Cameroons Case). With respect to this latter case, the UN General Assembly adopted Resolution 1608 (XV) of 21 April 1961 which included the two following relevant paragraphs:

> 2. *Endorses* the results of the plebiscites that:
>
> a) The people of the Northern Cameroons have, by a substantial majority, decided to achieve independence by joining the independent Federation of Nigeria;
>
> b) The people of the Southern Cameroons have similarly decided to achieve independence by joining the independent Republic of Cameroun;
>
> 3. *Considers that, the people of the two parts of the Trust Territory having freely and secretly expressed their wishes* with regard to their respective futures in accordance with General Assembly resolutions 1352 (XIV) and 1473 (XIV) , the decisions made by them *through democratic processes* under the supervision of the United Nations should be immediately implemented (emphases added).

8 It is this very idea of the 'democratic process' and of the 'free will of peoples' which principally characterized the French conception of decolonization since its formal inception. The preamble of the French Constitution of 27 October 1946 proclaimed:

> Faithful to its traditional mission, France desires to guide the peoples under its responsibility towards the freedom to administer themselves and to manage their own affairs democratically; eschewing all systems of colonization founded upon arbitrary rule, it guarantees to all equal access to public office and the individual or collective exercise of the rights and freedoms proclaimed or confirmed herein.

The French Constitution of 4 October 1958, while confirming the principle contained in the 1946 Constitution, embodies a more precise legal formulation of the intrinsic relationship between the right to self-determination and the right of peoples to 'freely determine their political status'. The preamble of the 1958 Constitution reads as follows: 'By virtue of the principle … of the self-determination of peoples, the Republic offers to the overseas territories which have expressed the will to adhere to them, new institutions founded on the common ideal of liberty, equality and fraternity and conceived for the purpose of their democratic development.'

C. The Legal Principles Governing the French Conception of Decolonization: 'Self-determination' and 'Evolution'

9 The emphasis on the free will of peoples to determine their political status was reiterated by the French authorities after protests during the 1966 visit of General Charles de Gaulle, President of the French Republic, to the French Coast of the Somalis (French Somaliland; in French, Côte française des Somalis). General de Gaulle, in a press conference of 28 October 1966, expressed his astonishment and declared 'Lors de mon passage, la question de l'indépendance a été posée d'une manière que l'on peut qualifier de pressante et de bruyante. Eh bien! Soit. Mais alors il faut savoir à quoi s'en tenir. La France entend savoir si la Côte française des Somalis veut rester avec elle ou non. Elle va donc le lui demander' (quoted in 'Rapport fait au nom de la Commission des lois constitutionnelles, de la législation et de l'administration générale de la République sur le projet de loi [no 2118] organisant une consultation de la population de la Côte française des Somalis par René Capitant'). Before him, State Minister Pierre Billotte had pinpointed on 28 August 1966: 'La France est ici de par la volonté clairement exprimée au référendum de 1958 par une majorité des trois quarts de la population. Elle ne s'y maintiendrait certainement pas par la force s'il apparaissait clairement que la volonté exprimée en 1958 avait changé' (quoted ibid).

10 During the draft law discussion at the French National Assembly concerning the consultation of

the peoples of the French Coast of the Somalis (in French, Projet de Loi (no 2118) organisant une consultation de la population de la Côte française des Somalis), a report was presented by René Capitant (the 'Capitant Report'). The importance of the Capitant Report lies in the fact that it is one of the few official documents of the French Republic that thoroughly highlights and explains the fundamental principles in which the French policy of decolonization remains rooted. According to the Capitant Report, two main principles govern the French conception of decolonization: the 'principle of self-determination' and the 'principle of evolution' (in French, *principe d'évolution*).

11 With respect to the principle of self-determination, a distinction had to be made between the 'optional phase' of the 1958 Constitution and the 'non-optional phase' of the 1958 Constitution. The initial 1958 Constitution through its Arts 1 and 76 gave an 'option' to French overseas territories. Art. 1 read as follows: 'La République et les peuples des territoires d'outre-mer qui, par un acte de libre détermination, adoptent la présente Constitution, instituent une communauté'. Art. 76 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, ils deviennent soit département d'outre mer de la République, soit groupés ou non entre eux, états membres de la communauté'. In other words, in light of Art. 1 Constitution of 1958, peoples of the overseas territories had the option to reject the draft 1958 Constitution and to leave the French Republic. That was the case with Guinea, which gained its independence automatically following the rejection of the 1958 Constitution. The other option for overseas territories, under Art. 76 Constitution of 1958 was either to retain their status within the French Republic (option 1), become overseas departments of the French Republic (option 2), or become a Member State of the 'French Community' (option 3). In order to obtain the latter status, the territorial assembly was required to deliberate upon the matter within four months following the promulgation of the 1958 constitution.

12 The following overseas territories chose to enter the Community: Chad; Congo; Dahomey (now known as Benin); Gabon; the Ivory Coast; Madagascar; Mauritania; Niger; Oubangui-Chari (now known as the Central African Republic); Senegal; Sudan; and Upper Volta (now known as Burkina Faso). It is important to note that the decision to opt for one of the options was a unilateral act of each of the territories with effects binding upon the French Republic. By refraining from option 3, the other overseas territories either kept their status (option 1) or became overseas departments (option 2), if they expressed that will. However, those territories that selected option 1 and option 2 were deemed to have renounced the possibility of leaving the French Republic. From then on, those overseas territories and departments' right to self-determination was no longer subject to their unilateral free will.

13 Until the beginning of the new millennium, the 'overseas territories' were: New Caledonia; Polynesia; Wallis and Futuna; and the Austral and Antarctic Lands. The overseas departments were: Martinique; Guadeloupe; French Guiana; and Reunion. Between these two categories, there was another category of entities called 'other territorial entities', ie Saint-Pierre and Miquelon, and Mayotte. Having no permanent population, the Eparses Islands in the Indian Ocean (Tromelin, Les Glorieuses, Juan de nova, and Bassas de India) as well as Clipperton Island were respectively administered by the Commissioner of the Republic of Reunion and the High Commissioner of the Republic in French Polynesia. The landscape of dependent and overseas territories integrated in the French Republic was to change after the constitutional revision of 2003 (see below para. 27).

14 Following the entry into force of the 1958 Constitution, the exercise of the right to self-determination in overseas territories and departments was then subject, in particular, to Art. 53 (1) and (3) Constitution of 1958. These provisions, embodied in Art. 53, which deals with treaties and international agreements, state:

> Peace Treaties, Trade agreements, treaties or agreements relating to international organization, those committing the finances of the State, those modifying provisions which

> are the preserve of statute law, those relating to the status of persons, and those involving the ceding, exchanging or acquiring of territory, may be ratified or approved only by an Act of Parliament … No ceding, exchanging or acquiring of territory shall be valid without the consent of the population concerned.

As explained by the Capitant Report, Art. 53 applies both in the case of cession and secession of territory. The 'independence' of one of the above-mentioned overseas territories, in accordance with the UN 'Declaration on the granting of independence to colonial countries and peoples', would imply a secession from the French Republic. For such an act to occur and to be valid, the Capitant Report explains that two conditions must be cumulatively met: *i)* an Act of the French Parliament authorizing such a secession; and *ii)* a consent of the population of the concerned territory. The Capitant Report underlines that 'on voit donc qu'à la différence de ce qui s'est passé lors de l'entrée en vigueur de la Constitution, les territoires d'outre-mer n'ont plus la faculté de décider unilatéralement qu'ils se maintiendront dans la République française ou en sortiront. La décision exige la volonté commune du territoire et du législateur français. Le territoire ne peut sortir de la République sans l'accord du législateur. Réciproquement, celui-ci ne peut rejeter un territoire hors de la République sans son consentement'.

15 Thus, it appears that at the outset the French conception of decolonization was not, and has never been, substantially equivalent to the United Nations perception of the right of self-determination. The French approach is centred on the idea according to which the population of a colony should be able to decide its status and future within the mother country. It is in relation to that perspective that Judge Luchaire argued that 'the exercise of the right of self-determination may evidently lead certain plainly individualized parts of the former colony to a different option from that followed by the other parts' (*Frontier Dispute Case [Burkina Faso/Republic of Mali] [Separate Opinion of Judge Luchaire]* 653). In contrast, the United Nations' approach focuses on the idea according to which self-determination is to be realized through the development of colonies into completely independent sovereign States. The preamble of the UN Declaration on the Granting of Independence to Colonial Countries and Peoples firmly states that 'all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory'. It also enunciates that 'any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations' (Territorial Integrity and Political Independence). The gap between the French conception and the UN approach is exacerbated by the second principle governing the process of decolonization within the French Republic, ie the 'principle of evolution'.

16 The principle of evolution is based on the assumption that decolonization per se is a complex process and that complete independence is the ultimate phase. Independence should not be granted to a territory if that territory does not yet meet the conditions to achieve independence. Gradual autonomy should be preferred to independence depending on the circumstances. The Capitant Report points out 'se séparer de la République, c'est pour un territoire l'étape extrême dans la marche vers l'indépendance. Mais il y a des degrés intermédiaires qui consistent à acquérir une dose croissante d'autonomie au sein de la République française. Le préambule de la constitution a prévu cet acheminement progressif des peuples d'outre-mer "vers la liberté de s'administrer eux-mêmes et de gérer démocratiquement leurs propres affaires" … C'est pourquoi l'article 74 de la constitution a laissé au législateur toute liberté pour adapter le statut des territoires d'outre-mer au degré d'évolution de leurs populations'. Thus, the French constitution gives to the French legislator the power to determine whether the conditions to grant independence have been fulfilled, or else assess the appropriate degree of autonomy to grant to a territory.

D. Self-determination and Evolution In Vivo: The 'Scramble' of French Decolonization

17 The 'Scramble for Africa' is often referenced to depict the race for annexation of African countries between the end of the 19th century and World War I. The process of decolonization of French territories can also be described as a scramble. Transposing this metaphor to the French situation does not imply that the French Republic was engaged in a 'race for decolonization' but captures the disorganized and somewhat heterogeneous mechanisms through which decolonization was conducted within the French Republic. By contrast to the situation in Indochina, Black Africa, and the Near East, the independence of Morocco and Tunisia, as well as Algeria did not occur through a process in which increasing levels of competence were transferred to the new States until they attained independence. The panoply of situations involves de facto independence, autonomy within the French Union, quasi-independence within the French Community, integration of overseas territories and departments in the French Republic, secession of parts of a colony for integration in the French Republic, and *sui generis* territorial entities.

18 'Independence de facto' characterizes the situation of the A-mandate territories of the Near East where France founded two autonomous States, Syria and Lebanon, in the early 1920s. During World War II, upon the re-conquest of the mandate territories by the troops of Great Britain and free France, the French General-Deputy Catroux proclaimed the independence of both States. However, the proclamation did not amount to a legal act changing the status of these territories, but rather to a promise of later independence. Full territorial sovereignty was still assumed by the French Republic. Because of the pressure of third States that had recognized the independence of the Levantine States and of the latter becoming original members of the United Nations in 1945, France transferred important levels of sovereign authority to the said States and withdrew its troops from their territories in 1946. The independence of both Syria and Lebanon thus relied on factual circumstances.

19 'Autonomy within the French Union' relates to the assimilation policy put in place by the 1946 French constitution. The French Union was constituted 'd'une part, de la République française qui comprend la France métropolitaine, les départements et territoires d'outre-mer, d'autre part, des territoires et Etats associés' (Art. 60 Constitution of 1946). Under the 1946 French constitution, French colonies in Sub-Saharan Africa were renamed 'overseas territories'. The inhabitants of those territories benefited from French citizenship and progressively acquired basic rights such as the right to vote and to be elected. The associate States were the three Indochinese States, ie Vietnam, Cambodia, and Laos. In 1946, France concluded treaties with the three Indochinese States. The said treaties envisaged 'independence in the framework of the French Union'. Through the treaties important competences (foreign affairs, defence and, economy) were laid in the hands of the French Union. The organs of the French Union were the Presidency, the High Council, and the Assembly. The French Union did not involve a union of States under international law with international legal personality, but rather a juridical person under French colonial law that was fully integrated in the French State.

20 The French defeat in Indochina in 1954 and the Algerian war severely weakened the French Union. French Indochina acceded to independence after the conclusion of the Geneva Agreements of 27 April 1954. Morocco achieved independence through the Declaration of de La Celle-Saint Cloud of 6 November 1955. Tunisia acceded to international sovereignty and independence on 20 March 1956 with the termination of the clause in the 1881 Treaty of Bardo establishing the French protectorate in Tunisia. As for Algeria, the 1962 Évian Accords between the French Republic and the Front de Libération Nationale (FLN) paved the way for the organization of a referendum (March 1962), during which 99% of the people voted in favour of complete independence. Algeria became independent on 1 January 1963. This wind of change in the French colonies and protectorates led to a paradigm shift in which the assimilation or integration policy was to be abandoned in favour of a policy fostering self-administration of the colonies and quasi-independence.

21 The 1958 French Constitution, through its 'optional system' allowed for different pathways. Overseas territories that opted for the French Community gained independence in 1960, and their

relations with France were governed by treaties of co-operation. The other territories were fully integrated into the French Republic as overseas departments or territories. Later the status of *sui generis* territorial entity was created. New Caledonia acquired such a *sui generis* status after the conclusion of the 1998 Nouméa Accord between the French government and the main political groups of New Caledonia, pending the organization of a referendum on self-determination in 2014. The Nouméa Accord was adopted by referendum and New Caledonia is thus no longer an overseas territory. The three main aspects of the *sui generis* status are: the establishment of Caledonian citizenship; the right conferred to New Caledonia to conduct international relations in the Pacific; and the right granted to the New Caledonia's Congress to vote on local laws. The example of New Caledonia shows that the principles of self-determination and evolution obey certain dynamics in order to appropriately fit the French conception of decolonization. However, that conception is still subject to scrutiny by UN principal organs. As an illustration, Resolution 57/136 of the UN General Assembly of 25 February 2003 'invites all parties involved to continue to promote a framework for the peaceful progress of the Territory towards an act of self-determination in which all options are open and which would safeguard the rights of all New Caledonians according to the letter and the spirit of the Nouméa Accord, which is based on the principle that it is for the populations of New Caledonia to choose how to control their destiny'.

22 The case of French Somaliland, which was renamed the French Territory of Afars and Isas in July 1967, offers another example of implementation of the principles governing the French conception of decolonization. In March 1967, the French government decided to organize a 'consultation' by virtue of which the peoples of French Somaliland were given the choice between independence and a new territorial status within the French Republic. 57% voted in favour of the continuation of integration within the French Republic. A referendum was already organized in French Somaliland in 1958. The peoples of French Somaliland in their majority pronounced themselves in favour of becoming an overseas territory. Resolution 2356 (XXII) of the UN General Assembly of 19 December 1967 implicitly rejected the 1967 referendum and regretted that the French Republic did not co-operate with the United Nations and, in particular, the 'Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples'. Before this resolution, Resolution 2228 (XXI) of the UN General Assembly of 20 December 1966 urged the French government to 'ensure that the right of self-determination shall be freely expressed and exercised by the indigenous inhabitants' of French Somaliland and 'to create a proper political climate for a referendum to be conducted on an entirely free and democratic basis'. Resolution 2228 also requested that France, in consultation with the UN Secretary General, 'make appropriate arrangements for a United Nations presence before, and supervision during, the holding of the referendum'. French Somaliland became independent in 1977 as Djibouti.

23 Among the 'contentious' instances of French decolonization, the case of Mayotte is surely the most controversial. It reveals that the French implementation of the principles of self-determination and evolution could go as far as conflicting with certain norms of customary and general international law, such as the principle of territorial integrity and its corollary in the context of decolonization, the uti possidetis doctrine. Indeed, the case of Mayotte led to a situation of 'secession of one part of a colony for integration in the French Republic'. Mayotte was one of the islands of the Comoro Archipelago together with the Islands of Anjouan, Grande-Comore, and Mohéli. Since 1958, the Comoro Archipelago had been an overseas territory. The Comoro Archipelago became independent on 6 July 1975. The French government organized a referendum on self-determination in December 1974. It appeared that three of the islands in their vast majority voted in favour of independence, but not Mayotte, where the majority voted against independence. Despite France's commitment, according to which the consultation of the Comoro Archipelago was to be organized 'on an archipelago-wide basis', the French government decided to recognize the independence of the three other islands constituting the Comoro Archipelago and to organize a new special referendum in 1976 for Mayotte. Such a move contravened Resolution 3291 (XXIX) of

the UN General Assembly of 13 December 1974 which made clear that France had 'to ensure the unity and territorial integrity of the Comoro Archipelago', as well as 'to take all measures to ensure the full and speedy attainment of freedom and independence by the people of the Territory'. At the 1976 referendum, the population of Mayotte voted by a great majority for integration in the French Republic as an overseas territory, and thus against integration in the new Comorian State.

24 The status of Mayotte as a French overseas territory has led to a number of condemnations and negative reactions from the international community. The UN General Assembly has continually adopted resolutions criticizing France's conduct. For instance, in Resolution 49/18 of 6 December 1994, the General Assembly recalled that 'in accordance with the agreements between the Comoros and France, signed on 15 June 1973, concerning the accession of the Comoros to independence, the results of the referendum of 22 December 1974 were to be considered on a global basis and not island by island'. Resolution 49/18 also reaffirms 'the sovereignty of the Islamic Federal Republic of the Comoros over the island of Mayotte'. In the same vein, the Assembly of Heads of State and Government of the Organization of African Unity (OAU) (31st Ordinary Session in Addis Ababa, Ethiopia, 1995) adopted Resolution AHG/Res 241 (XXXI), by virtue of which the OAU

> 2. Reaffirms the sovereignty of the Federal Islamic Republic of the Comoros over the Comorian Island of Mayotte;
>
> 3. Reaffirms its solidarity with the Comorian people in their determination to recover their political integrity and to defend their sovereignty and territorial integrity;
>
> 4. Condemns the introduction of entry visa to Mayotte for Comorian nationals living on the other three sister Islands;
>
> 5. Appeals to the French Government to accede to the legitimate claims of the Comorian Government in accordance with the relevant decisions of the OAU, the UN, the Non-Aligned Movement, the Islamic Conference and the League of Arab States;
>
> 6. Invites OAU Member States to take every step, individually and collectively, to inform and sensitize the French and international public opinion on the Question of the Comorian Island of Mayotte in order to bring the French Government to end its occupation of Mayotte;
>
> 7. Appeals to all OAU Member States and the international community to categorically condemn and reject all forms of consultations to be organized by France on the Comorian territory of Mayotte regarding the international legal status of the Island specially as the referendum of self-determination conducted on 22 December 1974 remains the only valid consultation applicable to the entire Archipelago.

25 Other international organizations like the League of Arab States (LAS) and the Organization of the Islamic Conference (OIC) took positions in relation to Mayotte. Resolution No 22/27-P 'On the Comorian Island of Mayotte' adopted by the foreign ministers of the OIC considers that 'the separation of the Island of Mayotte from the other Comorian Islands constitutes a grave violation of the territorial integrity of the Islamic Federal Republic of the Comoros, and is a serious impediment to the harmonious economic development of that country'. The same resolution 'rejects and condemns any institutional evolution of the Island of Mayotte which would tend to remove it from the integrity of the Comoro as a whole and complicate efforts exerted with a view to achieve a final settlement of the dispute'.

26 Despite these strong calls and condemnations, the French Republic organized a new referendum on 29 March 2009 concerning the change of status of Mayotte from an overseas territory to an overseas department. The population by a majority of 72% voted in favour of that change of status within the French Republic. The referendum was organized following the 2000 Agreement on the Future of Mayotte between the French Government and the representatives of

political groups in Mayotte, and the adoption of 'Décret no 2009-67 du 20 janvier 2009 décidant de consulter les électeurs de Mayotte en application des articles 72–4 et 73 de la Constitution'.

27 The XV Summit of Heads of State and Government of the Non-Aligned Movement (NAM) unequivocally reacted against this new referendum:

> The Heads of State and Government reiterated once again the unquestionable sovereignty of the Union of Comoros over the island of Mayotte. In this regard, they condemned and considered null and void the referendum of March 29, 2009, organized by the Government of France in the Comorian island of Mayotte that constituted a violation of the sovereignty of the Comorian State and of its territorial integrity and represents a grave breach of international law and of relevant United Nations resolutions.

The Heads of State and Government deplored the current involvement of France in the affairs of Mayotte and vigorously rejected any further integration of the Comorian Island of Mayotte within the French territorial Administration.

28 The persistent attitude of the French government with regard to Mayotte is justified by the idea according to which the status of overseas departments and territories is governed by French constitutional law and not by public international law. Dealing with the constitutionality of the 'Law relating to the consequences of the self-determination of the Comorian Islands' (in French, *Loi relative aux consequences de l'autodétermination des îles des Comores*), the French Constitutional Court (Conseil Constitutionnel) declared that 'l'île de Mayotte fait partie de la République française; 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 déférée au Conseil constitutionnel qui concernent cette île ne mettent en cause aucune règle du droit public international' (Décision no 75–59 DC du 30 décembre 1975).

29 Therefore, it is not surprising that since 1947 (in some cases since 1957) and in relation to most overseas territories and departments, the French Republic has not complied with its obligation to inform under Chapter XI of the UN Charter. As an illustration, Resolution 42/79 of the UN General Assembly recalled the 'obligation' that 'exists on the part of the Government of France to transmit information on New Caledonia under Chapter XI of the Charter of the United Nations' and regretted that France 'has not responded to the request to submit information'.

30 Thus, the French conception of decolonization remains solely governed by French constitutional law. From a focus on the principle of self-determination at the end of the 1950s, the French conception is now focusing mainly on the principle of evolution. Overseas departments and overseas territories continue to be an integral part of the French Republic. In turn, the French Republic is setting mechanisms to grant ever-evolving substantive autonomy to those entities in light of their needs and aspirations. Mayotte has, for example, become an overseas department. With the 2003 revision of the French constitution, the category of 'overseas territories' has been abandoned and replaced by the category of 'overseas collectivities' (in French, *collectivités d'outre-mer*). Saint-Barthelemy and Saint-Martin which used to be dependent territories of Guadeloupe decided in 2003 through referendum to separate from Guadeloupe and to become 'overseas collectivities'.

31 To sum up, 'internal decolonization' (continuous autonomy within the French Republic) has somewhat superseded 'external decolonization', ie granting of complete independence and sovereignty to a dependent territory in accordance with the UN 'Declaration on the Granting of Independence to Colonial Countries and Peoples'. This might be a French 'cultural exception' with respect to decolonization. The uncertainty results intrinsically from the fact that the French Republic is still in quest of achieving a balance between its past as a former colonial power, and its future as a member of the international community, to which the right of self-determination is opposable without limitations or conditions. The internal and international controversies which have

surrounded the so-called ‘positive role of the French presence abroad’ during the adoption of the 2005 ‘French Law on Colonialism’ (Loi no 2005–158 du 23 février 2005 portant reconnaissance de la Nation et contribution nationale en faveur des Français rapatriés; the terms of this decree were deleted by Loi no 2006–160 [31 January 2006] as a result of the ensuing controversy) are illustrative of the uncertainty that characterizes the French conception of decolonization.

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