RESEARCH ARTICLE

NORTH AMERICAN ACADEMIC RESEARCH (NAAR) JOURNAL
2021 SEPTEMBER, VOLUME 4, ISSUE 9, PAGES 194-207
https://doi.org/10.5281/zenodo.5593191

Madagascar's Claim for the Sovereignty over the Scattered Islands which Arbitrarily Occupied by France in the Perspective of International Law: A "War of the Seas"

Rakotoarivelo Tiana Nantenaina[1*], Dr. Idris, S.H., M.A.[2], Raden Achmad Gusman Catur Siswandi, S.H, LL.M. Ph.D.[3]

[1*] Master Candidate, Faculty of Law, Department of International Law at Padjadjaran University Bandung Indonesia.

[2] Lecturer and professor, Faculty of law, Department of International Law at Padjadjaran University Bandung Indonesia.

[3] Lecturer, Faculty of law, Department of International Law at Padjadjaran University Bandung Indonesia.

OPEN ACCESS

Accepted September 13, 2021
Published October 22, 2021

* **Corresponding Author:**
Rakotoarivelo Tiana Nantenaina
nanahrakotoarivelo3@gmail.com

DOI:https://doi.org/10.5281/zenodo.5593191

Pages: 194-207

Funding: none

How to cite this article (APA): Nantenaina, R. T., Dr. Idris, S.H., M.A. & R.A. Gusman Catur Siswandi, SH, LL.M. Ph.D. (2021). Madagascar's claim for the sovereignty over the Scattered Islands which arbitrarily occupied by France in perspective of international law: a "war of the seas". *North American Academic Research, 4(9)*, 194-207. doi: https://doi.org/10.5281/zenodo.5593191

Conflicts of Interest
There are no conflicts to declare.

ABSTRACT

The "Scattered Islands" comprises five islands or groups of islands located either in the Mozambique Channel west of the large island of Madagascar for the Glorieuses, Juan de Nova, Bassas da India, and Europa, or in the North East of Madagascar for the Tromelin islands. The islands In international law of the sea, especially UNCLOS 1982 and international law are of considerable importance. While their combined land area is only about 43km², their adjacent waters potentially represent 640,400km² of Exclusive Economic Zone. However, shortly before the independence of Madagascar, which took place on June 26, 1960, they were attached by Decree n° 60-555 of April 1, 1960, to the French Overseas Ministry, against the wishes of the Malagasy representatives. The legal aspect of the status of the Scattered Islands is interesting given the circumstances relating to the decolonization procedure and the attempts at conciliation that followed the Malagasy claim after this mentioned independence. Madagascar first claimed sovereignty over the Scattered Islands in 1973. It was not until 1978 that Madagascar brought official sovereignty claims to certain international organizations. These were related only to the Glorieuses, Europa, Juan de Nova, and Bassas da India, not including Tromelin.

Keywords: CLAIMS, DECOLONIZATION, INTERNATIONAL LAW, SCATTERED ISLANDS, SOVEREIGNTY

1. Introduction

There are various methods that governments have historically gained territorial sovereignty and demarcated their land and marine boundaries. However, in practice, these categories are simplistic and are often used in overlapping ways to determine sovereignty and boundary disputes.

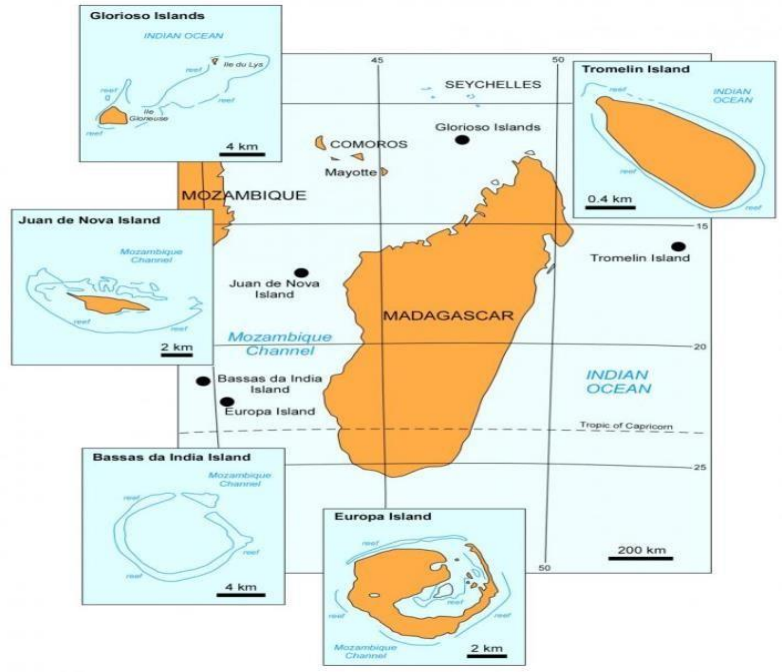
The former Madagascan head of state, D. Ratsiraka, had declared in 1976: "[I] do not see why the French Government, which gave independence to its former colonies in Africa and Asia, would not let go of these small islands"[1]. This question does not interest us so much for its substance, however, justified and innocent it may be, but rather, regarding the moment when it was publicly expressed, that is to say on June 28, 1976. In particular, we must reason differently, depending on whether the 'we are before or after this date. The Scattered Islands, around Madagascar, have an area total estimated at approximately fifty-four square kilometers [2]. Qualified as "Empire dust" by Professor Oraison [3], they are, in reality, almost desert. Their soils, sheltering rodents and mosquitoes and serving as passageways for certain species of migratory birds [4], did not have any particular natural resources. As for their subsoils, it was not until the 1980s and 2000s that we discovered, respectively, polymetallic nodules and hydrocarbon deposits. Therefore, at the time of the questioning, these islands were of no particular interest. It is only in this perspective that it is justified.

It is in this context that the dispute that interests us is situated. The Permanent International Court of Justice had to define the term "dispute" as "a disagreement on the point of law or of fact, a contradiction, and an opposition of legal theses or interests between two people." The Franco-Malagasy dispute results in a disagreement about the sovereignty and the mode of management of the Scattered Islands. It finds its source in enacting a decree of April 1, 1960, relating to certain islands' administrative situation under France's sovereignty. By this decree, the Tromelin, Glorieuses, Juan de Nova, Europa, and Bassas da India Islands were subsequently placed under the authority of the Minister in charge of the overseas departments and the overseas territories on the eve of the independence of Madagascar.

Indeed, these islands can generate around 360,400 km² of EEZ. Thus, this area is a sink for biological and mineral resources. In addition, the discovery of an oil field off the coast of Mozambique has made the eponymous channel the new "oil El Dorado". Thus, the determination of the maritime territory is decisive in the granting of exploration and exploitation authorizations [5]. Although small in size, they play an important role through the Exclusive Economic Zone (EEZ) that surrounds them, which can extend up to 200 miles from its baselines and in which the coastal State has sovereign rights over natural resource exploration and exploitation, as well as exclusive jurisdiction over artificial islands, marine scientific research, and the marine environment [6].

Although international law does not require other nations to recognize territorial sovereignty, broad acknowledgment is convincing evidence that sovereignty has been established. However, the UNCLOS of 1982 establishes the notion of state territorial sovereignty provided to coastal nations over marine zones within their authority as the main law of the sea.

Figure 1: Maps showing the geographical position of the Scattered Islands



Source: French Southern and Antarctic Territories (TAAF)

History shows that any decolonization is a test both for the colonial powers and for the colonized peoples. More often than not, it is under the pressure of struggles that European nations have granted at least formal sovereignty to their overseas dependencies. The Franco-Malagasy dispute over the Scattered Islands is a complex reality. First, its territorial aspect is obvious. From a legal point of view, the essential question is: who owns the sovereign right over these islands? But this dispute is not only a problem of "incomplete decolonization" as claimed by the Malagasy state [7].

Thus, when the profits to be made from an uninhabitable island are almost non-existent, the traditional conflict of territorial sovereignty issue takes precedence. However, this took on a whole new meaning when, from 1976, an unprecedented turnaround in the international game took place, transforming "territorial war" into "economic war"[8]. Furthermore, the objective of the research is to find out and analyze the conflict of territorial sovereignty between Madagascar and France to the war of the seas. To answer the question initially expressed, we will discuss, on a preliminary basis, the entry of the territorial war into a new dimension before analyzing the legal theses involved and suggesting solutions.

2. Methods

This research applied qualitative research conducted as documentary research, reviewing studies, interviews and observation, and documents on concepts and theories concerning the conflict of sovereignty over the Scattered Islands. The current study used a legal approach. The researcher has explored international law and its implementing regulations. Data collection from various sources was analysed and compared with the context and conditions of the topic to obtain findings on the issues.

3. From the conflict of sovereignty to the "war of the seas"

The International Law of the sea has greatly modernized under the impetus of the newly independent countries, in search of a New International Economic Order [9]. To transform a right established “without them or against them” [10] into a law “more just and more equitable” [11], the decolonized States have worked to have the international community recognize the concept of an EEZ of 200 nautical miles previously, in the classical law of the sea, a distinction was made between internal and territorial waters, limited to 3 nautical miles. In this regard, the Caracas session of the United Nations Conference on the Law of the Sea in 1974 was decisive. Although it was the subject of several oppositions from France, criticizing both the very notion of exclusivity and the extent of the area itself [12], it was nevertheless welcomed by the United States, the USSR, China, and many others [13]. As such, the coastal States benefit from the recognition of certain rights over the resources in the said zone. This ultimately explains the readiness of France to recognize the concept, which is reflected directly in acts, even before the entry into force of the Montego-Bay Convention. Indeed, on July 16, 1976, less than a month after the famous questioning of the former Madagascan Head of State, a French law creating, on the coast of the Republic, "an economic zone that can extend to “188 nautical miles” was adopted [14], followed by a decree applying it off the coasts of the Scattered Islands [15]. France thus becomes the second-largest maritime power in the world, behind the United States, with eleven million square kilometers of E.E.Z, thanks to its overseas possessions.

It is thus easier to answer D. Ratsiraka's question: even though the islands are devoid of specific wealth, the sea around them is full of important resources. There are many interests: we can cite firstly the fishery resources in the Indian Ocean, the pelagic nature of tuna species (yellowfin, skipjack, etc.) making fishing easier in the EEZs of the Scattered Islands. The integration of the islands into the French Southern and Antarctic Territories (TAAF) by the Law n° 2007-224 of February 21, 2007, also makes access to fishing, in their EEZs, subject to an obligation to have an operating permit, a reaffirmation of French exclusivity [16].

In addition, the Mozambique Channel holds significant oil reserves. Moreover, it is readily compared to the North Sea of the sixties, or even called "future oil El Dorado" [17]. The Canal is said to be overflowing with tens of billions of barrels of oil and three to five billion cubic meters of gas [18], enough to propel a very poor country to the rank of emerging countries [19]. The traditional “spice route” was then reconverted into the “hydrocarbons highway” [20], an expression which derives its full meaning, in addition to the passage of large tonnages of oil, from the unbridled conquest of oil and gas resources in the area: a conquest which brings together states claiming sovereignty as well as companies in the search for hydrocarbon exploitation permits. As regards possible hydrocarbon deposits, explorations are underway and have not yet reached the stage of exploitation. These sovereignty conflicts reveal a new acuteness due to the importance of the hydrocarbon reserves discovered since 2008, [21] a research permit issued in 2008 in the Juan de Nova EEZ was extended in 2015 for three years by the Minister of the Environment, Energy, and the Sea.

Thus, the discovery of colossal hydrocarbon resources in the Scattered Islands since 2008 and the beginnings of their exploitation impacting the Exclusive Economic Zones of these Islands reveals new

interactions of International Territorial Disputes with the dynamics of globalization. The decree of December 22, 2008, granting an exploration permit for liquid or gaseous hydrocarbon mines, known as “Juan de Nova Maritime Profond Permit” to the Companies Marex Petroleum Corporation and Roc Oil Company Ltd, jointly and severally, constitute a good one; for example. The statement "the separating limits of the EEZ’s are to be determined" does not pose any major difficulties if one sticks to exploration, it will be quite different as soon as it comes to exploitation. Therefore, the time is no longer for the question of State succession or unfinished decolonization, but indeed for a question of "war of the seas", as Prof. Oraison [22] emphasizes. In this sense, it is a "war" in its most original dimension. Indeed, in its dimension, it opposes various entities: first, the States among themselves (in particular France, Mozambique, Tanzania, Madagascar), secondly, the companies among themselves [23]; finally, it induces a standoff between State(s) and company [24]. Likewise, its spatial and material dimension is ultimately only the fruit of blind, deaf and silent pretensions-actions-reactions. Blind because each claims to have the right to exploit resources without recognizing the legitimacy of the spatial extent of the other's claims; deaf, because neither of them listens to the other, nor hears him, each crying out violation; silent, because they don't want to negotiate.

Ultimately, this multidimensional war adds the time factor because the conflict has been unresolved for several decades while the evolution of technology allows and will allow more to discover the wealth that will be the subject of claims as long as the titles are not clear. This is ultimately the scope of the dispute that interests us. However, the *"war of the seas"* cannot be answered by simply abandoning the analysis of the traditional conflict of territorial sovereignty.

4. The traditional conflict of territorial sovereignty: what does international law say?

In his address to the UN General Assembly, the representative of Madagascar, BLAISE Rabetafika denies the existence of a "Franco-Malagasy dispute" [25]. However, it is indeed a dispute in the legal sense of the term "a disagreement on the point of law or of fact, a contradiction and an opposition of legal theses or of interests between two people" [26]. Said disagreement officially took shape in 1972, when Madagascar claimed sovereignty over the islands (the pretension-action) while France remained firm on this point, considering French possessions. However, this denial of the Malagasy representative says a lot about the situation and the political strategy of the country: a strategy of "high diplomacy" or "silence," also accused to the Malagasy president in power Hery Rajaonarimampianina [27] in 2017.

Moreover, we have to go back a century to understand the rationale for such a policy: Let us note, first of all, that France annexed *"Madagascar and its dependencies"* on August 6, 1896 [28]. Then comes the great wave of decolonization of 1960, the two states signed the agreement transferring the Malagasy Republic of competencies of the Community, April 2, 1960. But the day before, that is to say on April 1, France decrees that the islands in question "are placed under the authority of the minister responsible for overseas departments and overseas territories" [29]. The Malagasy authorities remained silent at the time of independence until 1972. “High diplomacy” then took on a whole new meaning in 1979, with three different

interventions before international and regional organizations: within the framework of the African Union, in July of the Non-Aligned Countries, in September; and the UN in November [30]. These interventions have failed to end the conflict. Moreover, these organizations do not have the power to decide the dispute. Indeed, for example, by resolution 34/91, the UN General Assembly "invites" States to negotiate [31]. In reality, in interpreting the terms of the latter, it is appropriate to consider that it is only a question of a simple recommendation, the term of "invitation", having no defined legal content, opposing the "order" which expresses the idea of a legal superiority which is essential [32]. This resolution has no binding legal value; it serves to guide States with a course of action to adopt. Moreover, even if it were mandatory, it would "appeal to the will of its recipient to fulfill the obligations incumbent upon him" [33]. What is more, in any case, the General Assembly does not settle the conflict, by this resolution.

Faced with these protests of varying nature and quality, the response of international law suggests to us, here, to set aside the case of the effective occupation of territory without an owner, in favor of the law of succession of States.

4.1. The legal title of the effective occupation of a territory without an owner or "terra nullius" of the Scattered Islands invoked by France

Apart from the legal perception of ownership of the Scattered Islands, historical rights play a significant basis for determining the owner of the Maritime Sea or an island like those Scattered Islands [34]. The historical rights are applied to determine State sovereignty over those said islands; this practice is accepted in the concept of international law [35]. For clarification, it should be noted that, according to France, the debate on state succession is irrelevant. Either the effective occupation of territory can acquire a territorial title without an owner or by a succession of States [36].

The interest of this distinction is major because, according to France, the Scattered Islands became French possessions, in the last century, under the law of effective occupation of uninhabited territories, thus affirming the character of *res nullius* of these islands [37]. Nevertheless, sovereignty over territories without an owner can only be established cumulatively based on the title of the geographical discovery of these territories and that of their permanent and effective occupation [38]. Furthermore, the title of discovery is questionable because the islands were known to the native fishermen of the Big Island before the arrival of the French. In particular, at the end of the 19th century, Juan de Nova was inhabited eight months out of twelve by turtle fishermen, subjects of King Alidy de Maintirano [39]. Moreover, according to the Malagasy authorities, France itself had confirmed the organic unity of Madagascar and these islands by its annexation law declaring a French colony, "Madagascar and the islands which depend on it" [40] a reaffirmed legal consecration, then, by regulatory acts [41].

This principle of effective occupation is most often used in international law, and case law has broadened its scope. Such was, for example, the case of the arbitration award concerning Clipperton Island, located off the coast of Mexico, which was the subject of a dispute between France and Mexico. Indeed, the arbitration

award recognized the effectiveness of a summary taking of possession of November 17, 1858, in the Pacific Ocean, exploration, descent ashore, and the act of surveillance [42]. The condition for exercising public authority continuously fulfilled France's sovereignty has been no longer discussed or contested. Besides in this case, although discovered by navigators from various European states towards the end of the 19th century, these islands had been attached to the French colonial empire called "Madagascar and its dependencies" by a Note, dated October 31, 1897, relating to the taking of possession of the Juan de Nova, Europa, and Bassas da India Islands [43]. Its means that the islands in question could not legally be considered terra nullius from that moment. According to the principle of *uti possidetis*, the critical date to determine the borders inherited from the colonial period is the date of independence. It, therefore, seems reasonable to turn to the question of state succession.

4.2. Analysis of the dispute from the point of view of the law of state succession

State succession implies that territorial sovereignty is passed from one state to another, with the new national state inheriting all the attributes of the predecessor state [44]. In this regard, France itself succeeded the Malagasy state at the time of its annexation and its dependencies [45]. As evidenced by the judgment of the Court of Appeal of Antananarivo in 1913 reaffirming that the Glorious Islands were part of the private domain of the successor State of Madagascar, in this case, the French State [46], during the colonial period enjoyed, as of right, the goods, movable and immovable, which belonged to the predecessor State. Thus, according to this logic, these islands should have returned to the Malagasy Republic during Madagascar's accession to independence.

However, the succession must be the subject of an agreement [47]. Although the decree of April 1, 1960, it is, in reality, a unilateral act that is unenforceable against the Malagasy state unless it has "clearly" accepted [48]. As for the mention of the Malagasy agreement of April 2, 1960, it does not contain dependencies. In this case, it is necessary to rely on general international law [49]. There are two consequences to be made from this: either there is no consensus, in which case established jus cogens principles and norms, in particular, the principle of *uti possidetis juris sive* necessitates and the right of peoples to self-determination, must be applied. Either there is an agreement by the legal operation of a meeting of two unilateral acts, the second being a possible acceptance of the first by Madagascar. Because of its behavior, there would be no violation of the right of State succession.

4.2.1. In the absence of agreement between the two States

The principle *of uti possidetis Juris,* which consists in fixing the border according to the old administrative limits of the State, applies in the event of succession [50]. This limit, having enshrined in the annexation law of 1896 and by the regulatory acts that followed [51], the transfer of State property within limits drawn must therefore take place as of right. According to the principle of *uti possidetis*, the critical date to determine the borders inherited from the colonial period is the date of independence. It corresponds, for

Madagascar, to June 26, 1960. A norm of general international law, the principle of uti possidetis Juris, has been confirmed on several occasions by international jurisprudence, whether arbitral or "judicial." So, in any case, it should remember that the principle of uti possidetis is a tool available to States and not a rule imposed in border disputes in the context of a succession of States. That was when uti possidetis played a part in describing the detachment of colonial territories as a violation of a state's territorial integrity. It is realized that a colony was not a state before achieving its independence.

However, it already realized that self-determination in the context of decolonization took place under the whole territory of a colony. International Law explains that in the event of a change of sovereignty, the international boundaries of the territory concerned still operate under the principle of continuity of international boundaries. This arrangement is based on the notion of preserving territorial stability [52]. As for the right to self-determination, an imperative right [53] consists of guaranteeing certain communities a free determination of their fate, depending on whether, in this case, they wish to be French possessions or not after decolonization. Thus, even though the Scattered Islands have no permanent population, the fact remains that the Malagasy population had to be consulted before "the excision of the islands," under penalty of violation of international law [54].

Several sources of international law could be used to show that in 1965, states considered self-determination to be binding [55]. With the adoption of the UN Charter in 1945, self-determination gained prominence in the international community. It is mentioned twice in the Charter :

Self-determination found a prominent place in the international community with the adoption of the UN Charter in 1945. The Charter mentions it twice:

> *Article 1(2) provides that one of the purposes of the UN is 'to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace.*

Article 55 provides as follows:

> *To create conditions of stability and well-being necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: […]*

In this case, the Malagasy authorities have not hesitated to mention the violation of the principle of peoples' right to self-determination. The argument is certainly not valid for the will of indigenous island populations who do not exist, but the disposal by the former tutelary power of part of the Malagasy territory without the consent of its population corroborates the hypothesis of decolonization of the general principles of state succession. Self-determination refers to the right claimed by a "people" to control their destiny. However, such people have not yet achieved "statehood" under international law. Traditionally, only statehood could confer international legal personality and its accompanying rights and duties upon any group. A group seeking self-determination feels that it has been unjustifiably excluded from the community of states

recognized by international law [56]. However, the conclusion would be different if there was an agreement.

4.2.2. In the presence of agreement by the act of interpretation of Malagasy behavior

At this moment, two Malagasy behaviors are significant, namely, the lack of reaction, which lasted between 1960 and 1972, and the transmission of state files concerning the islands, to France, in 1962.

4.2.2.1 Does the silence of the Malagasy authorities constitute acquiescence in the excision of the islands?

The Malagasy authorities have remained silent on the situation of the Scattered Islands for more than a decade. Still, from 1972, their demand is regular, without drawing a line on the strategy of "high diplomacy," as was seen earlier. At first glance, following the adage *Qui tacet consentir evidetur si loqui debuisset acpotuisset*, Madagascar, has been silent throughout this period and could not be listened to after that. It is indeed the assessment made by the I.C.J. in the case of Temple of Preah Vihéar when it concludes that Thailand has accepted the Cambodian position because of its lack of reaction "At the material time and for several years" approximately fifty years [57]. The sovereignty can change ownership again in the face of concrete manifestations of the exercise of territorial sovereignty [58].

Moreover, as Sir G. Fitzmaurice says, there is "historical consolidation when a title has been manifestly lost (…) because one of the parties has renounced it or remains inactive while the other exercises its jurisdiction and its effective and continuous control"[59]. It is clear that before and after decolonization, France exercised control over the islands by sending technicians responsible for looking after meteorological installations [60]. This presence has been reinforced since Malagasy claims: by classifying the islands as "natural reserves," by establishing a permanent force made up of soldiers under the command of the Armed Forces of the Indian Ocean zone and by extending the track of Juan de Nova to facilitate the landing of military transport planes [61]. The French strategy is, in this case, indisputable: it seeks to reaffirm its sovereignty. It is in this sense that there could be consolidation of its territorial title over the islands.

At the same time, it should be noted that the Malagasy claim on the islands coincides with that of the newly independent States on the E.E.Z. In law, however, it cannot make such claims because a region "would show to be of unknown or unexpected importance at the time of the border's establishment[62]."However, had Madagascar been aware of the adverse claims? It should rightly recall that the decree of April 1, 1960 [63], was not published until June 14, 1960. Therefore, it is not only certain that Madagascar could not have known about it at that moment, but it is also inappropriate to consider that the signing of the agreement of April 2, 1960, implies acceptance of the decree published two months later. Furthermore, the Malagasy claim to the islands corresponds with that of the newly independent states of the concept of the E.E.Z idea. However, this is only the result of a pure combination of circumstances. In reality, the Malagasy claim corresponds to the

authorities' knowledge of France's actions on the islands, which corresponds to the claim of the concept of E.E.Z. Indeed, should we exclude the reasoning on discovering an economic interest in the islands and specify that the reference date for calculating the silence is no longer April 1, 1960, but corresponds to the taking of knowledge of French claims: in 1972.

4.2.2.2 Does the transmission of state files to France constitute acquiescence in the excision of the islands?

The Temple of Preah Vihéar, the C.I.J., detected a "clear acknowledgment" from Thailand [64] as a comparative case. Can we make the same analogy here, when the Malagasy authorities have transferred the eighty-four pieces of the state files concerning the islands to the French authorities [65]? It should be noted, in this sense, that President Tsiranana's letter, attached to the files, did not mention the recognition of French sovereignty, but for some authors, it is implicit [66]. The beneficial effect of such a transfer is not.

Indeed, not without ambiguity insofar as it is quite possible to conclude that the Malagasy authorities intended to be released from the islands for the benefit of France. However, as we had studied earlier, the transfer of territorial sovereignty cannot be presumed under international law [67]. In particular, "in case of doubt," a restrictive interpretation is called for [68], which would exclude the thesis of the transfer of sovereignty by the transfer of state files. In any case, one thing is to defend the present article; another is to resolve it definitively.

5. Different methods to settle the dispute over the Scattered Islands

The subject of UNCLOS Article 287, which gives each state the right to choose one or more ways to resolve their disputes over the interpretation and application of this Convention, is directed by UN Charter Article 33, which directs the parties to a dispute to find a peaceful solution in their way. Given the interests involved, it is unrealistic to imagine that France could outright grant these territories to Madagascar, as we have already studied. Undoubtedly, the ideal would be to bring the case before an international court or consider co-management; in any case, to negotiate more seriously.

5.1. The possibility of alternative dispute resolutions

The I.C.J. is a court that can resolve international disputes in most cases. Insofar as France withdrew its declaration of acceptance of the compulsory jurisdiction of the I.C.J. in 1974, Madagascar could only attract based on the *forum prorogatum*. In this regard, if the Malagasy State wished to initiate this procedure, the Court would only consider itself validly seized of the dispute if the French State agreed to appear before the procedure [69] or if it participated in the discussion by filing its conclusions [70]. In reality, there is nothing to indicate that France would accept it all the more because it is "aware of being in opposition with the whole of the international community on its very singular interpretation of the right of peoples to self-determination"[71]. In addition, consent to arbitration can constitute a genuine international legal obligation,

provided it is sufficiently clear and valid under the law of treaties [72]. In this sense, we must not ignore that an Arbitration Convention was signed in June 1960 between France, Madagascar, and Mali. Its sets out the obligation to have recourse to arbitration for disputes of an international "including territorial" nature between the States parties if the conciliation procedure is unsuccessful [73]. However, it can detect a certain inconsistency in the Malagasy strategy at this stage: knowing that Madagascar claimed the islands in 1972, D. Ratsiraka. Minister of Foreign Affairs plans to bring the dispute to the I.C.J. in May 1973. Thus, political solutions are favored in settling disputes involving territorial sovereignty (negotiation, conciliation, investigation, etc.). If these prove to be ineffective, then the modes of legal solutions will intervene. Since the dispute deals with a subject relating to international law, the I.C.J. or arbitral and ITLOS could be competent. Moreover, a dispute impacts maritime delimitation and therefore relating to the law of the sea, which offers the possibility of lodging a mixed request before the said international courts. However, this does not prevent the parties from resorting to arbitration proceedings. The government of Madagascar has to take austerity measurements to urge France to restitute the islands and liberate the complete sovereignty over its territory. The government of Madagascar should ask help from all members of the UN to envisage the solution to solving the dispute because France does want to compromise for resolution before ITLOS, ICJ, or arbitration.

5.2. The solution of co-management

From the point of view of the law of the sea, adopting the co-management agreement constitutes a relevant practice for identifying the regime applicable to disputed maritime zones, particularly regarding the interpretation of articles 74, paragraph 3 and 83 paragraph 3 of the UNCLOS. The concept of co-management is one of the solutions that the two parties could consider to resolve the dispute. But, it should be noted that co-management will not resolve the parties' dispute concerning sovereignty over the Scattered Islands; rather, it may serve as a means of cooperation while the parties wait for a more favorable time to resolve the dispute [74]. Even so, the question of sovereignty on the Scattered Islands would not be resolved by co-management. Indeed, it is necessary to distinguish sovereignty over these islands from the resources that the exploitation of the EEZ can generate because co-management only involves the management of the economic and technical aspects of the island [75].

Negotiated as a common strategy for neo-decolonization, it resolves the UN General Assembly favoring the Malagasy claim omitting Tromelin. In 1979, the UNCLOS, which will be the basis of the law on EEZs, was adopted. Despite this, the historic party of the struggle for independence and opposition to Didier Ratsiraka's regimes rejects any idea of co-management. They believe it is up to Madagascar to decide whether or not to "co-manage" and with whom, States, and firms [76]. They remind the French ambassador, who declares that "the Scattered Islands are French," that no Malagasy parliament has ever voted to renounce the Scattered Islands and established the framework agreement for the mixed commission between the two parties to find a common solution to the dispute.

The Indian Ocean Commission concluded its conference in 1999 with a "spectacular" resolution affirming the claimant countries' co-management of the areas and their commitment to establishing the procedures as soon as practicable.

6. Conclusion

Given the interests involved, it is unrealistic to imagine that France could cede these territories altogether to Madagascar, as studied above. Bringing the dispute to an international court or considering co-management would undoubtedly be ideal; in any case, further serious negotiations are required. Meaningful that Madagascar claimed the islands in 1972 and intended to bring the dispute to the ICJ in May 1973. At that time, France had not yet retracted its declaration of acceptance of the Court's compulsory jurisdiction, which supposes that the latter could have declared it competent to settle the dispute. Since 2010, whether Madagascar could benefit from the concept of Scattered Islands co-management in the same way as Mauritius did for Tromelin Island has been discussed. The co-management does not mean "shared sovereignty"; it suggests common action without settling the territorial conflict. In reality, it has no economic interest in the *stricto sensu*. No matter how noble they are, these objectives do not resolve the contentious point of the war of the seas: that of the right to exploit the resources other than fishery in the E.E.Z, unless the co-management modalities are fixed respond to this problem. On a purely economic level, it should be noted that by the "Fisheries Partnership Agreement" concluded between the Malagasy authorities and the European Union, Madagascar authorizes French, Spanish, and Italian vessels to fish in its economic zone, through a financial contribution. The challenge is, therefore, great for the Malagasy authorities. But to move the situation forward effectively, they must abandon this "high diplomacy" strategy. Ultimately, this suggests reviewing the country's economic strategy, in addition to its diplomatic strategy. In short, regarding the setting out of those international legal frameworks, territory gained through colonization shall be restituted to its original owner that lays down on the principle of *UTI POSSIDETIS*.

7. Recommendations

According to practice on territorial disputes, the UN organs are assigned to enable resolving the disputes; however, the existence of priveledges given to some countries in the organization may undermine the rights of others on their sovereignty. France has "Veto power" in the UN, complicating the disputes between Madagascar because the other member could not urge it to renounce from that said Islands. The government of Madagascar should ask help from all members of the UN to envisage the solution to solving the dispute because France does want to compromise for resolution before ITLOS, ICJ, or arbitration.

Since the two parties have already established a mixed commission to find a common solution, Madagascar must consider a jurisdictional settlement. Anyway, the co-management agreement is an interesting example of cooperation in the absence of a resolution of the sovereignty conflict and can be evoked to both parties as a provisional solution to the dispute because France will keep on arbitrarily occupying and exploiting those islands without considering the interest of the Madagascar's government.

References

1. Alain Hoarau, *"Iles Eparses: history and discovery"*. Sainte-Marie (Reunion) (La Mare Business Park, islet 7, 97438): Azalées Ed 2000 2nd enriched edition;

2. Elísio Benedito Jamine, *"maritime boundaries delimitation, management and dispute resolution"*. Delimitation of the Mozambique maritime boundaries with neighboring states (including the extended continental shelf) and the management of ocean issues; "The United Nations and Nippon Fellowship Program 2006-2007", Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs United Nations , NY, USA;

3. Professor Jean-Louis Guébourg *"Small islands and archipelagos of the Indian Ocean",* Faculty of Letters and Human Sciences at University Of Reunion, 2006;

4. André ORAISON, P. des U. (2010). *Radioscopie critique de la querelle franco-malgache sur les îles Éparses du canal de Mozambique*. 147–233;

5. André ORAISON. (2010), *Public international law*: "Critical radioscopy of the French Decree of April 1, 1960 (Regarding the Franco-Malagasy dispute over the Glorious Islands, Juan de Nova, Europa and Bassas da India", Indian Ocean Legal Review (RJOI), 2010, number 11, p.147 to 233;

6. Christiane Rafidinarivo. Geopolitical stakes of the negotiations on the Scattered Islands. *Madagascar Legal Review International Council*, Madagascar International Council, 2016, Special Report Scattered Islands, pp. 21-30. hal-02468637 [Submitted on 20 Feb 2020];

7. I.C.J., Sovereignty over PedraBranca / Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia v. Singapore), judgment of 23 May 2008, Rec., P. 12, §121;

8. Jean-Marc Four. (October 22, 2019), Radio France International (RFI). Le Monde upside down: "The confetti of the French colonial empire which irritates Madagascar";

9. Jean-Marc Châtaigner. (2015) The Scattered Islands: issues of sovereignty and co-management in the Indian Ocean, the maritime magazine, 2015, p. 70-87;

10. Mareva Razafintsalama. (2020), EGE School of Economic Warfare: "Oil issues around the Scattered Islands";

11. Pierrefonds, B. P. (2017). Canal du Mozambique : Impact géopolitique des nouveaux enjeux économiques. 1–33;

12. Philippe Disaine Rakotondramboahova, lawyer at the Madagascar bar; Scattered Islands: "France does not respect geography, history or international law", Le monde Afrique Tribunes, published on November 15, 2019 at 12:13 p.m;

13. Pierre Barbancey. L'Humanité: "Contested lands, ignored lands" (1/6). The Scattered Islands, an archipelago of discord on an oil background" (2020);

14. Rico Valiha ANDRIANIRINA. "Complex balance of power in the territorial dispute between France and Madagascar";

15. Rafidinarivo, C., Ravaloson, J., Rafidinarivo, C., Ravaloson, J., & Eparses, I. (2020). Views of the Scattered Islands. Contested resources and territories. To cite this version : HAL Id : hal-02468634;

16. Rafidinarivo, C., Sabathier, T., & Territoriales, C. (2020). International Territorial Resources and Challenges: comparative political analysis of the Scattered Islands To cite this version: HAL Id: hal-02484048 IV. 4. Resources and international territorial disputes: comparative political analysis;

17. RIVIER (R.), Public International Law, ed. P.U.F., Paris, 2nd ed., 2012, p. 307;

18. Title, P., Tolulope, O., Namso, A., Sarah, K., Glen, P., Atlantic, S., & Limited, P. (n.d.). Unraveling the hydrocarbon potential of deep water Mozambique Channel. 1–14.

Legal Documents:

1. Decree of 21 September 2015 extending the exclusive exploration permit for conventional liquid or gaseous hydrocarbon mines, known as the "deep maritime Juan de nova permit" (French southern and Antarctic lands).

2. French decree n ° 60-555 of April 1, 1960 relating to the administrative situation of certain islands under the sovereignty of France, JORF, June 14, 1960, p. 5343.

3. French law of annexation of Madagascar of August 6, 1896.

4. LEX OI, law in the Indian Ocean "Indian ocean legal review number 29, 2020-3".

5. Resolution of the United Nations General Assembly, A/RES/34/91 of 12 December 1979 "question of the glorious islands, Juan de nova, Europa and Bassas da India".

6. United Nations Convention on the Law of the Sea (UNCLOS) signed on December 10, 1982 in Montego Bay;

7. United Nations General Assembly resolution 1514 (XV) of December 14, 1960.

Authors name and details: Rakotoarivelo Tiana Nantenaina

Master candidate, Faculty of Law, Department of International Law at Padjadjaran University, Bandung Indonesia

E-mail: nanahrakotoarivelo3@gmail.com, rakotoarivelo18001@mail.unpad.ac.id

\