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AGENDA ITEM 127

QUESTION OF THE ISLANDS OF GLORIEUSES, JUAN DE NOVA, EUROPA AND BASSAS DA INDIA

Mr. RABETAFIKA (Madagascar) (interpretation from French): Before going into the substance of the issue, and in order to clear up any misinterpretation or misunderstanding, I should like to recall in as concise a way as possible, the geographical, historical and legal situation of the islands of Glorieuses, Juan de Nova, Europa and Bassas da India. In this respect, I would ask the members of the Committee to refer to document A/34/245 of 12 November 1979 which provides some details about the islands now in dispute between France and Madagascar.

Geographically these islands are dispersed in the Mozambique channel between latitudes 11° 34' and 21° 27' south. The closest is 150 kilometres and the farthest 350 kilometres from the west or north-west coast of Madagascar. The Glorieuses Islands are situated 200 kilometres from Cap d'Ambre of Madagascar, but 250 kilometres from the Comorian island of Mayotte. Juan de Nova is 150 kilometres from Tambohorano, on the west coast of Madagascar, but 280 kilometres from the People's Republic of Mozambique. Europa is less than 300 kilometres from Cap Saint-Vincent, Madagascar, but 550 kilometres from Mozambique; and, lastly, Bassas da India, an atoll in the formative stage, is approximately 380 kilometres to the west of Morombe, Madagascar, less than 130 kilometres from Europa but 450 kilometres from Cap Saint-Sebastien, Mozambique.

Moreover, following the last scientific symposium on Gondwana, which was held in September 1979 in Antananarivo, experts on the subject recalled that the islands are on the Madagascar side of the fault line which separates the African continent from Madagascar.

I recall these facts in order to show that no independent State in the region is closer to those islands than Madagascar and therefore they are what is usually called geographical satellites or natural dependencies of Madagascar, just as are Nosy Be on the west coast and Sainte-Marie on the east coast. Most island or archipelagic States are in the same position, and the argument that these are only rocks, tiny islands or uninhabitable atolls, on which little can be grown, are not enough to warrant their being considered outside the Malagasy context in which they naturally belong. This natural ownership has been implicitly or explicitly

(Mr. Rabetafika, Madagascar)

recognized by the States of the region, since neither the Comoros nor Mauritius, nor Mozambique, nor the Seychelles has laid any claim to those islands, either before or after they attained independence.

Historically, the islands were discovered at the beginning of the sixteenth century by Iberian navigators, just as was Madagascar, on 10 August 1500 by the Portuguese navigator, Diego Dias. As for the alleged discovery of the Glorieuses by Hippolyte Caltaux in 1879, this is questionable to say the least, because it would have taken place at a time when France was claiming protectorate rights over the north-west and north-eastern parts of Madagascar, in spite of recognition of Madagascar's sovereignty in the Franco-Malagasy Treaty of 8 August 1868.

Moreover, the notion of discovery is only of relative value. It may perhaps serve to justify the creation or organization of a colonial empire, but it cannot have any impact on the intrinsic nature of the discovered lands. If such were not the case, what about the trading posts set up in and around Madagascar by Arabs, Indonesians, Indians, and Africans from the continent as early as the seventh century? Who can say that those islands were not reported by navigators other than those from the West? Who can say that they were not discovered by the Malagasy people themselves? This is an even more likely hypothesis, since they are near the mainland.

But let us come back to more recent days and point out that the Glorieuses Islands, which are on the route of Malagasy fishermen and traders on their way to the Comoros and the east coast of Africa, have for many centuries been a resting point and a fishing ground for the Antakaranas from the north of Madagascar. This is also true of Juan de Nova which, until the end of the nineteenth century was inhabited for eight months out of the twelve by Sakalava fishermen, subjects of King Alidy of Maintirano, on the west coast of Madagascar. As for Europa, it is midway between the continent and Madagascar and since there is a lagoon full of fish in the middle of the island it is hardly likely to have been ignored by Malagasy fishermen in the constant trade carried on between Mozambique and Madagascar, long before the colonial era.

(Mr. Rabetafika, Madagascar)

Lastly, in none of the numerous pacts and treaties concluded in the eighteenth and nineteenth centuries, or even at the beginning of the twentieth century, between the Malagasy sovereigns of the West and North-west, on the one hand, and France, on the other hand, is there any mention whatsoever of these islands, and this can be put forward as proof that sovereignty over them has never in any way been transferred to any foreign Power.

Legally speaking, it seems that recourse to such notions as discovery or occupation cannot justify French territorial sovereignty over the islands. Indeed, the nineteenth century concept of sovereignty was basically peculiar to European States and was of no practical or political interest to the fishermen and navigators who used the islands. To claim that the Malagasies did not fulfil the formalities required by the Berlin Act - that is, occupation and notification - is hardly a good argument.

This exclusively European ethnocentrism in the process of developing legal norms has already been challenged in the framework of the Monroe Doctrine in 1823.

In fact, the French party claims that before France took possession of these islands at the end of the nineteenth century - more precisely, in 1892, in the case of the Glorieuses Islands, and in 1896, in the case Juan de Nova, Europa and Bassas da India - those islands were terrae nullius, and the few geographical and historical considerations I have just put forward demonstrate that the Malagasy party cannot accept the application of the notion of terrae nullius to the islands at issue. Indeed, we consider it an abuse of language and of law to invoke it.

A great deal could be said about this notion of terrae nullius, which, in the context of rivalry between colonial Powers, made it possible to justify occupation and territorial acquisition, often to the detriment of so-called non-civilized States. Fortunately, this is no longer a time when the Berlin Act of 1885 must still be respected, particularly in view of its explicit abrogation by article 13 of the Saint-Germain-en-Laye Treaty of 10 September 1919.

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But solely for purposes of argument, let us suppose that those islands were terrae nullius. The theory of contiguity, or proximity, or of neighbouring territories, stipulates that the effective occupation of a territory by a State should denote that that State has acquired sovereignty over all terrae nullius which are nearby or in that area.

Now, before colonization, there was an independent Malagasy State, the sovereignty of which was internationally recognized in treaties signed by such Powers as Germany, England, the United States of America, France and Italy. Therefore, still before colonization, the Glorieuses Islands, Juan de Nova, Europa and Bassas da India were, ipso jure, part of Madagascar, and there was no legal basis for their being taken over, because they were islands legally and naturally dependent on a sovereign State.

But if we go back in history we will see that the single article of the Law of Annexation of 6 August 1896 declared Madagascar and the islands dependent on it as a French colony. Therefore, there is in that law explicit recognition of the fact that the Glorieuses, Juan de Nova, Europa and Bassa da India were dependencies of Madagascar before colonization, and this fundamental act only reaffirms the natural and organic unity of Madagascar and those islands.

We can also see that this dependency was strengthened by various administrative acts during the colonial period, and we would venture to submit that these acts were adopted not to make the management of the islands easier but to administer a territorial entity as it had been administered in the past and to preserve the territorial integrity of that entity.

Finally, we can see that on 15 October 1958 the Law of Annexation of 1896 was declared null and void, following the proclamation of the Malagasy Republic on 14 October 1958. No text at that time stipulated that the islands in question would cease to be part of the Malagasy Republic. In other words, it can validly be considered that France's claims of title to Madagascar and the islands became null and void at the same time as did the Law of Annexation.

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The Territory of Madagascar, which then acceded to the status of a State constitutionally recognized by France, included what was legally and organically on 14 October 1958 under the direct authority of the French High Commissioner of Madagascar. This legal interpretation explains the raison d'être of the legal autonomy of the Comoros, which, detached from Madagascar in 1946, became a distinct autonomous territory on 14 October 1958.

Now, upon the independence of the Malagasy Republic on 26 June 1960, for reasons which we need not recall here, Madagascar's accession to international life and to its own international personality was interpreted as a transfer to the Malagasy Republic of the attributes of sovereignty theretofore vested in the community. In Franco-Malagasy relations since then, mutual recognition as between States continued to be based on the acts of 1958, and as far as France is concerned the Territory of Madagascar could only be understood as the Malagasy territory as organically constituted on 14 October 1958.

In short, geographically, historically and legally, the Glorieuses, Juan de Nova, Europa and Bassas da India islands have always been an integral part of Madagascar, and that is why we denounce the arbitrary unilateral act of 1 April 1960 separating those islands from Madagascar and placing them under the authority of the French Minister in Charge of Overseas Departments and Territories.

The decree of 1 April 1960 was unilateral because it was enacted by one of the parties, without any prior consultation with the other, at a time when Franco-Malagasy negotiations were theoretically under way, thus presenting the Malagasy delegation with a fait accompli.

It was also an arbitrary decision because, by the will of one party alone, tantamount to a veritable coup de force, it disposes of Malagasy national territory and results in the imposition of an unequal treaty and the dismantling of Madagascar's territorial integrity.

(Mr. Rabetafika, Madagascar)

However, the French party to the dispute was well aware of the claims presented by the Malagasy delegation in 1960. Those claims rested on the geographical and legal arguments which I mentioned a while ago, as well as on regional security needs pertaining to meteorological forecasts and to maritime or aerial navigation. Those claims were sets aside summarily, to say the least.

(Mr. Rabetafika, Madagascar)

The decree of 1 April 1960 is unlawful and contrary to international law in many respects.

First of all, the effect of this seemingly administrative measure, taken by the administering Power during the period that specialists in the succession of States through decolonization call "the suspect period", is to destroy the national unity and territorial integrity of Madagascar.

Resolution 1514 (XV) on the Declaration on the Granting of Independence to Colonial Countries and Peoples stipulates, in operative paragraph 6, 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".

In the second place, France, the administering Power of "Madagascar and its dependencies", was duty bound to lead the entire territory to independence, and it was therefore incumbent upon the State transferring sovereignty to give up the whole territory. Transfer must be total, not partial, otherwise there would be partial non-execution of the law or incomplete devolution inconsistent with the rules governing the succession of States through decolonization.

The argument might be adduced that the decree of 1 April 1960 was adopted by France in the context of the sovereignty it has exercised over the islands from the very beginning and for the purpose of strengthening that sovereignty. We challenge France's original sovereignty over the islands and we do so by virtue of Madagascar's sovereign geographical, historical and legal rights.

It has also been argued that the Malagasy side took note of this separation effected by France when it initialled, on 2 April 1960, the Franco-Malagasy co-operation agreements and when it transmitted to the French side, on 5 May 1962, the domanial files relating to the islands of Glorieuses and Juan de Nova.

Now, taking note of a French position so heavy with consequences or renouncing part of the territory constitutes a sufficiently serious act for it to be expressly stated in an exchange of letters, a note or in the records of the negotiations. We do not believe that such was the case.

(Mr. Rabetafika, Madagascar)

Similarly, at the time of the transmission of the domanial files, at no time and nowhere was mention ever made of recognition of French sovereignty over the islands.

In fact, transfer of the domanial files has no effect whatsoever on the legal status of these areas. These title-deeds are but declaratory deeds attesting to the existence of genuine property rights over a piece of land, over an area, even if the whole area is a small island. That transfer can only be considered as a transfer of instruments concerning ownership or, better still, the economic exploitation of that area, but has no effect whatsoever on the international status of these islands. Indeed, the difference between domestic law and international law, on the one hand, and between private law concerning the use of a plot of land and the law of sovereignty, on the other, leads us to view the transfer of the domanial files as simply a material act.

Finally, it is fitting to recall that the Franco-Malagasy agreements of June 1960 were officially denounced in their totality by the Government of Madagascar on 25 January 1973. Thus a new legal order was established in relations between France and Madagascar, and the Government of Madagascar has since 1973 been entitled to reconsider the commitments entered into by the previous régime which might be viewed as granting implicit or explicit recognition of a sovereignty over the islands other than that of Madagascar.

The application of the principle of tabula rasa, which is considered by positive law as the norm recalled since the Vienna Convention of 1978 on the succession of States with regard to treaties, has only been in effect in Franco-Malagasy relations since 4 June 1973. The period prior to that was only provisional, politically called upon to conform to the true legal order imposed by the principle of tabula rasa endorsed by the denunciation, by common agreement, of all the provisions of the 1960 and subsequent acts.

Hence there is reason to consider the relative Malagasy discretion over these questions as being only temporary and unchallengeable, the more so since at no time was there either renunciation of sovereignty or explicit or implicit recognition of French sovereignty over these islands.

(Mr. Rabetafika, Madagascar)

Furthermore, at the level of bilateral relations, on 4 June 1973 the Minister for Foreign Affairs of Madagascar officially requested that France return these islands to Madagascar upon normalization of legal relations without an estoppel by the French side in Madagascar.

On the international level, since 1960 it has not been possible to claim any international recognition of French sovereignty over these islands. The jurisprudence of the Holy See is significant in this respect and, indeed, by pontifical decree the islands of Saint-Paul, Amsterdam, Kerguelen and Crozet, as well as Terre Adélie, were explicitly detached from the diocese of Fort-Dauphin, of which they were previously a part, to be incorporated into the diocese of Saint-Denis de la Reunion. That was a statement of opposition, or at least of reservation, concerning France's right of sovereignty over the islands of Glorieuses, Juan de Nova, Europa and Bassas da India.

Thus one can see the three consistent points in the position of the Government of Madagascar with regard to these islands.

First, successive Malagasy Governments have claimed the islands of Glorieuses, Juan de Nova, Europa and Bassas da India as constituting an integral part of Madagascar. They put forth this claim in 1960 and 1973 during the negotiations on the Franco-Malagasy agreements, but the French side has consistently refused to consider it.

Secondly, no Malagasy Government has ever expressly renounced Malagasy sovereignty over the islands, regardless of the allegations of implicit recognition made by the French side.

Thirdly, the Malagasy side has always expressed its desire to find a solution to this issue through negotiations and by recourse to the methods indicated in the United Nations Charter. Despite this willingness on the part of the Malagasy Government, the French Government, which was approached in 1960, 1973 and 1979, has not yet accepted our request to open negotiations.

(Mr. Rabetafika, Madagascar)

The nature of the dispute between France and Madagascar is obviously rather complex, but it is quite easy to grasp its main elements, namely, a sovereignty acquired by the seizure and occupation base on the standards of colonial right, as opposed to an original sovereignty founded on geography, history and law; the unilateral and arbitrary character of the decree of 1 April 1960, detaching the islands from Madagascar; the existence of a situation of incomplete decolonization in so far as the islands are concerned; and lastly, the refusal of the French side to engage in meaningful negotiations.

(Mr. Rabetafika, Madagascar)

One might wonder why Madagascar has brought this question before the United Nations, almost 20 years after the dispute first emerged. The dispute involving these islands calls into question the fundamental principles of international law, such as the inviolability of the sovereignty and territorial integrity of a State; the duty of States to seek rapidly - and I stress "rapidly" - an equitable solution to their international disputes by means of negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or resort to regional agencies or arrangements or other peaceful means of their choice; the duty of States to carry out in good faith the obligations that they assumed under the United Nations Charter; and the duty of States to carry out in good faith the obligations incumbent on them under the principles and generally recognized rules of international law.

These principles are reaffirmed in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations contained in resolution 2625 (XXV), and if the Malagasy Government has decided to bring its dispute with the French Government to the United Nations it is because we are convinced that a solution can be found with due respect for and application of these principles, which are also the principles of the United Nations Charter.

Moreover, the Malagasy Government feels that the undue continuation of this dispute - which, as I have said, will soon have lasted for almost 20 years - could affect the relations between two Member States, could prejudice the establishment of the conditions necessary for the maintenance of justice and respect for the obligations born out of treaties and other sources of international law, and also could have negative repercussions on the maintenance of peace and security in the region. I would note in passing that this is not the first time that the Democratic Republic of Madagascar has drawn the attention of the United Nations to this problem. In fact, in cable No. 10094, addressed to the Secretary-General of the United Nations on 13 February 1976, the President of the Democratic Republic of Madagascar referred to the problem in the following terms:

(Mr. Rabetafika, Madagascar)

"The Malagasy people, for their part, regard their independence as incomplete as long as portions of African territory remain under foreign domination. For that reason, we have never renounced our rights to the small Indian Ocean islands, including Juan de Nova, which, historically, geographically and legally speaking, have always been an integral part of Malagasy national territory".

We are also profiting from the co-operation between the Organization of African Unity (OAU) and the United Nations to request the latter to support with all its authority, after due deliberation and within the context of its competence, resolutions CM/Res.642 (XXXI) and 732 (XXXIII) adopted by the fifteenth and sixteenth Conferences of Heads of State or Government of the OAU.

I shall not quote them at length, but shall simply read out the first four operative paragraphs of resolution CM/Res.732 (XXXIII) relating to the Islands of Glorieuses, Juan de Nova, Europa and Bassas da India. They state that the Council of Ministers of the OAU:

"1. Declares that the Islands of Glorieuses, Juan de Nova, Europa and Bassas da India are integral parts of the national territory of the Democratic Republic of Madagascar;

"2. Calls upon the French Government to return the islands in question to the Democratic Republic of Madagascar and to resume negotiations immediately with the Government of Madagascar;

"3. Requests the French Government to make the necessary arrangements to repeal the measures taken by the French authorities, measures which impair the sovereignty of the Democratic Republic of Madagascar, and to refrain from taking other measures which may affect the good relations between the two countries;

"4. Demands that all foreign Powers withdraw from these islands".

That resolution of the Organization of African Unity was endorsed by the Sixth Conference of Heads of State or Government of Non-Aligned Countries, which stated in its Final Declaration:

(Mr. Rabetafika, Madagascar)

"In relation to the situation of the Glorieuses, Juan de Nova, Europa and Bassa de India Islands, which geographically and historically belong to Madagascar, the Conference called for the reintegration of these islands in the Democratic Republic of Madagascar, from which they were arbitrarily separated in 1960 by decree of the former metropolis." (A/34/542, para. 100)

x We feel that it is hardly appropriate to call upon a State to show patience and moderation when its rights have been systematically disregarded by another Member State. On the contrary, it would seem to be urgently necessary that appropriate measures and methods be found at the United Nations level to put an end to anomalies created as a result of an incomplete decolonization, anomalies whose persistence can be a continuing source of conflict and discord.

These are the basic reasons which prompted us to bring the question of these islands to the United Nations, even at this late date.

The various parts of this statement have shown the importance of the question of the Glorieuses, Juan de Nova, Europa and Bassas da India islands the Democratic Republic of Madagascar. Of course, these are small, scattered islands with a total area of 54 square kilometres, with no established population, but I think that members of the Committee will agree with us that sovereignty cannot be measured by the square kilometre or by the number of inhabitants.

It is sometimes forgotten that these islands are in a strategic military and political zone, and there is a tendency to minimize three aspects of the question: the control of the Cape route which can be exercised from these islands; the possibility that the islands could be used as support bases for armed intervention or for clandestine operations by mercenaries; and the exploration and exploitation of marine resources and the sea-bed in the zones around the islands.

The Malagasy delegation has absolutely no intention of accusing anybody at all, but consideration of these three elements will make it possible to understand why sovereignty over these islands is being so bitterly disputed.

(Mr. Rabetafika, Madagascar)

What assurance, indeed, do we really have that these islands would not be used for purposes incompatible with the maintenance of national and regional security? Can France commit itself to a statement that they will never become part of a military defence zone and that they will not be militarized, in accordance with the principles and objectives of establishing a zone of peace in the Indian Ocean?

Why should we, a developing county, assent to having the marine resources and the resources of the sea-bed around these islands fall to an industrialized Power, when in fact they should be exploited and used for the benefit of our people? Again, why must Madagascar, a country whose natural resources are limited, to say the least, reconcile itself to having its exclusive economic zone amputated?

(Mr. Rabetafika, Madagascar)

Madagascar's renunciation of sovereignty over these islands, which, as I have said, we can in no way consider for the reasons I have already explained, would also mean that we would be exposing ourselves to all the dangers, hazards, risks and injustices that these issues might entail.

In order to facilitate consideration of this item by the Committee and to avoid having to return to the same arguments at a later meeting, I should like to introduce the draft resolution contained in document A/SPC/34/L.21. I do so on behalf of the delegations of Algeria, Angola, Benin, Congo, Cuba, Democratic Yemen, Ethiopia, Guinea-Bissau, Guyana, Lesotho, the Libyan Arab Jamahiriya, Mozambique, Sao Tome and Principe, the Seychelles, Swaziland, Uganda, the United Republic of Tanzania and my own.

There are three main parts to the preamble. First of all, we recall the principles relating to decolonization and friendly relations between States and the principle of the peaceful settlement of disputes. Then, in the seond part of the preamble, we refer to the resolutions or decisions adopted by the regional or interregional bodies such as the Organization of African Unity (OAU) and the Non-Aligned Movement. In the last part of the preamble we refer to two essential and positive elements, namely, the claim by Madagascar for the reintegration of the islands and also the willingness of the Malagasy Government to enter into negotiations with a view to finding a solution in conformity with the purposes and principles of the United Nations Charter.

Turning to the operative part of the draft resolution, paragraph 1 reaffirms the necessity of scrupulously respecting the national unity and territorial integrity of a State. This is a cardinal principle of absolutely basic significance for the maintenance and promotion of friendly relations between States, and also for the peaceful settlement of territorial disputes - in this case, one arising out of incomplete decolonization. In paragraph 2 we take note of the relevant resolution of the OAU on the basis of the co-operation between the United Nations and the Organization and on the understanding that there should be some harmonization, if not conformity, between the decisions which the two organizations are called upon to take in connexion with an issue which is before both of them.

(Mr. Rabetafika, Madagascar)

Operative paragraphs 3 and 4 of this draft resolution reflect the spirit of paragraphs 2 and 3 of resolution CM/Res/732 of the Organization of African Unity, which can be found in appendix 3 to the basic document A/34/245. Paragraph 3 invites the French Government to initiate negotiations with the Malagasy Government and states the purpose of negotiations between the French and Malagasy Governments. Paragraph 4 derives in part from paragraph 1. We feel that the decree of 1 April 1960 and subsequent measures taken to consolidate that decree are, in fact, an infringement of the sovereignty and territorial integrity of States. Accordingly, it is quite logical that we should call upon France to repeal those measures.

In the second part of paragraph 4, France is called upon to refrain from taking any other measures which might hinder the search for a just solution to the present dispute. This is a classic provision whereby States parties to a dispute should refrain from any action which might aggravate the situation.

The purpose of paragraph 5 is to keep the United Nations, through its Secretary-General, informed as to developments relating to this issue and also as to the course and outcome of the proposed negotiations.

We sincerely hope that the report of the Secretary-General to the thirty-fifth session of the General Assembly will be the only report on the item and that we will not have to discuss this issue once again next year as is indicated in paragraph 6. This relates to the opening of negotiations between the two parties and the conclusion of negotiations in keeping with justice and law.

We have prepared this draft resolution as objectively as possible. We have refrained from taking extremist positions, although, of course, we would have been entitled to do so in view of the importance that we attach to this item. However, we did not wish to give rise to useless controversy in this Committee.

(Mr. Rabetafika, Madagascar)

Accordingly, we trust that the overwhelming majority of delegations here will support the resolution and that the Committee will be able to adopt it by consensus.
