

THE MOROCCAN INITIATIVE FOR NEGOTIATING AN AUTONOMY STATUTE FOR THE SAHARA REGION¹

Introduction to the International Research Seminar

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Between federal states and unitary states there can be many intermediate variants that suggest that there can be a variety of levels on a scale going from the most unitary of states to the purest federation. This is how states, particularly so in Europe, devised organisational patterns called “regional states” or “autonomy states”. This is mainly the case in Italy and Spain and, to a lesser extent, in Portugal. These states grant genuine political autonomy to autonomous entities, regions or communities entrusted with autonomous normative power, in other words they do not only implement national laws (v.L. Favoreu et alii, Dalloz). These are unitary states in so far as their is control over what regional authorities are doing, and in so far as decentralized states do not have constituent and self-organisation power. They also differ from decentralization in that autonomous regions not only have administrative powers but also political ones.

In some cases, not all of a state's regions are concerned but only a few of them, or one of them, depending on the specificity of the ties that unite it to the state or on its own specificity. Such is the case for instance with France and New Caledonia.

The autonomy initiative for the Sahara Region is thus entirely in accord with these principles:

- It is an autonomy statute and not a mere decentralized or federal structure;
- This autonomy doesn't cover the whole administrative and political organization of the Moroccan State, but a specific region;
- The solution put forward aims to solve a specific issue related to a conflict that has acquired an international dimension and it aims both at resolving the conflict and at taking into account the specificity of the Sahara Region within the Moroccan State.

I - Guiding principles of the autonomy statute

The principles that shape the project are the following:

1/ First of all, this initiative doesn't question the Kingdom's sovereignty and its unity. In this respect the initiative does not follow a federal logic and less so a confederal one. The new entity is a region of Morocco and is not sovereign. The Moroccan State thus keeps sovereignty-related competencies or powers, especially in the areas of defence, international relations, while respecting the King of Morocco's constitutional powers.

¹ Project annexed to the letter dated 11 April 2007 from the Permanent Representative of Morocco to the United Nations addressed to the President of the Security Council of the United Nations.

2/ The second principle applied is that of the political autonomy of the newly created region. This autonomy goes beyond a mere attribution of administrative powers. It translates into the management of the region's local affairs through specific institutions and own financial resources. Finally, the initiative provides for the region's participation in the economic, social and cultural life of the State of Morocco.

3/ The third principle applied is that of democracy. It is apparent both in the choice of the autonomy statute and in the functioning of the newly autonomous region. From this first point of view, the autonomy statute will be submitted to the populations concerned in a referendum, in keeping with the principle of self-determination. From the second point of view, the Sahara populations will manage their own affairs through legislative, executive and judicial bodies. Besides, at the national level this democratic principle applies in favour of the populations of the region which will be represented in Parliament and in the other national institutions and which will take part in national elections.

II - Governance of the region

This governance is based on the doctrine of the separation of powers and the traditional trilogy, i.e. a Parliament, an executive power and courts.

1/ Regarding the legislative body, it will comprise a parliament of the region consisting of elected members. This parliament's composition obeys three principles that will have to be taken into account:

- community participation to ensure representation of the various tribes that will elect their representatives;
- democracy to ensure the representation of the territory's population by representatives elected by direct universal suffrage;
- gender-based quotas to ensure women's representation in proportions yet to be determined.

2/ As for the executive power, it shall be exercised by a head of government elected by the regional parliament and invested by the King. From this point of view, the coming into office of the elected head of government will be subject to confirmation or recognition by the King, which one may believe will not be merely formal. The latter consideration is supported by the dual function performed by this head of government who is both head of the government of the region and representative of the state in the region. He should therefore enjoy dual legitimacy: that of the regional parliament, as the executive of the region, and that of the King, as state representative in the region. In this respect, it is worth noting that the text somehow lacks precision since it provides for the existence of a representative of the government exercising the powers of the state in the region with an uncertainty as to the scope of these powers and their specificity knowing the head of the regional government also represents the state. The head of government shall also form the region's Cabinet and appoint the members of the regional administration. He shall be answerable to the Region's Parliament.

3/ Regarding the judicial power, whereas the Initiative provides for the possibility for the region's Parliament to set up courts to give rulings on disputes arising from enforcement of norms enacted at regional level, it shall itself establish a high regional court to give final decisions regarding the interpretation of the region's legislation. It is further specified that this function shall be exercised without prejudice to the powers of the Kingdom's Supreme Court

or Constitutional Council. This reservation naturally and mainly stems from the need to respect national law in local law. Indeed, whereas interpretation of the local law falls on a local court, only national courts can see to it that local courts abide by national norms. In this respect, the Initiative specifies that the laws, regulations and court rulings issued by the bodies of the Region shall be consistent with the region's autonomy statute and with the national Constitution. The need to comply with the autonomy statute is self-evident since this statute shall be included in the national Constitution. Though the text is rather silent on this, it can be inferred from this analysis that Morocco's Constitutional Court will be called upon to adjudicate conflicts of jurisdiction between the Region and the State.

4/ Finally, it is worth adding that an Economic and Social Council comprising representatives of the various sectors of the region and of qualified individuals shall be set up, but the text doesn't say anything as to how they will be appointed.

III - Apportionment of powers between the region and the State

These powers shall necessarily be exercised at regional level:

They shall apply to the following areas: the region's local administration, local police force and jurisdictions; the economic sector and related sectors, the region's budget and taxation; the social sector, including education; cultural affairs, the heritage and the environment. The powers attributed are quite wide when it comes to the Region's own interests.

The State keeps jurisdiction over the attributes of sovereignty, the nation's symbols, the currency, the King's religious prerogatives, national security, international and military issues and the national juridical order. It is also worth noting that the protection of fundamental rights and freedoms mainly falls within the competencies of the state, since it is said that the region's populations shall enjoy all the guarantees afforded by the Moroccan Constitution in the area of human rights as they are universally recognized, in other words regional authorities shall not adopt more restrictive provisions in this area.

Besides, shared powers include international relations. Whereas these powers are under the primary jurisdiction of the State, this statutory jurisdiction includes two reservations. On the one hand the Region is to be consulted on matters related to the prerogatives of the region, and on the other, in consultation with the Government, the Region may establish cooperation relations with foreign regions, at interregional level.

Regarding the powers that are not specifically attributed to one or the other, the principle of subsidiarity applies, which can have a positive effect on regional powers.

IV - The region's resources

The allocation of own and guaranteed resources is a sine qua non for the exercise of the powers granted.

To this effect, the draft statute provides for two types of resources allocated to the region: the region's own resources and resources allocated by the State of Morocco.

Under the first category can be mentioned the taxes, duties and regional levies enacted by the Region's competent authorities, the proceeds from the exploitation of natural resources located in the region and allocated to the region and the proceeds from the region's assets.

Under the second category can be mentioned the necessary funds allocated in keeping with the principle of national solidarity and the share of proceeds collected by the State from the exploitation of natural resources in the Region. It can furthermore be noted that the region will be in a position to benefit from the proceeds from the exploitation of natural resources.

V - Transitional measures

It can be mentioned that the proposed statute may be adapted and fine tuned in the framework of the negotiations that will be held before its adoption through a referendum, knowing that these negotiations will precisely be aimed at the adoption of the said statute. Besides, measures have been provided for in favour of persons to be repatriated and for the granting of amnesty. Finally, once the statute is adopted, a Transitional Council shall be established to bring together representatives of the State of Morocco and representatives of the region, in order to implement the statute and handle the consequences of the conflict it aims to end.

In conclusion, it can be said that in its current form, this draft statute offers the Sahara region broad autonomy characterised by important powers with full respect for the sovereignty of the Moroccan state. The implementation of the statute is guaranteed by its incorporation into the Moroccan Constitution, by specific governing bodies and the allocation of resources. It can only be noted that it would be useful to give additional details on the settlement of conflicts of authority between the state and the region and on the representation of state interests within the region.