- The Greenland Home Rule Act 1979 and 2009
- United Nations, Document S/2007/206 of 13 April 2007: Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region (available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFC9B-6D27-4E9C-8CD3-CFE6FF9%7D/MINERSO%2007206.pdf)
- "Democracy and Human Rights Dimension in the Moroccan Initiative for Negotiating an Autonomous Statute for the Sahara Region", International Seminar, Dakhla, 21-22 February, 2011.

CONCLUDING OBSERVATIONS

The Moroccan Autonomy Initiative for the Sahara Region in the light of other autonomy statutes in the world

As demonstrated in the presentations made, the historical and political contexts surrounding the various autonomy statutes differ greatly. The latter were motivated by a willingness to grant the populations within a given territory their own political rights. This particular type of organization aims at taking into account the specificities of the population of the territory. The State is the Western form of organization of political societies. It spread to the point of becoming the mainstay of the international society first in the framework of the League of Nations and then in the framework of the United Nations. The principle of sovereignty is a corollary to the above. This State structure has sometimes replaced more traditional structures, just like decolonization led to the creation of new State structures, which were the source of many conflicts.

Other forms of political organization now tend to compete with the State. The former can come under a supra-national framework, as is the case with the European Union, and no longer under an international framework. They can also be set in a sub-national context. This is the case with the autonomy statutes this conference is dealing with.

These sub-national structures sometimes attest to the resurgence of traditional identities that pre-date the constitution of States. They can also be entities that are subject to multiple claims, not only by the States, but also by internal, pro-independence type movements.

The existence or the establishment of such autonomy structures has several advantages. It makes it possible to keep the nation-state as the basic common framework, which can be a way of avoiding or solving disputes, hence a way to establish peace while avoiding the creation of multiple independent states, like a balkanization of existing States that can create competing entities often not economically viable and that run against the notion of general good enshrined in the state.

A basic outline of the autonomy statutes can be given. They are part of the exercise of a political power and stem from the recognition of a power that is not sovereign. These very generous criteria nevertheless cover different situations. In this respect, such a statute is the product of practice rather than of preestablished theoretical analysis. The traditional concepts of constitutional law, sovereignty, majority-rule democracy, equality of citizens.....are thus partly called into question. Likewise, the solutions advocated must be pragmatic to be accepted and their legal basis must be strong to stand the test of time and provide the required stability.

On the basis of the autonomy frameworks that have been presented, a few, necessarily sketchy, concluding observations can be made.

I. Background and goals

First of all, the solutions adopted must take into account the context and the problem they are meant to solve.

The autonomy statute can be the result of history or ancient treaties, as in the case of Greenland. It can be a solution to an internal conflict within a state, i.e. between certain populations of that state and public authorities. This is for example the case with New Caledonia. It can also be a solution to an international conflict that doesn't only affect local populations but States. Such is the case in the Sahara. This is the reason why this solution is being considered under the aegis of the United Nations.

The problem may concern a peripheral area, or even overseas territories, as in New Caledonia, Puerto Rico or Greenland. It can affect a region in the heart of a metropolitan state as with Catalonia. The Sahara is indeed a peripheral region but it is geographically contiguous with the rest of Morocco.

This autonomy statute can be specific to a region, as in New Caledonia or Aceh, or on the contrary it can cover all of a state's territories in cases such as Spain, with varying degrees of autonomy from one region to the other.

The autonomy statute can be an end in itself or a step towards something else, it can be transitional or permanent. In this respect, things aren't always as straightforward as it may seem. The autonomy statute for New Caledonia was conceived, at least by some of its proponents, as a step towards independence. But in fact, this autonomy was enhanced and the decision to grant independence was postponed on many occasions for want of a genuine consensus. Conversely, whereas Greenland's autonomy was meant to be long-lasting, a move towards independence was contemplated. In Puerto Rico, the 1952 Constitution was considered an end point and not a starting point. The draft autonomy statute for the Sahara region is meant to be permanent.

II. Guiding principles

A number of common principles have to be respected. They can however give rise to some adjustments.

A. The principle of democracy

The first of these principles is that of democracy. The populations concerned must approve the statute. In this regard, some adjustments were made to the principle of democracy. In New Caledonia, a minimum period of lawful residence was introduced to be able to vote on the decisions affecting the territory, but this electorate has been frozen since 1998. In other words, though they have been residing in the territory for over 10 years, newcomers will not be involved in the decisions regarding the future of the territory. In any event, this solution acknowledges a specific type of citizenship. The Moroccan autonomy initiative for the Sahara doesn't follow the same logic. The proposal reconciles the democratic logic that takes into account the territory's population without distinction with tradition and the various tribes, each electing their own representatives.

B – Integration of the autonomy statute into the Constitution

The principle of autonomy is also part of the national constitutional legal order. In this respect, it has to be taken into account in the national Constitution for various reasons. First of all, the principle of democracy applies at national level. The national community must be able to take the future of what is considered an integral part of the state into its own hands. From this point of view, the situation of Puerto Rico is, a contrario, quite telling. It is probably because historically Puerto Rico wasn't considered "incorporated" into the United States that its statute wasn't integrated into the Constitution. By contrast, the Congress of the United States accepted this statute. Conversely, the French constituting power was asked to give an opinion on the statute of New Caledonia, just like the French people had been asked to give an opinion on the status of Algeria. Therefore, the national constituting power, the people or its representatives needs to be consulted but it also has decision-making power. Indeed, the debate surrounding the scope of the referendum on the statute of Catalonia is a case in point.

Censorship by the Spanish Constitutional Court of the draft statute adopted by Catalan referendum, in a system in which autonomous entities are not sovereign, attests to the subjection of those entities to constitutional principles. Such constitutional recognition is an undeniable factor of stability, it allows to set rules to govern the operations of the system and solve conflicts at the highest level. Finally, the Constitution protects the autonomous entity by making it impossible for its powers or competences to be put into question by an ordinary law. In Spain, autonomy statutes are thus considered of quasi-constitutional nature. This requirement was highlighted in the case of the Government of Aceh.

C – Protection of fundamental rights

The protection of fundamental rights must remain a national prerogative and these rights must equally apply to all citizens, including those of autonomous entities. From this point of view, recognizing on the one hand specific rights to communities and following on the other the principle of equality that only applies to individuals can be contradictory. Autonomy means identity, but this identity can be detrimental to the principle of equality of rights and duties. Regarding the Moroccan initiative for the Sahara, the existence of a common national Constitution that enshrines rights and values and gives rights to women, contributes to equal treatment. The representation of tribes in the regional Parliament, just like the cultural, legacy, educational skills of the region contribute to the recognition of the local identity.

D – Recognition of political autonomy

One of the characteristics of autonomy is the allocation of legislative power to the autonomous entity. This is the case in almost all the situations we have just looked into. Even in France, a State where the law was for a long time the only symbol of sovereignty and where centralized power prevailed, law-making powers were granted to New Caledonian authorities and the so-called "country laws" that ensued are subject to the scrutiny of the Constitutional Council. In this respect, the Moroccan Initiative goes a step further by providing for the establishment of local jurisdictional bodies and by entrusting local authorities (in keeping with national law) with control over the classical trilogy of governmental power, parliamentary or deliberative power, and the judiciary. These authorities cannot however be called "powers" since they do not represent a sovereign entity.

III. Competences of autonomous entities and allocation of resources

This refers to the allocation of competences per se as well as to the control over their distribution and the governance of natural resources.

A. Control over allocation of competences

In keeping with a quasi federal logic, and since principles and guidelines are enshrined in the Constitution, conflicts of competences between the State and autonomous regions, as well as verification of compliance of local law with national law must come under a Constitutional Court or a national Supreme Court. In Spain, the Constitutional Court exercises this dual competence. As we have also seen with Puerto Rico, the institutional framework was initially established to a great extent by the Supreme Court of the United States of America. Likewise, federal American courts have competence to hear cases related to the relationship between local law and the Constitution, the law and treaties of the United States. In this regard, the autonomy initiative for the Sahara should be clarified.

B. Competences of the autonomous entity

With regards to the competences allocated, the Moroccan initiative is, as has been said, very favourable to the future Sahara region and stands comparison with existing models. It is however worth noting, as was underscored in the case of New Caledonia, that the existence of transitional measures allowing for progressive transfer of competences as and when local authorities start gaining strength, may turn out to be apposite to avoid failures that could from the onset jeopardize the success of the project. It may also be useful to take inspiration from the Spanish model and write down in the Constitution the main rules governing the allocation of competences, while providing for more flexible allocation mechanisms within the existing framework (framework laws, organic laws...).

It will be noted that since the issue of the Sahara is set against a background of inter-state conflict, it may seem difficult to immediately entrust the territory's authorities with wide-ranging competences in the area of international relations.

C – Governance of natural resources

Natural resources are an important issue for the new entity. In Aceh, the sharing of these resources gave rise to new conflicts. In this respect, the Moroccan initiative grants the populations of the Sahara wide powers over their resources and allows them to use the proceeds from virtually all these resources.

Conclusion

Generally speaking, in the light of these foreign examples, it can be seen that the autonomy initiative put forward by Morocco aims at ending a conflict. It grants the populations concerned wide political autonomy, wide ranging competences and genuine resources. It offers guarantees such as the democratic process it provides for and the constitutionalisation of the statute per se. To be successful, the initiative should however be clarified especially with regards to the conditions for the transfer of competences and the settlement of the conflicts that may stem from their implementation.

Some projects were criticized for ruling out all options other than acceptance or refusal and not allowing voters to suggest alternatives. However, a referendum cannot offer multiple choices lest it be confusing. Talks start when the initiative is negotiated, they must resume in case it is rejected. Since there seems to be some consensus around this initiative, it is this project that will have to be put to the populations concerned and should it hopefully be adopted it would have to be enshrined in the Moroccan Constitution.

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