

INTRODUCTION

PROVISIONS OF THE MOROCCAN INITIATIVE FOR THE SAHARA REGION ON THE REPRESENTATIVENESS OF THE POPULATIONS CONCERNED BY THE AUTONOMY NEGOTIATIONS

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In October 2009, here in Geneva during an initial seminar organized by the Geneva Centre for Security Policy (GCSP) on the question "Does Autonomy fulfil the right to self-determination?"¹, we established together a basic and much needed framework to look at self-determination: **the framework of contemporary changes in the international system.**

Indeed during the first seminar of 2009, participants took a comparative look at political and constitutional autonomy systems to assess their relevance for solving self-determination issues.

Indeed, in the contemporary world we live in, made up of sovereign "nation-states", there is ongoing tension between the principle of (and the desire for) self-determination that stems from a **feeling of identity**, and the principle of sovereignty which is an organizing principle of the "international society". From a global viewpoint, the first principle can potentially be a source of "disorder" (instability), whereas the second aims at creating "order" (stability) in a system that is fundamentally anarchical.

The many historical and contemporary cases studied have shown, if proof was necessary, that the desire for self-determination is as old as society itself and that in an international community that claims to be democratic and liberal it simply cannot be denied and set aside, even though it was never considered an "absolute" right in the positive sense of the word. The various cases we shall be looking into during today's seminar provide further confirmation of that.

Moreover, since the first seminar, within what could be described as the Muslim-Arab subsystem, events unfolded in 2011, took a majority of observers and international community (and actors) completely off guard. Those events were given various names: "Arab springs", "Arab revolts" or "Arab revolutions"... Although the logic of these processes inside the Muslim-Arab world should not be mistaken with the logic that underpins the transformation process of the Moroccan state (that goes much further back), the approach adopted by the Moroccan Government (especially the adoption of a new constitution) should not be interpreted as a process of adjustment to the upheavals caused by what some see as the Moroccan expression of the "Arab spring". Yet, **the demand for participation in decision-making processes and government, which take various shapes and forms depending on the political spaces concerned, can be considered as the common denominator between these recent events and much older self-determination demands**². One may thus argue that, once again, Morocco anticipated those problems, especially through the exemplary initiative taken on the autonomy of the Moroccan Sahara: Given that, since

¹ "Does Autonomy fulfil the right to self-determination?" International seminar, 6 October 2009, Geneva Centre for Security Policy (GCSP). These questions were to a great extent inspired by Martin Griffiths' article entitled "*Self-determination, International Society, and World Order*" greatly inspired these questions. This article was published in the *Macquarie Law Journal*, 1, 2003, <http://www.austlii.edu.au/au/journals/MqLJ/2003/3.html>

² See Hussein Agha and Robert Malley, "La fin du 'monde arabe'", *Le Monde*, fr, 19/02/2011.

2007, Sahrawi populations have been offered increased participation in political decision-making, through regionalisation and democratization.

Our discussions in Geneva also highlighted the feeling that had emerged a few years ago in the international community: self-determination should not necessarily be confused with access to independence and the creation of a new "sovereign" state³. Indeed, in an era of extreme instability such as the one we are living in, allowing for the creation of political structures that are weak from a democratic, economic and security perspective, within an anarchistic space such as the international system, can at best prove to be irresponsible and at worst criminal, if we bear in mind the tendency of such spaces to degenerate into violent and uncontrollable conflict areas.

This is how the validity of what some international bodies had, since 1945, in both a proactive and utopian approach and in disregard for regional and global actors and balances, been considering as a type of **positive law**, came to be progressively questioned.

The discussions between academics and practitioners during the various seminars organized since 2009, whether they be lawyers, political scientists or economists, led to the conclusion that persisting in the rigid implementation of the principle of self-determination in today's international context leads nowhere and is not constructive. This mind-set, which everyone agrees upon has been increasingly perceptible in recent years, is seen by some as a "new paradigm" in the field of self-determination; a paradigm that ushers the end of self-determination as independence and its transformation into a new type of "democratic self-determination"⁴. This paradigm reflects the territorial sovereignty crisis in the international system, both in the South and in the North.

The existence of this acute contemporary territoriality crisis is widely acknowledged in the international community. As a matter of fact, in many cases, the implementation of the self-determination principle as resulted in what has now come to be called "failed states", in that these political entities turned out to be unable to fulfil their obligations towards their citizens (in the areas of security, well-being, freedom, i.e. in the fields of human and civil rights...)

But what is at least as serious from the point of view of the international community is the fact that these "states" can become sources of insecurity for other states and whole regions. Because of their congenital weakness, they thus become hotspots for endemic violence, terrorism, and all sorts of trafficking, due to their inability to produce defence structures to protect themselves against these scourges. Through the destabilization of states, the pursuit of self-determination undermines the fundamental principles of international political order that nowadays favours **genuine** state sovereignty (as opposed to **formal** sovereignty), i.e. the one based on the strength of the state's institutional framework as well as actual means for the state to fulfil its fundamental missions.

Autonomy helps transcend these fundamental tensions between respect for the territorial integrity of the state and the deep desire for self-determination⁵. Hence, for some, it is the expression of a new paradigm of the "state of the regions" that replaces the traditional nation-state that suffers from a combination of globalization, transformation in the structure of the international system and its growing instability and dangerous nature, as well as from the lessons of historically varied self-determination processes. In this respect, autonomy is a compromise solution between territorial integrity and independence, and it should be recalled that over 70 autonomy arrangements have been signed since 1945.

³ "Does Autonomy fulfill the right to self-determination?", Geneva Paper n° 12, 2010: <http://www.gcsp.ch/Resources-Publications/Publications/GCSP-Publications/Geneva-Papers/Conference-Series/L-autonomie-peut-elle-satisfaire-le-droit-a-l-Autodetermination>, *op.cit.*

⁴ Abelhamid El Ouali, *Autonomie au Sahara. Prélude au Maghreb des régions*, 2009, p.9.

⁵ Martin Griffiths wants to "transcend the tension between territorial integrity and national self-determination in contemporary international relations", *Self-Determination, International Society, and World Order*, *op. cit.*

It is thus in this context that we are now looking into representativeness and legitimacy, through the substance of the Moroccan initiative and the various relatively recent cases of self-determination. Regarding the participation of the populations concerned, the Initiative presented in April of 2007 by Morocco to the Security Council of the United Nations⁶ comes across as a particularly strong proposal based on two elements that make it undoubtedly legitimate from a democratic point of view.

First, autonomy within the framework of the Moroccan state and of the Sahara region addresses tricky questions such as "who are the populations concerned by self-determination?" or "who is the Saharawi people?" In other words, it addresses the problem of the definition of the electorate. The latter was expected to be consulted through a referendum on the means of self-determination. It will also have to be consulted as to the acceptance of the autonomy statute.

The positions expressed so far on the definition of this electorate have led the negotiations into an impasse. It can be said that the claims of the Sahrawi Arab Democratic Republic (SADR) or of the Polisario Front are weak on two accounts, as confirmed by the evolution of the international "context". The first weakness is in the reference to the "Sahrawi people" as a basis for self-determination and for the creation of a new independent state in the Sahara region: the historical and ethnic logic that seems to be invoked would question the definition of the sovereignty of at least four states, i.e. Morocco, Algeria, Mauritania and Mali, were we to follow the "historical geography" of the Sahrawi people as accepted by historians⁷. Sahrawi tribes aren't only to be found in Morocco.

The second weakness is related to the first and also has to do with democratic representativeness and legitimacy: the problem of the definition of Sahrawi populations highlights the lack of democratic foundation of the SADR that remains today the only entity claiming for self-determination/independence. Their claim has no territorial or "national" (or ethno-national) basis since their representatives do not reside on the territory claimed and, especially since they do not have any ethno-national specificity vis-à-vis the other components of the Moroccan state...

Therefore, as wisely noted by Ms Shadia Marhaban in her comparison between Aceh and the the Sahara region, "in Morocco, there is no claim of national identity other than Moroccan (...). The Saharan tribes are the continuation of the same local and tribal culture that prevails in the South of the Kingdom"⁸. The Polisario Front has then no particular legitimacy to represent the Sahrawi people. This is why the Initiative, which offers the guaranty of the participation of **all Moroccan citizens concerned**⁹, gives unquestionable democratic legitimacy to the self-determination process.

The Moroccan Initiative is indeed a recent proposal in an almost 40-year-old conflict and it does also take into account the new realities of modern Morocco. Let us not forget that since Saharan territories were returned to Morocco, their population growth literally skyrocketed. The economic development process driven by progressive "advanced regionalization" that aimed at encouraging the local populations to become actors of their development prompted all sorts of populations from other regions of Morocco to settle down in the booming South¹⁰. It is therefore hard to imagine that the self-determination process in the Sahara would not take into account these new populations that live, work, consume and vote in the Sahara. Hence, defining populations on a

⁶ http://www.europarl.europa.eu/meetdocs/2009_2014/documents/dmag/dv/dmag20101130_06---/dmag20101130_06---fr.pdf

⁷ See for instance Bernard Lugan, *Histoire du Maroc*, Editions Ellipses, 2011, as well as issues 14 and 20 of *L'Afrique réelle*, by the same author.

⁸ Shadia Marhaban, "Comparative studies of autonomy negotiations: Aceh and the Sahara region".

⁹ Morocco considers refugees in the Tindouf camps as citizens of the Kingdom.

¹⁰ Just like elsewhere this "melting pot" poses coexistence-related problems: see for instance Bahia Amrani's editorial "Sakhla, violence suspecte!" in *Le Reporter* dated 29 September 2011, p. 3, and Loubna Bernichi's article, "Violence: quand Dakhla s'enflamme", *Maroc Hebdo International*, n°947 (30 September-6 October 2011), pp. 16-17.

purely "ethno-national" basis as requested by the Polisario Front would now make no sense, **except when discussing Moroccan nationhood.**

The democratic legitimacy of the Moroccan autonomy initiative can obviously also be assessed on the basis of its content and the various levels of participation it provides for: participation in the negotiations but also in the life of the region. It is worth recalling here the provisions of the Initiative (the details of which are still under negotiation) on this matter:

- "Article 4 - Through this initiative, the Kingdom of Morocco guarantees to all Sahrawis, inside as well as outside the territory, that they shall fully hold their position and play a leading role in the bodies and institutions of the region, without discrimination or exclusion.

- Article 5 - Thus, the Sahara populations will themselves democratically run their affairs, through legislative, executive and judicial bodies, enjoying exclusive powers. They will have the financial resources needed for the region's development in all fields, and will take an active part in the nation's economic, social and cultural life.

- Article 7 - The Moroccan initiative, which is made in an open spirit, aims to set the stage for dialogue and a negotiation process that would lead to a mutually acceptable political solution.

- Article 8 - As the outcome of negotiations, the autonomy statute shall be submitted to the populations concerned through a referendum, in keeping with the principle of self-determination and with the provisions of the UN Charter.

- Article 18 - The populations of the Sahara Autonomous Region shall be represented in Parliament and in the other national institutions. They shall take part in all national elections.

- Article 19 - The Parliament of the Sahara autonomous Region shall be made up of members elected by the various Sahrawi tribes, and of members elected by direct universal suffrage, by the Region's population. There shall be adequate representation of women in the Parliament of the Sahara autonomous Region.

- Article 26 - An Economic and Social Council shall be set up in the Sahara autonomous Region. It shall comprise representatives from economic, social, professional and community groups, as well as highly qualified figures.

- Article 27 - The Region's autonomy statute shall be the subject of negotiations and shall be submitted to the populations concerned in a free referendum. This referendum will constitute a free exercise, by these populations, of their right to self-determination, as per the provisions of international legality, the Charter of the United Nations and the resolutions of the General Assembly and the Security Council."

His Majesty King Mohamed VI wants the Moroccan Initiative to grant "all the populations of the region great discretion in the management of their own local affairs, according to their cultural specificities"¹¹. The "advanced regionalization" project, ideally meant to ensure renewal and democratization of Morocco's governing elites, was initiated by the King¹². This led, in 2006, to the creation of the Royal Advisory Council for Saharan Affairs (CORCAS) to ensure representation of all components of the Saharan society. It enjoys wide powers granted by the King on matters concerning Moroccan Sahara's affairs. The 141 members of the Council are appointed by the King "from among the members of Parliament, the presidents of regional councils, the presidents of provincial assemblies and the presidents of the professional bodies of the Southern Provinces during

¹¹ Address by King Mohamed VI on the occasion of the 37th anniversary of the Green March, 6 November 2012 (published in *Afrique-Asie*, 8 November 2012).

¹² "We reaffirm our commitment to implement advanced regionalization, starting with Our Southern provinces, in the light of the possibilities offered to populations to take part in the management of their local affairs and to contribute to integrated and sustainable development. It furthermore creates a stimulating atmosphere underpinned by promising social dynamics that fosters the emergence of new elites, especially among women and young people, in the framework of possible democratic and open changeover of power". Address by King Mohamed VI, *ibidem*.

the exercise of their mandate" as well as "from the members elected by their respective tribes under the previous council, tribal Chioukh, members of civil society associations and youth organizations of the Southern Provinces, representatives of Moroccan citizens from the Southern Provinces living abroad and those sequestered in Tindouf, representatives of socio-economic operators and bodies and personalities recognized for their skills and probity"¹³

It is mainly in the CORCAS that the Sahrawi populations were able to partake in the Autonomy Initiative. At all levels of the consultation, of the drafting process, in the discussions during the negotiating sessions under the aegis of the United Nations since 2007, representatives of the populations were an integral part of the Moroccan delegation and were able to express their vision and defend their interests.

Finally, it should be recalled that the Autonomy Initiative for the Sahara did not appear out of the blue. Its content, its form as well as this wide-ranging reform process are tangible manifestations of a process of democratization and liberalization of the **entire Moroccan political system**. The development of broad reforms since the early 2000 in particular, in key areas such as human rights, political freedoms, the family and social structures, as well as devolution of power to local stakeholders, is a lengthy process that includes the issue of the Sahara region but goes beyond it. The new 2011 Constitution, possibly adopted in haste due to the tense political context and the impact of "Arab Springs" on Morocco, cast in stone these fundamental reforms. Still, reality doesn't boil down to texts, no matter how fundamental.

Morocco can pride itself on having walked the path of compromise and negotiation¹⁴ in order to convince "all the populations concerned" before this part of the country takes its place in the collective construction of a democratic Moroccan nation.

¹³ See the *Dahir* establishing the CORCAS: <http://www.corcas.com/Default.aspx?tabid=914>.

¹⁴ As reaffirmed in Mohammed VI's address on the occasion of the 37th anniversary of the Green March and reactions of the Sahrawis, 6 November 2012, *op. cit.*