SOME PERSPECTIVES ON THE DEVELOPMENT OF THE STATUS OF NEW CALEDONIA AND FRENCH POLYNESIA TO NON-SELF-GOVERNING TERRITORIES WITHIN THE REPUBLIC OF FRANCE

Alain Moyrand* *and AH Angelo*****

Independence is the fact which allows an entity to be the subject of international law in its own right; that is, to be a sovereign state. The divisions within a sovereign state and in particular the non-self-governing territories of France do not have this quality; they are dependent on a superior entity which in this case is the state. Nevertheless, these territories could secede from the Republic and become states. The French Constitution upholds the right of self-determination. In reality, it is not possible of course to speak of a right[1] *because the right of self-determination can be activated only by the administering state and not by the territories concerned. The territories can only seek the application of the right by virtue of a procedure which is entirely controlled by the state. However, in the case of New Caledonia, accession to full sovereignty does constitute a right because its activation has been negotiated by the parties to the Nouméa Accord and the right has been incorporated in that Accord. The result is that the legal basis for the right to secede and the procedure which concerns the right of self-determination of the non-self-governing territories*

* Maître de conférences en droit public. Université de la Polynésie française.

** Professor Emeritus, Faculty of Law, Victoria University of Wellington.

This text reproduces the second part, translated and amended, of an article published in French, La France et le droit international vol IV, La France et son outre-mer. III - Statut des collectivités ultramarine en droit interne, en droit européen et en droit international (dir Gérard Cahin, Florence Poirat, Sandra Szurek). The authors would like to thank Professor Florence Poirat for her agreeing to this reproduction.

1 In this sense: Thierry Michalon, "Pour la Nouvelle-Calédonie, l'hypothèse fédérale", L'avenir statutaire de la Nouvelle-Calédonie. L'évolution de la France avec ses collectivités périphériques, (Dir Jean-Yves Faberon), La Documentation française, 1997, p 229.

of France are different depending on whether New Caledonia or French Polynesia is being considered.

La Polynésie française et la Nouvelle-Calédonie, deux territoires situés dans le Pacifique Sud, sont d'anciennes colonies françaises devenues, à compter de 1946, des collectivités territoriales de la République. Il était ainsi mis fin au régime colonial en écho au dernier alinéa du préambule de la Constitution de la IVe République du 27 octobre 1946.

Cependant, malgré cette affirmation formelle et après avoir été rayées de la «liste des Nations Unies des pays et territoires non autonomes à décoloniser», la Nouvelle-Calédonie, le 2 décembre 1986, et la Polynésie française le 17 mai 2013, ont été réinscrites sur cette même liste par l'assemblée générale des Nations Unies.

Depuis 1946, ces deux collectivités ont fait l'objet de très nombreux changements de statuts qui leur ont conféré une certaine forme «d'autonomie».

Si la Polynésie française, à l'instar des anciens territoires d'outre-mer, s'est muée en collectivité d'outre-mer, elle a choisi de bénéficier du régime d'autonomie défini à l'article 74 de la Constitution.

En revanche, la loi constitutionnelle du 20 juillet 1998 a transformé le territoire d'outre-mer de la Nouvelle-Calédonie en une nouvelle entité disposant d'un pouvoir législatif, jusqu'alors inconnu en droit français.

Il est clair que ces collectivités ne sont pas des Etats fédérés car elles ne disposent pas d'une Constitution, ni d'un système juridictionnel qui leur soit propre, ni ne participent à des organes constitutionnels fédéraux. Dès lors, la Nouvelle-Calédonie et la Polynésie française sont des collectivités publiques d'un Etat unitaire.

S'agissant tout d'abord de la Polynésie française, celle-ci demeure toujours régie par l'article 74 de la Constitution (Constitution du 27 octobre 1946 et Constitution du 4 octobre 1958) et après avoir été un territoire d'outre-mer, elle est devenue (par l'effet de la révision constitutionnelle du 28 mars 2003) une collectivité d'outre-mer (COM) dotée de l'autonomie.

Cependant, même si l'on peut admettre que la Polynésie française dispose d'une certaine part d'autonomie politique, il faut bien reconnaître qu'elle n'est pas complète ni totale.

Notamment, aucun pouvoir d'auto-organisation n'a été reconnue à cette collectivité.

Au final, si sur le plan formel la Polynésie française est une collectivité ne bénéficiant que d'une autonomie administrative, si l'on se fonde sur le critère

matériel, cette entité jouit d'une autonomie quasi-politique, c'est-à-dire qui se situe à un niveau intermédiaire entre l'autonomie administrative et l'autonomie politique.

En ce qui concerne ensuite la Nouvelle-Calédonie, l'auteur observe que cette collectivité est désormais régie, depuis la révision constitutionnelle du 20 juillet 1998, par les articles 76 et 77 et par l'accord de Nouméa du 5 mai 1998 (auquel renvoie l'article 77) qui sont regroupés dans le titre XIII de la Constitution.

L'analyse du système institutionnel de la Nouvelle-Calédonie, révèle que cette collectivité dispose d'une autonomie politique indiscutable. L'identification des éléments d'autonomie politique qui caractérisent les institutions de la Nouvelle-Calédonie permet de qualifier la nature juridique de cette collectivité.

L'auteur au terme de d'une analyse comparative, envisage les perspectives d'évolutions statutaires possibles de la Nouvelle-Calédonie et de la Polynésie française selon que ces évolutions s'effectuent avec la République ou sans la République.

I THE LEGAL BASIS FOR SELF-DETERMINATION BY NON-SELF-GOVERNING TERRITORIES OF FRANCE[2]

In principle, when a French territory wants to leave the Republic, it must follow the procedure set out in art 53 para 3 of the Constitution: "no secession, no exchange, and no addition of territory can be made without the consent of the interested populations". This has always been the case when parts of the national territory have gained full sovereignty and it will be the same if, by chance, French Polynesia wants to secede. In so far as New Caledonia is concerned, the legal basis is a little different because the procedure for secession is prescribed by the Nouméa Accord which refers to the international law on decolonisation.

A National Law: Article 53 Para 3 of the Constitution

Nothing in the Constitution envisages the possibility that public collectivities of a status less than that of a state may secede,[3] but territorial changes to the boundaries of the Republic were considered by the Constitutional Council in its decision no 75-59 DC of 30 December 1975. This decision was given in relation to the accession of

2 See in particular: Félicien Lemaire *La République française et le droit d'autodétermination* (Thèse de droit, Université de Bordeaux I, 1994).

3 The fundamental law refers, on the contrary, to the principles of the indivisibility and integral nature of the territory (Constitution arts 2 and 5) and in the case of a threat to the integrity of the State, art 16 of the Constitution confers special powers on the Head of State.

the Comores to independence and was compatible with the principle of indivisibility of the Republic:

> given that the provisions of this art 53 final paragraph must be interpreted as being applicable not only when France cedes territory to a foreign state or acquires territory but also when a territory of France ceases to belong to the Republic by becoming an independent state.

Since the revision of the Constitution of 28 March 2003, it may have been thought that the conditions for secession had been amended in order to make it more difficult for an overseas collectivity to gain independence. In fact, the legislator has stated in the fundamental law the fact that all overseas territories, and notably that two non-self-governing French territories, are part of the Republic. Also, it is noted that "any exit of territory from the Republic requires henceforth the enactment of a constitutional law which removes from Article 72-3 the name of the collectivity in question".[4] What is more, the legislator has removed the idea of "overseas peoples" and substituted it with "overseas populations" which is now in art 72-3. The preamble to the Constitution recognises the right of free choice for "peoples" overseas and not simply for "populations".[5]

But the Constitutional Council did not adopt that interpretation.[6] The conditions for the right to self-determination are always the same. More precisely, it is necessary that Parliament passes a law to organise the self-determination vote which will permit "the interested populations" of the overseas collectivity to express their wish to accede to full sovereignty. A priori, the determination of the people who must be consulted will not raise any particular difficulties because the prime objective is taken to account the population of the territory. However, according to the case law of the Constitutional Council (#75-59 DC of 30 December 1975), the concept of "territory" in art 53 para 3 of the Constitution is not synonymous with overseas territory. Therefore, within a public collectivity which is not a state, it is possible to

---

4 Stéphane Diemert "L'ancrage constitutionnel de la France d'outre-mer" in *L'outre-mer français. La nouvelle donne institutionnelle,* (dir J-Y Faberon), La Documentation française 2004, p 73; see also the Parliamentary debate, note Pascal Clément, Rapport, *Projet de loi constitutionnelle relatif à l'organisation décentralisée de la République*, Commissions des lois de l'Assemblée nationale, n° 376, 2002-2003, p 47.

5 However, according to the description of Emmanuel JOS: "the people can be held to be the group which holds the right to self-determination and the exercise of this right by way of a vote is by the 'interested populations'; there is no contradiction between the two" notions: "overseas peoples" and "overseas populations"; *Contribution à l'histoire juridico-politique de l'outre-mer français. Guadeloupe, Guyane, Martinique, Mayotte et La Réunion: vers des statuts sur mesure* (L'Harmattan 2012) p 233.

6 Constitutional Council # 2007-457 DC 15 February 2007 cons no 13.

distinguish several territories (indeed several "populations" who live in these territories). This interpretation is based on the fact that in art 53 para 3 itself the legislator uses the phrase "interested populations" in the plural which leads to the conclusion that at the time of a referendum several populations[7] could be consulted.

At the time of a self-determination vote, one of the interested populations may not agree to secede. That population would therefore not leave the Republic.[8] At the time of the consultation of the populations of the Comores 1974 a very large majority in the archipelago voted in favour of independence, except in Mayotte where 65% of the population wanted to remain part of France. In its decision of 30 December 1975, the Constitutional Council agreed that since the island of Mayotte was a "territory" and taking into account the fact that its population had clearly shown their refusal to leave the French Republic, that territory would remain a French collectivity. The rest of the archipelago achieved independence in accordance with their agreement as expressed by their population. It seems, however, that this "regionalisation" of the referendum within an overseas territory can be supported only on the condition that "there are, between the different parts of the territory, matters of serious difference".[9]

In relation to French Polynesia, there are indeed elements of differentiation between the various populations of the archipelagos which make up the collectivity of French Polynesia and this is notably the case at the level of the languages used. In New Caledonia, it has been held that there may exist several territories which make it possible to distinguish several interested populations. This is the opinion of Olivier Gohin,[10] who believes that each province of New Caledonia constitutes an interested population. Further, in the case of consultation with the interested populations and in regard to the results of the self-determination vote, it is possible that a part of these overseas collectivities will not seek independence. This practice which is specific to the French Republic is in contradiction to the principles of public international law. Indeed, it has always been agreed that the self-determination votes must be conducted within the framework of the colonial borders. That arrangement could,

---

7 But other authors, and notably Alain Pellet, have emphasised the fact that the terms "interested populations", though in the plural, is that way simply because in art 53 of the Constitution, these words are applicable to several hypotheses: session exchange or addition of territory. "*Commentaire de l'art. 53 de la Constitution", La Constitution de la République française*, dir Gérard Conac, et François Luchaire, Economica 1987.

8 Cons Const no 75-59 DC of 30 December 1975.

9 François Luchaire *Le statut constitutionnel de la France d'outre-mer* (Economica 2000) p 57.

10 "L'indépendance des Comores et le précédent de Mayotte", L'avenir statutaire de la Nouvelle-Calédonie. L'évolution de la France avec ses collectivités périphériques, (Dir Jean-Yves Faberon), La Documentation française 1997, p 76.

however, be reviewed for future consultation by overseas populations in the non-self-governing territories of France.

A second difficulty that has to be resolved before the activation of a self-determination vote is the following: in principle, not everyone who is enrolled on the electoral list can participate in such a vote. Indeed, the legislator concerned to maintain the authentic character of the self-determination vote, has excluded from the list of voters metropolitan residents or those coming from other overseas collectivities who have been living in the territory for only a short time. The law requires at least three years of residence.[11] This was the case for the consultation for the peoples of French Somalia[12] in 1967 and 1976 and it was also the same for New Caledonia on 13 September 1987. The Constitutional Council when presented with this provision did not declare it to be unconstitutional.

After consultation with the interested populations, Parliament must act to authorise (or deny) secession. Must the parliament follow the sense of the vote of the interested populations? Professor Luchaire, basing himself on the fact that the interested populations must self-determine, believes that is it possible to see in the consultation "simply advice as to whether the population of a territory wishes to leave the republic or alternatively to remain within it. It would naturally follow its decision even if it is presented in the form of advice". Luchaire adds, "moreover, Article 53 of the Constitution uses the word 'consent'[13] which implies obviously, a decision"[14] which maintains that the legislator must always respect the wish of the interested populations and denies that their territory accedes to independence in the case of a negative response from the consultation[15] or on the contrary, by accepting that the territory can leave the Republic if the response is positive.[16] This

11 It sometimes appears necessary, given the importance of the question asked, to exclude from the electorate certain people whose ties with the territory are not considered sufficient.

12 The territory was then called the Territory of the Afars and Issas.

13 Jean-Eric Schoettl holds the same view and bases it on "the local consent", note sur Cons. const. n° 2000-428 DC du 4 mai 2000, loi organisant une consultation de la population de Mayotte, *AJDA* 2000, p 565.

14 *"Le Conseil constitutionnel et la consultation de la population de Mayotte", R.J.P.I.C.* 2000, n° 3, p 252.

15 Côte française des Somalis (19 mars 1967), Mayotte (22 décembre 1974), Mayotte (8 février 1976), Nouvelle Calédonie (13 septembre 1987).

16 The Comores (22 December 1974); The French Territory of the Afars and Issas (8 May 1977). As we know, the situation in respect of the Comores is more complex. Clearly, on 22 December 1974, the archipelago as a whole voted in favour of independence. However, one of the islands (Mayotte), rejected independence by a large majority. Based on this fact, the Government decided to grant independence to the archipelago excluding Mayotte.

interpretation of the process of self-determination is consistent with the decision of the Constitutional Council "considering that this island [Mayotte] cannot exit the French Republic without the consent of its own population".[17]

The sources of public international law on decolonisation are in the Charter of the United Nations and the law is a product of this body. First of all, Article 1.2 of the Charter proclaims that one of the aims of the United Nations is "respect for the principle of equal rights and self-determination of peoples". Therefore, when there is a people in a given territory, it is for that people and them alone to decide on their future without a superior power (even if it is linked to this people) involved in the process. Moreover, art 73 of the Charter provides that:

> Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount …

The General Assembly of the United Nations has, on the basis of art 10 of the Charter, adopted Resolution 1514 (XV) of 14 December 1960 which is headed "Declaration on the granting of independence to colonial countries and peoples" which affirms the right to free self-determination of colonised peoples. In the application of this resolution, the General Assembly of the United Nations has declared that it alone is qualified to say whether the territory is autonomous or not and is alone competent to set out the factors which govern the determination of whether a territory has obtained complete autonomy. It is not for the colonial power to decide whether the territory it administers has or has not become autonomous. The following day, 15 December 1960, the General Assembly of the United Nations adopted Resolution 1541 (XV) which sets out the principles which must guide member states in the process of decolonisation.[18] Principle VI states that –

> A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:
>
> (a) Emergence as a sovereign independent State;
> (b) Free association with an independent State; or
> (c) Integration with an independent State.

These principles have no time limitation. In other words, the process of decolonisation extends over time: that could be ten, fifteen, or even twenty years.

---

17 Cons const no 75-59 DC of 30 December 1975.

18 See also Resolution 2625 of 24 October 1970 which adds that "any other political status freely determined by a people" can be a way of exercising its right to self-determine.

Thus, when the stages of decolonisation verified by the organs of the United Nations have been completed, the referendum on self-determination may occur. Consequently, programmes for political education and the making aware of the people of their right to self-determine are set out in advance. What is more, the right to be decolonised is not exhausted by the organisation of a single vote on self-determination whose result may be negative. Indeed:[19]

> a territory cannot be withdrawn from the list of non-self-governing territories except when it reaches 'full autonomy' that is to say when it becomes independent and sovereign or is freely associated to an independent state or is integrated into an independent state.

But until this point has been reached, several consultations have to be organised. In New Caledonia, three votes were held: in 2018, 2020, and 2021.

In principle, only the original population benefits from this right of decolonisation and hence, the right to participate in the self-determination vote. On the other hand, the non-indigenous population (those most often coming from the metropolitan state) cannot invoke the benefit of the right of peoples to self-determine. The result therefore is that the electoral body which participates in the self-determination vote must be "defined in a restrictive manner and exclude the most recent arrivals so that the result of the referendum belongs solely to the inhabitants who are directly concerned with the future"[20] of their territory.

Although the Kanak people is the indigenous people and first nations people of the territory, it has been accepted for historical reasons that the self-determination vote must be open to other ethnicities who have lived for a long time in New Caledonia but not to all the people who currently reside in the territory. The restricted electoral body has been in place for several decades. The principle involved is in the Constitution and will be put in question again because the Nouméa Accord stated that this political arrangement is irreversible. In French Polynesia, the situation is somewhat different because the indigenous people, the Māori, are more than 80% of the population.

---

19 Jean-Paul Pastorel "Territoires non autonomes (au sens du chapitre 11 de la charte des Nations unies)", Dictionnaire juridique des outre-mer (Lexis-Nexis, 2021) p 526.

20 Valérie Goesel-Le Bihan "La Nouvelle-Calédonie et l'accord de Nouméa, un processus inédit de décolonisation", AFDI (CNRS) 1998, p 25.

B The Achievement of Full Sovereignty of Non-Self-Governing French Territories – International Public Law: The Right to be Decolonised

As a general rule, states, and this is true of France, do not permit international bodies to become involved in the process of the evolution of status of formerly colonial territories. The evolutions in status are "matters which are essentially within the domestic jurisdiction"[21] and states do not tolerate any external interference in the process except sometimes permission is given for United Nations observers to be present at the exercise of the vote. Therefore, the vote on self-determination is covered by the application of national law alone. This is illustrated by the case of French Polynesia. But sometimes, international action succeeds in becoming involved in the evolutionary process of the status of the territory by way of the international law on decolonisation as in the case of New Caledonia.

1 Accession to full sovereignty on the basis of the Constitution alone: The situation of French Polynesia

Although French Polynesia, like New Caledonia, has been reinscribed on the list of non-self-governing territories by the United Nations, France must organise the process which could lead to the accession to full sovereignty of French Polynesia. This would be on the sole basis of French constitutional law and leave to one side all the principles of public international law which relate to decolonisation.

Indeed, some days after the General Assembly of the United Nations re-inserted French Polynesia on its list of non-self-governing territories, Senator Tuheiava, who belongs to the independentist movement of the political party Tavini Huiraatira of French Polynesia, asked the Prime Minister of France about "the position of the government on the necessity to put in place a limited electoral body in French Polynesia which will be the body which will vote in relation to the self-determination process within the territory".[22]

In his answer the Prime Minister stated that –

> the government has taken note of the resolution of 17 May 2013 of the General Assembly of the United Nations relating to the reinserting of French Polynesia on the list of non-self-governing territories of the United Nations. Polynesians have given a clear view at the time of the territorial elections of 5 May 2013 [that was the date that the autonomists won the territorial elections]. Further, France refuses to commit itself to the process of international decolonisation noting in this regard the respect which it

21 Article 2 para 7 of the Charter of the United Nations.

22 Written question #06682 published in the Official Gazette of the Senate of 30 May 2013, page 1608.

> gives to the view which has just been democratically expressed by the people of Polynesia.

The Republic still disputes the re-inscription of French Polynesia on the list of non-self-governing territories and consequently it refuses to have observers from the United Nations inquiring into the collectivity and to provide information and data that is requested by the Special Committee on decolonisation.[23] This being the case, each year there are resolutions of the General Assembly of the United Nations which criticise this position of the French government.

The position of France, which is that the results of the local elections in Polynesia where the autonomists gained a large majority are a ground for refusing to accede to the requirements of international law on decolonisation, does not respect those requirements. Indeed:[24]

> the population involved must be able 'to freely determine its political status (A/AC. 109/2016/7) or be actively associated in working that out (A/res/73/108, 19 December 2018), in relation to American Samoa. This excludes any solution determined by the administering power alone'. The Special Committee on Decolonisation considers that a status of decentralisation such as in the case of French Polynesia 'of administrative autonomy' granted by the central government does not constitute a 'governance arrangement'.

The French position is therefore not reconcilable with the law of the United Nations, but it could, however, be thought that that is without importance for the future status of French Polynesia.

In respect of New Caledonia, France operated for 13 years a policy of empty chair when the General Assembly was examining the situation of that territory. Its position changed from 1998 after the signing of the Nouméa Accord. Indeed, under pressure from other states and in order not to find itself indefinitely in isolation at a diplomatic level, France accepted that it should transmit to the Special Committee the information requested by the committee under art 73-e of the Charter of the United Nations. Is this evolution of position relevant to French Polynesia? The view of Pastorel is:[25]

---

23 Jean-Paul Pastorel "La réinscription de la Polynésie française sur la liste des pays à décoloniser, une nouvelle étape des relations avec l'État français?", BJCL n° 6/13, 20013, p 447-451.

24 Jean-Paul Pastorel "Territoires non autonomes (au sens du chapitre 11 de la charte des Nations unies)" *Dictionnaire juridique des outre-mer* (Lexis-Nexis, 2021) p 526.

25 Ibid, p 527.

> it will therefore be difficult to continue for any length of time ignoring the successive resolutions of the General Assembly of the United Nations which repeat that 'the right of peoples to decide their future' for themselves under the Charter and in accordance with the practice of the United Nations is a right valid in respect of everyone. The question of the 'non-self-governing territories' can therefore not be reserved as a matter purely for internal law and international recognition is by its nature such as will constitute a 'solid foundation for institutional development' in these territories.

Whatever the situation may be, the independentists in French Polynesia prefer that the question of the right to self-determination be understood from the point of view of international law and not that of internal law because in that situation, the "administering power" who is both "judge and party" cannot be seen to be a third-party mediator at the time of the organisation of the self-determination vote.

2 Accession to full sovereignty on the basis of the Nouméa Accord and the right to decolonisation: The case of New Caledonia

The operation of the right to self-determination in New Caledonia rests on different legal bases from those applicable to French Polynesia. In this case, the specific right does not arise from the operation of art 53 para 3 of the Constitution but from the specific regulations[26] which appear in art 5 of the Nouméa Accord which is headed "Evolution of the political organization of New Caledonia". Therefore, this Accord refers to the international law on decolonisation as it is set out in the Charter of the United Nations. Firstly, the Nouméa Accord has numerous provisions relating to the consultation which will "deal with the transfer of sovereign powers to New Caledonia, access to the international status of full responsibility and the organization of citizenship by nationality".[27] The population who can take part in this vote is limited because only the Kanak people and those who have lived in New Caledonia for a long time can vote. Furthermore, three votes on self-determination were envisaged – their dates were decided by the Congress of New Caledonia. So it is not the "administering power" alone which determines and organises the self-determination vote because interested parties are directly involved in this process. Indeed, guarantees are provided in the Nouméa Accord. On the one hand, if the vote is negative at the three referenda and is not in favour of a status of full sovereignty is it agreed that "the political partners will engage to examine the situation that has risen". And further, "the political organisation which is put in place by the agreement of 1998 will remain in force until the last step in the evolution

26 Thus it is not a piece of legislation which orders the self-determination vote as is required by art 53 para 3 of the Constitution but a simple decree because the specific provisions in the Nouméa Accord are set out in the organic law relating to the status of New Caledonia.

27 Nouméa Accord, art 5.

without any possibility of going backward; this 'irreversibility' being constitutionally guaranteed". On the other hand, in order to avoid the precedent of the Comores where accession to independence was different according to the islands of the archipelago (only Mayotte, as a result of the vote in that island, remained part of the Republic), the Nouméa Accord is careful to note that[28] –

> The result of the referendum shall apply comprehensively to New Caledonia as a whole. It shall not be possible for one part of New Caledonia alone to accede to full sovereignty or to retain different links with France on the grounds that the results of the referendum in that part of New Caledonia differed from the overall results.

The Nouméa Accord also refers to the international law on decolonisation. It is clear on the one hand that "decolonization is the means of re-establishing a lasting social bond between the communities living in New Caledonia today, allowing the Kanak people to establish new relations with France that correspond to modern realities".[29] On the other hand, "the progress made in the emancipation process shall be brought to the attention of the United Nation".[30] Thus, the matter of accession to independence is not exclusively reserved and controlled by the Republic but very clearly shared with the international agencies as provided by the United Nations Charter.[31]

The three self-determination votes have taken place. A priori it could be considered that the provisions of the Nouméa Accord have therefore lapsed. However:[32]

> the negative result of the referendum on independence cannot have any impact on the inclusion of a territory on the list of non-self-governing countries until the General Assembly has decided that the territory in question governs 'completely by itself' in accordance with Chapter 11 of the Charter.

Furthermore, the political organisation in New Caledonia is irreversible. The status quo is therefore dominant; accession to full sovereignty by New Caledonia is not, however, definitively excluded and could in the future be the subject of new

---

28 Nouméa Accord, art 5.

29 Nouméa Accord, Preamble, art 4.

30 Nouméa Accord art 3.2.1.

31 Géraldine Giraudeau, *"Le droit international et les transitions constitutionnelles",* Colloque: *L'avenir institutionnel de la Nouvelle-Calédonie*, 17 et 18 novembre 2017, LARJE, (dir Jean-Marc Boyer, Mathias Chauchat, Géraldine Giraudeau, Samuel Gorohouna, Caroline Gravelat, Catherine Ris) (Presses universitaires de la Nouvelle-Calédonie, 2018) p 25.

32 Jean-Paul Pastorel*,* above n 24, p 526.

consultations with, in principle, a guarantee that the electoral body will remain the same as under the Nouméa Accord.

II CONCLUSION

The study of the possibilities for the evolution of the status of the non-self-governing territories of France in the framework of international law shows relatively open choices offered to the collectivities concerned and they can use them freely vis-à-vis the State.

As far as New Caledonia is concerned, the limits have been set by the Nouméa Accord but they could be superseded in the future.

Indeed, if the parties who signed the Accord have not reached agreement on the institutional evolution that will be acceptable to everyone (the State, the Kanak people, and the Caldoches) and if the Republic does not wish to maintain the status quo (which has been there since 1998) it will be possible to modify the present framework and in particular to repeal the agreement.

Geopolitical considerations, which are linked to the Indo-Pacific area, could put a long-term brake on any evolution in New Caledonia towards a solution where its sovereignty will be recognised and leaves in doubt the process of decolonisation.

In French Polynesia, the situation is different. Although the majority of the population in French Polynesia appears not to want to accede to full sovereignty,[33] and therefore there has never been a request from the indigenous people (having been satisfied to base themselves within the French people) there is a strong desire to limit access to property rights by non-resident people – "non-indigenous people".

The recognition of this latter right would require the creation of a local citizenship distinct from French citizenship just as in New Caledonia so that the protection of the land rights can be limited to the indigenous people that is to say to the Māori.

Would the legislator be agreeable to such an institutional evolution? If it were willing to accede to such a request, it would be necessary to amend art 72-3 of the Constitution which states that French Polynesia – like the other overseas collectivities – is made up of an "overseas population".

33 Following the last legislative elections, the three deputies chosen were from the independentist movement. But this was a vote against the autonomists and particularly the President of French Polynesia.