

NEW CALEDONIA - PROPOSALS FOR A NEW STATUTE FOR NEW CALEDONIA AND ITS DEPENDENCIES.\*

The constitutional statute proposed here is one of specific, modifiable, transitory, internal autonomy.

I - AUTONOMOUS INTERNAL STATUTE

The proposed constitutional statute recognizes the *specific identity of the territory*, which shall be entitled to determine freely the emblems identifying its personality within the French Republic in official ceremonies (section 1).

By transposition of the legislation on decentralization in Metropolitan France, it first of all confers upon elected territorial officials *direct responsibility for territorial affairs*. To this end, the territorial executive is transferred to a government consisting of a president and nine members - of which one president and eight ministers (section 7) - which is elected by the territorial assembly by means of a single-round proportional party-list voting system. Under this system, the elected president and vice-president shall be respectively the first and second candidates named on the winning list (section 8).

The Government shall be answerable to the territorial assembly which may pass a motion of censure (section 99). The tutelage of the French Administration is abolished for those acts of the territorial institutions that are automatically enforceable (section 59), it is replaced by a posteriori review of the legality of these acts by the administrative court as instituted by section 119 - 123, and by the Public Audit Office in matters relating to public accounts and the budget (section 116 - 118).

The *President of the territorial government has authority* over his administration upon becoming the head of the territorial administration (section 40). The French State is represented in the territory by a High Commissioner. He is the guarantor of the proper working of the institutions and of public and individual freedoms (sections 112 and 113).

\*(This is the text of Press Release No 26/84 of 29 June, 1984, of the French Embassy, Canberra. It sets out the policy of the French Government as accounted by M. Georges Lemoine, Minister of State for occasion of his visit to New Caledonia in July 1984. A Summary of the proposed constitutional statute prepared by the Embassy, is included. The proposed statute was adopted by the National Assembly on 29 May, but rejected by the Senate: The Australian 13 July 1984 at page 5. It will now go before a joint committee of the two houses)

Where powers are concerned, the *State has the power of attribution, while the territory wields ordinary law powers . the latter have been broadened to include the following areas :*

- The territory acquires competence in regard to prior authorization for foreign investment in excess of 55 million francs, under certain conditions (section 30).

- In the conduct of foreign relations, provision is made for the participation of the territory in negotiations affecting New Caledonia ; its power of initiative is confirmed in its relations with the South Pacific States ; and it may represent the government of the French Republic in South Pacific regional organizations or in international negotiations affecting matters falling within its competence (section 38).

- In the exclusive economic zone, the territory shares with the State the exercise of competence over exploration, exploitation, conservation and management of natural resources, biological and non-biological.

It assumes competence for lower secondary education and in matters relating to labour legislation, with the exception of fundamental rules, which remain with the competence of the French State.

Apart from these transfers of power, the territory is consulted as of right with regard to international postal tariffs and telephone, telegraph and airwave charges, over the planning of the network of State establishments and the adaptation of their educational programmes, public safety, foreign investment schemes in excess of 55 million francs, fisheries agreements, conditions affecting air and coastal shipping links with the territory, immigration and aliens control, and public records (section 33). The territorial council of ministers is henceforward associated with policy on credit and mining through the agency of two consultative committees (section 35).

With these provisos, the French State retains its powers in matters of foreign relations, immigration and aliens control, external communications, currency, treasury, credit, financial relations with foreign powers, defence and strategic raw materials, the maintenance of public order, nationality, civil law, the fundamental principles of labour legislation, justice and criminal law, the central government civil service, local administration, higher education, radio and television broadcasting (section 5).

2 - A SPECIFIC CONSTITUTIONAL STATUTE

As provided for in point one of the *Nainville-les-Roches* declaration, new institutions are created to allow Melanesian civilization to "*manifest its representativeness through customs*".

Accordingly, the territory of NEW CALEDONIA and its dependencies is divided up into six "pays"<sup>(1)</sup>, whose boundaries are drawn up with reference to customary territories and traditional economic, social and cultural ties either still in existence or to be revived. (Section 3).

Each "pays" has a council consisting of customary representatives, local district representatives and representatives of the economic and social activities that make up the life of the community in the "pays" in question (sections 102 - 108). This council may be consulted on any project intended to promote the economic, social, health, cultural and scientific development of the "pays" and to ensure the preservation of its identity (section 109).

Consequently, the customary authorities will be associated, on the same basis as local elected authorities as local elected officials and employees' and employers' representatives, in the development of the region, thereby facilitating the integration of economic activities with the specific human environment.

At the territorial level, custom will be represented by a new institution, the "*Assemblée des pays*", which will sit as the second chamber alongside the territorial assembly. This will consist of 24 customary representatives appointed by the "pays" and 24 local district representatives (section 70). It will consist of a customary chamber and a college of elected representatives (section 76). The president of the customary chamber is ex officio president of the "*Assemblée des pays*" (section 79). The "*Assemblée des Pays*" is consulted on projects relating to economic, social and cultural development, planning and the budget. (section 84). It shall have a period of one month in which to express its opinion, after which this opinion shall be deemed to have been given, in order to avoid institutional delays. Furthermore, the customary chamber is ascribed a number of specific powers : to review bills relating to matters of private civil law, powers of reconciliation on conflicts between citizens

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(1) Region or locality, tr.

subject to private law which may be brought before it, and powers of representation, in the person of its President, in dealings with the South Pacific Melanesian communities belonging to the same culture.

Furthermore, the setting up of the Administrative Personnel Training Centre (sections 124 and 125) and the transitional measures provided for under section 131 stipulate the recruitment and training of new executive and supervisory grade personnel in such a manner as to ensure equality of representation of the different cultures within the administration.

### 3 - A MODIFIABLE, TRANSITORY CONSTITUTIONAL STATUTE

In keeping with the *Mainville-les-Roches* declaration, the proposed constitutional statute is governed by two perspectives :

- . *that of gradual devolution of new powers to the territory.*
- and . *that of progress towards self-determination.*

Concerning the first perspective : the three Boards, namely the Land Board, the Kanak Cultural, Scientific and Technical Board, and the Inland and Islands Development Board, remain within the competence of the French State. However, provision has been made for the possibility of transferring these Boards to the territory at a later date, if the latter so requests. A similar possibility exists with regard to the transfer of upper secondary education to the territory.

Concerning the second perspective, section one sets the term of application of the constitutional statute at five years. At the expiry of that period, the populations of NEW CALEDONIA and its dependencies will be consulted by means of a referendum, to allow them to exercise their right of self-determination, in keeping with the commitment entered into at *Mainville-les-Roches*.