

**THE RECENT SELF-DETERMINATION REFERENDUM IN NEW CALEDONIA:  
TERMS MILITATING AGAINST ITS VALIDITY**

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**INTRODUCTION**

New Caledonia is a French administered territory of the South Pacific. A referendum on the self-determination of the New Caledonians was held on 13 September 1987 which reasserted the continued French rule in the territory.<sup>1</sup> The French Government regarded this referendum as an exercise by the New Caledonians of their right to choose own political destiny.<sup>2</sup> This approach of France towards the self-determination of the New Caledonians sparked off widespread criticisms and controversies in the region. The Kanaks, the indigenous Melanesian peoples of New Caledonia, boycotted the referendum. The non-Kanak community of the territory however took part in the referendum.

The issue of colonial self-determination of the New Caledonians is not a new one. Pursuant to the decolonisation trend of the post Second World War, New Caledonia was classified as a non self-governing territory and enlosted in the UN decolonisation agenda in 1946. And the French Government transmitted informations on the territory to the UN under Article 73e of the UN Charter.<sup>3</sup> New Caledonia was subsequently accorded the status of a French overseas

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1. For an account of this referendum, see Pacific News Bulletin, Vol.2, No.4 Sept.-Oct. 1987, pp.3-4; The Bulletin, Republic of Nauru, No. 33/87, 19 Aug. 1987, p.2.
2. Bernard Pons, French Minister for Overseas Territories, claimed so, see Far Eastern Econ. Rev., 3 Sept. 1987, pp.28-29; Pacific Islands Monthly, July 1987, p.35; for a similar statement made by the French Prime Minister, see Niugini Nius, PNG, 15 Sept. 1987, p.8.
3. See GA Res. 66(I) of 14 Dec. 1946, UN Resolutions 1946-48 (Oceania, Vol.I, 1973) p.111.

territory in 1946 and France unilaterally ceased transmitting information in the following year.<sup>4</sup> The territory has once again been inscribed on the UN list of non self-governing territories in 1986. The General Assembly Resolution of 2 December 1986 affirms the inalienable right to self-determination and independence of the peoples of New Caledonia in accordance with the 1960 Decolonisation Declaration.<sup>5</sup> In its resolution of 28 October 1987, the UN Committee on Decolonisation has reaffirmed the General Assembly Resolution referred to.<sup>6</sup>

The 1987 self-determination referendum of New Caledonia has assumed and will continue to assume paramount significance both for the South Pacific nations and for the UN, committed to the total eradication of colonialism with all forms and manifestations wherever it may occur. The South Pacific countries and their Forum unequivocally discarded the outcome of the referendum, alleging that it was held on unfair terms, designed to perpetuate the French colonial rule in New Caledonia.<sup>7</sup> What will now be the posture of the UN on New Caledonia? Will the UN share the French view that the New Caledonians have already enjoyed their right to self-determination through this referendum? Or will the UN maintain, as the South Pacific Forum did, that the status of New Caledonia continues to be that of a non selfgoverning territory and remains to be decolonised notwithstanding the referendum? These and other pertinent issues involved in the referendum warrant examination.

A circumspect dissection of the terms of the referendum reveals that they were inconsistent with, and repugnant to, that of a self-determination referendum. The peoples of 'territories which have not yet attained independence' are the primary beneficiaries of the right to determine freely their own political future under

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4. The new status was given according to the Constitution of the Fourth Republic, see Pacific Islands Monthly, Feb. 1987, p.13; also the address of the ambassador of Papua New Guinea to the UN Special Committee on Decolonisation in New York on 17 Mar. 1987, The Time, PNG, 17-23 Sept. 1987, p.16.
  5. Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res. 41/41, votes were 89 in favour and 24 against, with 34 abstention, see Resolutions and Declarations of the GA 41st session from 16 Sept. to 19 Dec. 1986), Dept. of Information, Press Section, UN, New York, 12 Jan. 1987, pp.74-75.
  6. See Post Courier, PNG, 30 Oct. 1987, p.8; Weekend Nius, PNG, 31 Oct. 1987, p.9.
  7. For statements made by the South Pacific Forum leaders, see Pacific Islands Monthly, May 1987, pp.22-24; Post Courier, PNG, 18 Sept. 1987 p.8 and 9 Oct. 1987, p.2; The Bulletin, Republic of Nauru, 33/87, 2 Sept. 1987, pp.7-8 (for NZ statement).

the 1960 Decolonisation Declaration.<sup>8</sup> The Kanaks, being the colonial peoples of the territory, constitute an appropriate 'selfhood' for the purpose of determining the political end of New Caledonia. The referendum, devoid of colonial people's participation, became hollow and self-defeating especially with regard to the exercise of the right to self-determination by the colonial peoples of New Caledonia. The referendum did not in any way alter the non-governing territory status of New Caledonia. Nor did it exhaust the right of the colonial peoples of New Caledonia to self-determination and independence.

#### A BRIEF BACKGROUND TO THE REFERENDUM

Ever since its seizure of New Caledonia in 1853, France encountered strong resistance from the Kanaks who were gradually forced to submit.<sup>9</sup> Consistent with the first referendum on the status of New Caledonia in 1958, the New Caledonian Territorial Assembly voted on 17 December 1958 to maintain its status as a French overseas territory.<sup>10</sup> The territory has always been ruled by the French Government. The political aspirations and interests of the Kanaks have increasingly been ignored. The Kanak demand for self-rule and independence has hardly found favour with the French rulers, particularly the Conservative. Successive French Governments worked out many abortive schemes proposing new status to New Caledonia with promises for greater autonomy.<sup>11</sup> These schemes failed due to the fact that none of these schemes offered any degree of self-rule, reflecting the true wishes of the colonial peoples.

The prospects for the achievement of independence of New Caledonia seemingly became promising and brighter more than ever before during the regime of the French Socialist Government, which came to power in March 1981. A number of concessions were granted to the Kanaks towards the preparation of their independence. A roundtable conference of New Caledonian political leaders held in Paris in

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8. Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res 1514 (XV) of 14 Dec. 1960, para 5, (for brevity, it is cited as 'the 1960 Decolonisation Declaration') UN Resolutions 1960-62 (Oceana, Vol. VIII, 1974) pp.188-89.
  9. For early native revolts, see W.G. Burchett, Pacific Treasure Island: New Caledonia (Melbourne: F.W. Cheshire Pty Ltd. 1941) pp.123-40.
  10. See A.P. Blaustein and P.M. Blaustein ed; Constitutions of Dependencies and Special Sovereignties (New York: Oceana, 1986) p.2
  11. In fact, as many as seven such proposals were made since 1962, see Id., pp.2-6; also above note 4, Time.

July 1983 recognised the rights of the Kanaks as the original inhabitants of the territory. A whole range of land, economics, social and judicial reforms were adopted in the interests of the Kanaks. Proposals to revise the constitutional position of New Caledonia were declared at the meeting of the French Council of Ministers on 31 August 1983. This was followed by a meeting of all political parties of New Caledonia with a wide-ranging negotiation. It was agreed in this meeting that special allowances would be made for the Kanaky customs in local institutions and that the existing 'colonial fact' would eventually be abolished. The French Government declared that a self-determination referendum was to be held in 1989. The pro-independence front claimed that the referendum date be advanced and that only the Kanaks be allowed to determine the political future of the territory.<sup>12</sup>

The Socialist Government of France sent a mission on 27 November 1984 to renew dialogue with various political parties to expedite the process of self-determination in New Caledonia. The French High Commissioner of the territory disclosed on 7 January 1985 a plan for self-determination, which was submitted to the French President on 28 March 1985. This was followed by meetings of the French Council of Ministers on 25 and 30 April 1985 and a bill was drafted to be presented before the French National Assembly. This bill provided, *inter alia*, for a referendum on self-determination of the Kanaks in the form of establishing New Caledonia an independent state associated with France before 31 December 1987 and set up an administrative structure for the transitional period.<sup>13</sup> Following the preparation of this bill, it became exceedingly difficult for the French Government to reconcile the interests of the settlers with those of the indigenes. However, a modified bill, dividing New Caledonia into four administrative regions and establishing four Regional Councils, was enacted on 20 August 1985.

The Kanaky claim to self-rule received a further set back with the change of government in France in March 1986. The new Conservative French Government, quite compatibly with its previous stand on New Caledonia, rejected the idea of independence in association with France. Instead, it pledged itself to comply with the desire of the majority population of New Caledonia on the issue of independence. The non-Kanak community, to be observed in the discussion to follow, constitute one of the largest population sectors in New Caledonia, and are consistently hostile to the Kanaky claim of independence. The new French Government proposed that the political status of New Caledonia would be determined democratically

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12. See Blaustein and Blaustein, *op.cit.* pp.3-4.

13. See Blaustein and Blaustein, *op.cit.* pp.4-6. For a full analysis of the political history of New Caledonia, see generally J. Connell, New Caledonia or Kenedy? The Political History of a French Colony (Canberra: National Centre for Development Studies, A.N.U. 1987).

through a referendum. Accordingly, a referendum was held on 13 September 1987 on terms and conditions set by the French Government, permitting all inhabitants of New Caledonia to vote. The outcome of the referendum was claimed as an anti-independence victory. Constrained by unfavourable terms of the referendum and their numerical minority, the Kanaks abstained from voting, whilst the majority non-Kanak peoples overwhelmingly voted to remain as an overseas territory of France.

#### TERMS OF THE REFERENDUM

The terms entitled all inhabitants of New Caledonia, regardless of their country of origin, with a minimum of three years continuous residency in the territory to vote in the referendum. The Kanak Socialist National Liberation Front (FLNKS), the umbrella proindependence political party, demanded that only the Kanaks and the non-Kanaks having at least one parent born in the territory would be allowed to determine the political end of New Caledonia. The French Government discarded this proposal as 'racial'. It also rejected the FLNKS proposal for the involvement of the UN with France in working out the terms of the referendum and set the eligibility to vote unilaterally. It may be noteworthy that the previous Socialist French Government recognised the right of the FLNKS to negotiate on the terms which the new Conservative Government found untenable.<sup>14</sup>

Referendum is a recognised mode of exercising the right of self-determination. A self-determination referendum in New Caledonia, being a non self-governing territory, necessarily implies a means of permitting the colonial peoples to choose freely their own political destiny under the 1960 Decolonisation Declaration. It is in this sphere that the position of the referendum is very vulnerable. Its terms did not include a full range of prescribed alternative modes of the realisation of self-determination.<sup>15</sup> The right of the colonial peoples was not an issue in the referendum. Particularly, its terms failed to include the right of the Kanaks either to self-determination or to independence. Nor was the Kanak right an issue at the time of campaigns. Whilst the FLNKS boycotted both the campaigns and referendum, the anti-independence front of the non-Kanaks campaigned over the Government radio and television

14. For the terms of the referendum, see Far Eastern Econ. Rev. 3 Sept. 1987, p.28; Pacific Islands Monthly, May 1987, p.22; also above note 1.

15. Various modes of exercising the right of self-determination in the main include: complete independence, associated independence, merger with any existing state or any other status, see the 1970 Declaration on Principles of International Law ..., GA Res. 2625 (XXV) of 24 Oct. 1970, Principle V, para 4, (1970)0 Int'l. - Leg. Mat. 1295.

about the virtues of remaining a part of France and the horrors of independence. They made continuous threats that if people would vote for independence, all French aid, key staffs and equipments would be withdrawn, and that their economy would be destroyed.<sup>16</sup>

The 1960 Decolonisation Declaration recognises 'the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainments of their independence'.<sup>17</sup> It advocates a free, honest and genuine choice of self-determination by the peoples of 'territories which have not yet attained independence'. The non-Kanak population, most of whom are nationals of France and came to New Caledonia from France itself, Algeria, Indochina and the French Pacific. These peoples have 'kith and kin' and voting right in metropolitan France.<sup>18</sup> They have come to, and settled in, New Caledonia after the colonisation of the territory as beneficiaries of a mass immigration policy of the coloniser. Any modes of exercising self-determination in New Caledonia must include the colonial peoples concerned, quite independently of citizens of the coloniser and other independent states. The non-Kanaks do not come within the purview of 'dependent peoples' of 'territories which have not yet attained independence'. As such, the right to determine the political destiny of New Caledonia does not accrue to them.

The terms offered the Kanaks, together with the non-Kanak community, a stark choice between two alternatives: either to opt for total independence or to remain a part of France. They were not given any knowledge of the nature of the constitution of independence with well-defined institutional frameworks and powers. The form and colour of ballot papers were especially motivating. Blue and yellow ballot papers were supplied respectively to anti-independence and proindependence voters.<sup>19</sup> This act clearly contravened the democratic norm of confidential voting. Given the

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16. A television and radio campaign on the referendum was scheduled from 30 Aug. to 11 Sept. 1987. The parties which took part in the campaign were: the Central Right Caledonia Rally for the Republic (RPCA) and the Right-Wing National Front, see above note 1, The Bulletin.

17. The preambular para. 3, see above note 8, emphasis added.

18. See P. Larmour, 'The Decolonisation of the Pacific' in Ali Ahmed and others ed., Foreign Forces in Pacific Politics (Suva: Univ. South Pacific, 1984) p. 19.

19. Time, Aust., 14 Sept. 1987, p. 19.

continuous harassment and intimidation of those who favour independence in New Caledonia,<sup>20</sup> one may have good reason to believe that the act influenced the decision of many voters, out of fear, in opposing independence. The cumulative effects of all these factors patently demonstrate that the terms were inadequate to address the needs and aspirations of the colonial peoples of the territory.

#### THE 'SELFHOOD' OF A PEOPLE ENTITLED TO COLONIAL SELF DETERMINATION

The notion of self-determination in the form of the fundamental urge to self-rule received considerable boost and international blessing after the First World War. During the UN Charter regime following the Second World War there were numerous examples of the exercise of self-determination, much along the line of decolonisation. The existing international community and its forum, the UN, are committed to the total eradication of all forms and manifestations of colonialism.<sup>21</sup> This has been due to the fact that the people under colonial rule suffered grievous oppression and injustices. Colonial territories have been the areas where the deprivation of human, political and economic rights has been most acute. The gravity and intensity of the subjugation of colonial peoples moved their plight to the forefront of the world community. Flagrant abuses and misuse of colonial rule prompted the world community to adopt the 1960 Decononisation Declaration, outlawing all species of colonialism. The essence of the Declaration is that the colonial peoples, if they so desire, are entitled to exercise their inalienable right to colonial self-determination up to independence. It calls for a speedy and unconditional end of colonialism by transferring all powers to the peoples who have not yet attained independence.<sup>22</sup> All these prescriptions purport to suggest strongly that the colonial peoples are the beneficiaries of colonial self-determination.

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20. For an analysis on this point see, Y.C. Uregel, 'New Caledonia Confrontation to Colonial Rule' in Ali Ahmed, R. Crocombe and R. Gordon ed., Politics in the Pacific Islands (Vol. I, Suva: Univ. South Pacific, 1982) pp. 128-35; R. Crocombe, The South Pacific: An Introduction (NZ: Longman Paul, 1983) p.125.

21. For a discussion on this point, see A. Rigo Sureda, The Evolution of the Right of Self-Determinatin: A Study of UN Practice (Leyden, 1973) pp. 95-225; Report of the Secretary-General on the Work of the UN, 25 GAOR sup.1, pp. 83-101, UN Doc.A/800 (1970); S Kaur, 'Self-Determination in International Law' (1970)<sup>10</sup> Indian J.I.L. 500-01; M.K. Nawaz, 'Colonies, Self-Determinatin and the UN' (1962)<sup>11</sup> Indian Yr. I.A.ff. 3.

22. See above note 8.

In prescribing the right of self-determination, the 1960 Decolonisation Declaration presupposes the existence of distinct groups of dependent peoples living in 'territories which have not yet attained independence'. And these groups of peoples acquire 'selfhood' to which the right applies. The determination of such a unit basically appears to be a factual issue. It is the indentifying of the existence of a dependent peoples sharing common values and expectation quite different from that of the power administering them. There are indeed certain distinguishing features that determine whether a particular cluster of peoples is colonial or not. A number of common features, notably, historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, geographical contiguity, common economic tinct Kanaky cultural group. The Kanaky culture, being Melanesian in origin and based on tribal structure and customs, has developed on its own land of vegetation. The Kanaks have their own native language quite different from French, the official language, which lacks indigenous root and geographical identity in New Caledonia. The diverse Kanaky culture has come into contrast vividly with that of the French settlers and rulers, much of which is based on Western culture.<sup>24</sup> The Kanaks are altogether different from, and never merged with, the French. Thus France has been occupying, ruling and determining the lives and welfare of a people who have very little, if not nothing, in common with the French.

Quite apart from the initial colonisation of New Caledonia, its governmental powers have not been wholly and unconditionally transferred to the indigenous peoples during the past 134 years. At all times, its administrative authority has been manned by the French Government. The political development of the Kanaks has been denied under the strict control of French colonial administra-

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23. The annex of the GA Res. 742 (VIII) of 27 Nov. 1953 contains a list of these factors of 'selfhood'. GA Res. 1541 (XV) of 15 Dec. 1960 also mentions this list; also L.C. Chen, 'Self-Determination As a Human Right' in W.M. Reisman and B.H. Weston ed. Toward World Order and Human Dignity (New York: Free Press, 1976) p.226.
24. For the Kanaky history, culture, race and life-style, see V. Thompson and R. Adloff, The French Pacific Islands (Berkeley: Univ. California Press, 1971) pp.231-514; K.B. Cumberland, South-West Pacific (New York: Federick A. Paeger, 1954) pp.191-99; D.L. Oliver, The Pacific Islands (Cambridge: Harv. Univ. Press, 1962) pp.322-30.

tion.<sup>25</sup> The enormous concentration of political power by Europeans has resulted in the growth of a capitalistic economy with features of economic exploitation of the native. The French fiscal, trade and development politics have perpetrated striking economic disparities between the non-Kanaks and the Kanaks. The New Caledonian economy is under the firm grip of few commercial forces, none of which is a Kanak. The poor economic condition of the Kanaks has resulted in their lack of access to even small scale business. They have neither the resources nor the skill to participate in development activities.<sup>26</sup>

These common factors act as a bond between the Kanaks in constituting them a distinctly identifiable group within the whole population of New Caledonia. Juxtaposed to this 'distinctiveness' which has not disappeared over time and space, the Kanaks are also conscious of their common destiny. They have unified themselves for the common goal of present and future security. They surmise that an independent New Caledonia, a predominantly Kanak state, free from French rule will maximise the protection of their value-oriented goals which they are desirous of pursuing. The Kanaks have never been quiet, slow or indifferent of their demand for self-rule. Their urge to determine their own political status has been asserted through the boycott of referendums held in the interests of European settlers.<sup>27</sup> The expression of this common desire is imperative in order to acquire 'selfhood'. For self-determination is by nature, a right which must be asserted and set up by the 'self' concerned.<sup>28</sup> The Kanaks are therefore a distinct group with 'consciousness' of their common political destiny.

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25. See T.R. Adam, Western Interests in the Pacific Realm (New York: Random House, 1967) pp. 127-28; also above note 20, Uregei, pp. 121-23; M. Dornoy, Politics in New Caledonia (Sydney Univ. Press, 1984).

26. For an account of the economic position of the Kanaks, see a paper presented by J. Boengkih in a seminar on 'Human Rights in the Pacific' organised by the Pacific Committee of the Australian Council for Overseas Aid held in Sydney on 25 May 1987; also Newsletter of the Australian Development Studies, Canberra, No.8, July 1987, p. 10.

27. For examples, the 1973 and 1977 Territorial Assembly elections, and the 1984 Regional elections, see Pacific Islands Monthly, May 1986, p. 21 and the 1987 referendum. However, the Kanaks did take part in the Regional Council elections on 29 September 1985 and won in three regions out of four (except Noumea, the Capital)

Chapter XI of the UN Charter deals with the non self-governing territories. But it does not suggest any criteria to be relied upon in deciding whether a given territory is or is not a Chapter XI territory. The General Assembly Resolution 1541 (XV)<sup>29</sup> However embodies criteria for the determination of a non self-governing territory. According to this Resolution, a territory is prima facie a non self-governing territory 'which is geographically separate and is distinct ethnically and/or culturally from the country administering it' (Principle IV). Once it is established that such a territorial non-contiguity and cultural-cum-ethnic diversity exist, other factors, such as, inter alia, political, administrative, juridical, economic or historical, must be taken into account in ascertaining 'the relationship between the metropolitan state and the territory concerned.' Should this relationship reveal that the territory and its peoples concerned are placed arbitrarily 'in a position or status of subordination' by the metropolitan state, that territory concerned is a Chapter XI territory (Principle V). In consequence, the peoples of the territory are treated as 'dependent peoples'.

As mentioned earlier, the political power of New Caledonia has been held by a racially and culturally diverse authority, situated in a territorially different area, France, separated by two thousand kilometres of alien territory from New Caledonia. For all conceivable purposes, the French Government is totally alien to the Kanaks. The geographical separation and racial and/or ethnic diversity of the Kanaks from the metropolitan France constitutes new Caledonia a prima facie non self-governing territory under Principle IV of the General Assembly Resolution 1541 (XV). The relationship between the ruling French Government and the ruled Kanaks uncovers that the latter are politically dominated and economically exploited by the former which may be described as a class-colonial relationship. It is this relationship that has arbitrarily placed the Kanaks in a position or status of subordination within the meaning of Principle V of the said Resolution. This status of the Kanaks in effect classifies them as a 'colonial peoples' and their territory as a 'non self-governing territory'.

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28. Without any assertion of the right directly by the 'self', selfdetermination may not have any foundation. The Katangese claim to self-determination was considered illegal by the majority of the UN members because it was not asserted by the indigenous peoples. It was engineered by outside vested interests, supported by a Belgian mining company and backed by Belgian troops almost from the very beginning, see L.C. Buchheit, Secession: The Legitimacy of Self-Determination (Lond: Yale Univ. Press, 1978) p. 152.
29. Of 15 Dec. 1960, UN Resolutions 1960-62 (Oceania, Vol. VIII, 1974) p.153.

The status of the Kanaks as the 'colonial peoples' in conjunction with their 'distinctiveness' as a group and 'consciousness' of a common political destiny confer upon them a 'selfhood' for the determination of the political and of New Caledonia, a non self-governing territory which has not yet attained independence. The referendum, as noted earlier, was voted not by the Kanaks but by the non-Kanaks who did not form a self-determination unit. As a result, the referendum failed to comply with one of the resolute ingredients of a valid selfdetermination of referendum.

#### THE GEOGRAPHICAL IDENTITY

The legitimate correlatin between the people and land has also been suggested as a factor to be reckoned with in ascertaining the 'selfhood' of a people entitled to self-determination.<sup>30</sup> The exercise of the right to self-determination presupposes the existence of two interrelated components, namely, people and territory. Neither a land mass nor a people standing alone can form a self-determination unit. A proper lawful combination of them both acts as a bond between them to bestow 'selfhood' in the context of self-determination. A territorial association or a state is the procreation of the peoples who live in it. Only those peoples who are inseparably related to a given territory can, if they so desire, exercise their right to self-determination on that territory. All collectivities cannot assert such a claim on any territory of their choice. In other words, the right accrues to the peoples on their territory with which they are inextricably connected. The entire anti-colonial movement is founded on this prescription.

As stated before, the Melanesian kanaks are the indigenous peoples of the territory. They have continuously been inhabiting the same territory since time immemorial. They possess a firm indigenous roots and geographical identity in New Caledonia. The strength of their fundamental urge for self-rule is indeed their powerful sentimental attachment to their common land. This correlation between the territory of New Caledonia and the Kanaks serves as a common link between them and makes the Kanaks a distinctly identifiable group within the entire population of New Caledonia. It is this factor that contributes considerably to qualify them as a self-determination unit under the 1960 Decolonisation Declaration. The remaining population of New Caledonia evidently lack indigenous roots and geographical identity with the land which clearly undermine their claim to self-determination on the territory of New Caledonia.

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30. M.C. Bassiouni, 'Self-Determination and the Palestinians' (1971)65 Am.Soc.I.L.Procd. 36.

### PHASES OF SELF-DETERMINATION

Phases of self-determination are twofold: 'external' and 'internal'. The 'external' aspect of self-determination refers to the right of a people who are yet to be independent to choose freely in the sphere of international relations, opting for independence or union with other existing states or any other status. Once such a people achieves independence and establishes their own state, that people is deemed to have realised its 'external' self-determination in the form of freedom from alien colonial powers. These peoples, being the nationals of an independent state, are now entitled to 'internal' self-determination in the form of electing and keeping the government of their own choice and of having the right not to be oppressed by the government.<sup>31</sup> In other words, the 'internal' aspect of self-determination denotes the right of citizens of independent states to possess a representative government resting on the consent of the governed and not to be oppressed or discriminated against by any other influential group or by the government itself. Thus, whilst the right of 'external' self-determination belongs to peoples who are yet to be independent, the right of 'internal' self-determination is the prerogative of the peoples who are already independent.

The population of New Caledonia exhibits two different components: the indigenous Kanaks and the non-Kanak settlers. The former are dependent peoples entitled to 'external' self-determination. The latter are, as mentioned before, the citizens of metropolitan France, transplanted in New Caledonia by the colonial power. As such, they cannot exercise 'external' self-determination on an alien land. This is however not to assert that only the indigenous Kanaks and none else should constitute and reside an independent state of New Caledonia. It is true that many non-Kanak settlers have been living in the territory for many years and generations during the 134 years of French colonial rule. The feeling of these peoples to consider themselves as members of the Caledonian community may not be gain said. They may be desirous of living together with the Kanaks. In fact, states seldom consist of a single distinct group linked by identical factors. The concept of a modern

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31. A Cassese, 'Political Self-Determination-Old Concepts and New Developments' in A. Cassese ed., UN Law/Fundamental Rights (The Netherlands: Sijthoff & Noordhoff, 1979) p.137; Z. Mustafa, 'The Principle of Self-Determination in International Law' (1971) 5 Int'l. Lawyer, 479; V. Van Dyke, 'Self-Determination and Minority Rights' in V. Van Dyke ed., Human Rights, the US and World Community (London: Oxon, Univ. Press, 1970) p.80; P.K. Menon, 'The Right to Self-Determination: A Historical Appraisal' (1975) 53 Review Droit Int'l. 187.

state 'presupposes the existence of socio-economic-political structures capable of allowing the co-existing pursuit'.<sup>32</sup> There are numerous multi-racial states that contain more than one distinctly identifiable group. The UN Charter contemplates a plural society composed of various racial, linguistic or religious groups sharing a larger common national identity.

Since New Caledonia is a non self-governing territory, the right to 'external' self-determination belongs exclusively to the dependent peoples of the territory. Once the territory becomes independent through the exercise of 'external' self-determination, the non-Kanak community of the territory would have a right of free choice either to become nationals of the independent state of New Caledonia or to retain the nationality of their respective mother countries. Should they opt for the former, they would be on equal status with the Kanaks and all would be entitled to 'internal' self-determination in the form of freedom and protection under the new constitution. Terms of nationality may be formulated in such a manner as granting the right of nationality to the long term settlers from the day of independence. Explicit provisions may be incorporated stressing that economic and professional activities would be open to all nationals without any distinction whatsoever. In fact, a whole range of constitutional guarantees may be devised as safety-valves which could effectively be implemented to abolish or at least minimise the deprivation of self-determination in domestic sphere. All these measures of 'internal' self-determination may be invoked only after the attainment of independence through the exercise by the dependent peoples of the territory of their right to 'external' self-determination.

#### THE MAJORITY-MINORITY ISSUE

The French Government asserts that only the minority Kanaks are desirous of independence as against the majority of the New Caledonians. This assertion apparently represents the most elementary expectation of the world community, for it endorses the democratic principle of the majority opinion. In a multi-racial state if the Charter objectives of human rights and fundamental freedoms for all are to be ensured, the majority opinion must be respected. The UN has addressed and adhered to this principle on many occasions.<sup>33</sup> However, although the French contention appears to be intuitively appealing, the situation in New Caledonia is somewhat

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32. See Bassiouni, op. cit. 32.

33. For various UN resolutions condemning the former Smith minority regime in Rhodesia see (1966)60 Am. J.I.L. 921-26; J.L. Cefkin, 'The Rhodesian Question at the UN' (1968)22 Int'l. Org. 649; similar resolutions against the existing South African regime may be found in H.S. Cruz, Racial Discrimination (New York: UN, 1971) pp. 202-13.

different. A plain adherence to the majority principle by the French Government seems to be ill-conceived and incorrect and, as such, it may not be taken for granted. Rather, the majority-minority issue in New Caledonia ought to be appreciated both contextually and objectively.

Ever since the beginning of its rule in the territory, France scrupulously followed a policy of mass immigration from Europe, particularly from France, to New Caledonia. As early as 1864, France established a penal colony on New Caledonia which continued until 1897.<sup>34</sup> The forced resettlement and confinement of the natives to 'reserves' commenced in 1868. Numerous tribes were uprooted from their ancestral homes and deported to arid and inaccessible areas.<sup>35</sup> The initial colonisation of New Caledonia met with fierce resistance from the Kanaks who were gradually forced to submit resulting in the rapid declination of the Kanak population due to the disruption of cultural patterns and introduced diseases.<sup>36</sup> The encouragement of massive migration to New Caledonia in effect has altered the population balance, increasing the numerical strength of the settlers steadily, eventually outnumbering the Kanaks, who have been reduced to a minority in their own land. Prior to French annexation, the Kanaks were estimated up to 70,000 in number. They are now numbered 60,500 or 43 per cent of the total population of 144,000 in 1982 and the remainder of the population are settlers, mostly from France and their children born in New Caledonia.<sup>37</sup> In addition to this planned expansion of settlers, the French government has stationed a large number of French civil servants, armed personnels and police forces in New Caledonia. These French nationals and servicemen are also entitled to vote in New Caledonia.<sup>38</sup>

Once the non-Kanaks have emerged as the majority, the French Government has left the political future of New Caledonia to be decided democratically by all residents of the territory, no matter whether they are natives or not. As a result, in every election held under such a population ratio where the natives have artifici-

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34. See above note 9, pp. 88-122; note 10, p. 1, note 20, Uregei, p. 118.

35. See above note 20, Uregei, pp. 118-19, 123; Pacific Island Monthly, July 1987, p.11.

36. J. Carter ed., Pacific Islands yearbook, (Sydney: Pacific Pub., 15th ed. 1984) p. 277.

37. See, 'Economic Analysis: New Caledonia - 5' in the 1985 International Bureau of Fiscal Documentation, Mar. 1985; Far Eastern Econ. Rev. 15 Oct. 1987, p. 19.

38. See above note 20, Uregei, p. 131.

ally been made the minority, anti-independence forces dominated by the nonKanakaks have won and asserted the continuous ties of the territory with France.<sup>39</sup> The rapid development in Noumea, the capital, with multifarious economic opportunities have prompted outsiders, in particular Europeans, to migrate and settle in Noumea. It is the most industrialised city where life is markedly different from the rural life-style. Noumea is overwhelmingly French and exclusively occupied by Europeans, who hold most of the lands, mines and resource-rich areas and enjoy a very high standard of living with an average income of over five times than that of the Kanaks.<sup>40</sup> In order to protect this highly privileged position in New Caledonia, the non-Kanakaks are purposefully loyal to the French government and have consistently been inimical to the Kanaky claim of independence.

In the recent referendum, pro-France vote represented 57.05 per cent of the electorate, with a participation rate of 58.99 per cent.<sup>41</sup> The anti-independence forces insisted on holding the referendum immediately merely because the population balance favoured them which could well swing back in favour of the Kanaks with the passage of time, as there is a large group of young Kanaks who are just under the voting age.<sup>42</sup> The French public servants, troops and police forces who were stationed there for three years and above also cast their votes. Moreover, it has been widely alleged that the referendum was rigged to ensure a verdict against independence.<sup>43</sup>

It is against this background that the majority-minority issue in New Caledonia deserves to be understood. The French Government deliberately fostered a mass-scale immigration with the manifest aim to swamp any future movement for independence in the territory.

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39. See above note 27. However, the 1985 Regional Council's election in which the Kanaks took part may not be regarded as a referendum on the political status of the territory.
40. See Pacific Islands Monthly, Aug. 1987, p. 35; also above note 26.
41. See Post Courier, PNG, 18 Sept. 1987, p. 8; Niugini Nius, PNG, 15 Sept. 1987, p. 1 and Oct. 1987, p. 8.
42. See Pacific Islands Monthly, April 1986, p. 21.
43. It was alleged that dead peoples and those who ceased to be residents were not removed from the voters list, which excluded 2500 Kanaks who have been sentenced and votes were purchased, see Pacific Islands Monthly, July 1987, p.11; Far Eastern Econ. Rev. 5 Mar. 1987, p.8; 3 Sept. 1987, p.28.

It overtly abused and misused the democratic principle of the majority opinion in an attempt to mislead the world community that the majority of the New Caledonians are opposed to independence. New Caledonia is, unlike an independent state, a non self-governing territory with a population comprising both the native colonial peoples and the nationals of independent states including the colonial power. As noted earlier, the numerical strength of a settler group and their long term residence in an alien territory do not confer upon them 'selfhood' for the purpose of exercising the right to self-determination on that territory. The principle of democracy in relation to the self-determination referendum in New Caledonia is applicable among the beneficiaries of the right, the Kanaks, in deciding the future political status of the territory. The principle of democracy can not accord self-determination to the settlers and their descendants simply because the right does not lawfully belong to them. Similarly, the principle of democracy cannot be used to deny the Kanaks, the minority, of their inalienable right to self-determination. Therefore, the strength of a flat adherence to the majority principle by the French Government may not be given conclusive weight as in the event of democratic elections in independent states. And it would be erroneous to pretend that the referendum of 1987 has properly set out the political status of New Caledonia.

#### THE PRESENCE OF FRENCH TROOPS AND POLICE FORCES

The French Government maintains well equipped troops and police forces in New Caledonia particularly since the Pacific War to protect its colony from any external or internal threats. Repression of the militant Kanaks by these forces became frequent and widespread prior to the poll. French troops were deployed all over New Caledonia including the interior areas where the bulk of the Kanaks live and work to intimidate and terrorise them, to gather information about independence movement and to wage psychological campaigns. Additional security forces, paramilitary gendarmes, prior squads, police and others in uniform were reinforced ahead of the referendum. A further one thousand trained personnel arrived to guard the voting booths. Total France armed forces reached between 7,000 and 10,000 in the territory of 19,000 square-kilometres.<sup>44</sup>

The presence of such a large army and police forces resulted in the curtailment of the Kanaks' freedom of speech, of opinion and of movement during the referendum. The Kanaks were not permitted to hold public meetings to disseminate their views on the referen-

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44. See Pacific Islands Monthly, Sept. 1987, p. 18; Time, Aust. 14 Sept. 1987, p. 19 and the sources cited in above note 1.

dum.<sup>45</sup> French troops and police resorted to violence with casualties to disperse peaceful Kanaky demonstrations ahead of the referendum. The Kanaky opinion was shackled and their leaders were shadowed and jailed. The eyewitness account of foreign correspondents of the military excesses in New Caledonia at the time of the referendum created regional as well as international repercussions.<sup>46</sup> This extreme militarisation of the territory preceding the referendum appears to have compromised its sanctity and credibility as a fair and free election.

### CONCLUSION

The conditions of, and the terms of the question put in, the referendum failed to conform with the principles and practice in relation to the exercise of the colonial peoples' right to self-determination. As worked out, these terms appeared to be illconceived, ill-thought out, rickety affairs in the decolonisation process of the territory. One of the major fragilities generated by these terms and conditions was the suspicion that the outcome of the referendum would obviously guarantee the status quo which was indeed widely predicted even before the ballots were cast.<sup>47</sup> The prospects of conciliation between the pro and the anti-independence forces were bleak and the chances of violent confrontation between them were ample. The terms thus highlighted the weakness of the French approach to the decolonisation of New Caledonia.

The Conservative French Government held this referendum evidently in the interests of the non-Kanaks who repeatedly demanded this poll. The end in view was to make it clear that the majority of the New Caledonians opposed independence. Such a mandate was crucial not only to augment an international opinion in favour of the continued French rule in New Caledonia, especially before the meeting of the UN Decolonisation Committee looming at the end of

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45. Meetings and demonstrations were banned, the security forces intervened to prevent Kanaks travelling from outlying tribal areas to join meetings and demonstrations, several flights from the Loyalty Islands were cancelled because of 'technical problems' and the navy patrol boat turned back boats full of Kanaks because of alleged violations of maritime transport regulations, see Far Eastern Econ. Rev., 3 Sept. 1987, p. 28.
46. For an account of military atrocities on the Kanaks, see sources cited in above note 1 and 44.
47. Almost all interested corners who have been following the political developments in New Caledonia predicted so, see Pacific Islands Monthly, May 1987, pp.22-24; Time, Aust. 14 Sept. 1987, p.19; Far Eastern Econ. Rev., 3 Sept. 1987, p.28.

1987 with New Caledonia in its agenda.<sup>48</sup> The mandate was also thought to be an effective weapon to prevent socialist President Mitterrand, if reelected in 1988, from questioning the political status of New Caledonia and from making concessions towards the preparation for its independence, as the Socialist Government of France did in 1985.<sup>49</sup> The referendum was thus used as a vehicle to deprive the colonial peoples of their inalienable right to independence. Whilst the referendum and its aftermath preserved New Caledonia as a part of France, it further consolidated the Melanesian nationalism and awareness of their present and future security. Given the degree of political consciousness of the Kanaks for independence and the mounting international support in favour of their cause, France may not be able to retain the territory as a colony for a protracted period to come.

As concluded on the terms and conditions referred to, the referendum appeared like a simple democratic election in an independent state. The poll was rather used as a means to devise a new status that the French Government intended to offer for New Caledonia, the fourth in three years, with a promise of greater autonomy for the territory whilst holding it essentially well within the French orbit.<sup>50</sup> The referendum however could not be regarded as a self-determination one. It was voted by the non-Kanak community who did not constitute an appropriate 'selfhood' for the purpose of determining the political future of New Caledonia under the 1960 Decolonisation Declaration. In the absence of the colonial people's participation, the referendum lacked an important, if not the decisive, attribute of a valid self-determination referendum - both by what its terms were and by what its terms failed to be. In consequence, the outcome of the referendum had not brought about any legal implications whatsoever on the right of the colonial peoples to self-determination up to independence. New Caledonia continues to be a non self-governing territory which remains to be decolonised and its dependent peoples are yet to attain independence under the 1960 Decolonisation Declaration.

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48. The UN Decolonisation Committee adopted a resolution in its meeting on 28 Oct. 1987 reaffirming the right of the peoples of New Caledonia to self-determination and independence, see above note 6.
49. Mitterrand openly objected on 18 February 1987 to plans by Prime Minister Chirac's cabinet for a referendum on the status of New Caledonia. He said that it would be a grave historical error to reduce the territory into a mere electoral confrontation. It was not so much holding a referendum which counted, but the policy behind it, see, Far Eastern Econ. Rev. 5 Mar. 1987, p. 8; 19 Mar. 1987, p. 30.
50. See Pacific Islands Monthly, May 1987, p.24; Nov. 1987, p.19.