**PIURN 2023 CONFERENCE « Exploring this sea of islands »**

« The self-determination referendum of December 12, 2021 (December twelve, two thousand twenty-one) in New Caledonia: a missed opportunity »

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Hello everyone,

It is a great pleasure to be here with all of you, especially considering that the subject of my thesis focused on the constitutional status of the Cook Islands and other associated states in the South Pacific.

But today, I'm going to talk to you about another territory with a very special status: New Caledonia. A self-determination referendum took place on December 12, 2021 in this French territory. I would like to offer an analysis of this referendum, explain its context and demonstrate how it represented a missed opportunity.

To grasp the significance of this referendum, it is necessary to go back to key elements of New Caledonia's past:

New Caledonia has been colonized by France since 24th September 1853. The French state's settlement colonization had the effect of making the indigenous people, the Kanaks, a minority in their own land.

After the abolition of the colonial status in 1946, New Caledonia had different statuses. But none were able to prevent the rise of independence claims, which led to the violences in the eighties (80’s).

Peace has been restored through the signing of the Matignon-Oudinot Accords in 1988, followed by the Nouméa Accord ten years later.

The Nouméa Accord initiated the process of decolonization for New Caledonia. It granted New Caledonia a new legal status with extensive autonomy and established a process of progressive emancipation, culminating in a series of three self-determination referendums 20 years later.

These three referendums took place.

Three times, the people of New Caledonia had to answer the question: "Do you want New Caledonia to accede to independence and full sovereignty?".

The first referendum took place in 2018. The population answered "no" with 56.7% of the votes.

The second referendum was held two years later, in 2020. The voters again expressed their desire to remain within the French Republic with 53.3% of the votes. So, the results becoming increasingly close. In both cases, the voter turnout was particularly high with over 80% of the votes, demonstrating strong involvement from the population.

The third referendum represents the final stage of this process. It was a crucial moment in the history of New Caledonia, and yet the appointment was missed.

The voters voted "no" with 96.5%, but with a participation rate of only 46%. This very high abstention rate leads to a rather disappointing assessment. Not only does this result stem from a lack of consensus prior to the referendum, but it also reflects a lack of legitimacy afterward.

First point : Lack of consensus on the organization of the referendum

In terms of logistics, the organization of the vote went perfectly smoothly. However, the political context was particularly tense because the 2021 referendum was the final one, and the results in 2020 were very close with only a 10,000 votes difference out of approximately 180,000 registered voters.

Furthermore, two controversies disrupted the organization of the referendum.

First, there were disputes regarding the process used to determine the referendum date. It was not set within the framework of the committee of signatories, which is usually the platform for political discussions among independence supporters, non-independence supporters, and the state. As a result, some political representatives refused to participate in the discussions and filed a legal challenge.

The second controversy concerns the choice of the date of December twelfth. One point of contention was its proximity to national deadlines, which posed a risk of instrumentalizing the New Caledonian referendum. Additionally, New Caledonia lost its "COVID-free" status three months before the vote. The health situation was particularly severe, especially among the Kanak population, and the referendum campaign could not proceed normally.

Opposition formed within the population regarding the consequences to draw from the health crisis. The independence supporters requested a postponement of the referendum due to a period of Kanak mourning. The loyalists supported maintaining the original date. Finally, the french government decided to maintain the date. As a result, the independence parties called for non-participation in the vote.

So, there were strong tensions and a lack of consensus prior to the vote.

The lack of consensus resulted in a legitimacy deficit for the voting outcome.

Second point : Lack of legitimacy of the referendum results

In the third referendum, there was a very high abstention rate, reaching 56.1% with a majority vote in favor of "NO" at 96.5%. More than half of the electorate did not cast their votes.

This extremely low turnout rate raised questions about the validity of the vote.

From an internal legal perspective, the French judge confirmed that the integrity of the vote had not been affected by the health context or the Kanak mourning period. Furthermore, they specified that abstention does not affect the validity of the vote since there is no minimum required participation rate.

From an international legal standpoint, the vote is also considered valid. UN observers who were present said that the question posed was clear, the electoral lists had been duly established, and the consultation process proceeded without issues.

So, the validity of the result is not in question.

However, from a political perspective, the legitimacy of the third referendum results is lacking. There has been a significant increase of over forty percentage points in abstention between the second and third referendum. Furthermore, this abstention is almost entirely due to the non-participation of the independence supporters, which includes the Kanak population.

Consequently, we are faced with an absurd situation where a self-determination referendum took place without the participation of the colonized first people. Thus, there is a glaring lack of legitimacy for the third referendum, even though it was intended to close the chapter of colonization.

**In conclusion**, from a legal standpoint, the conduct of the third referendum cannot be contested. New Caledonia remains part of France as there have been 3 "no" votes. However, politically, it is evident that this referendum was a missed opportunity as it did not lead to a consensus-based transition. Now, we must hope that consensus will be more present in the adoption of the future status of New Caledonia, which is currently under discussion.

Thank you for your attention.