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SECOND INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

**Pacific regional seminar on the implementation of the Second International Decade for
the Eradication of Colonialism: assessment of decolonization process in today's world**

**Nouméa, New Caledonia
18 to 20 May 2010**

STATEMENT

BY THE

Prof. Edward Wolfers

(Australia)

United Nations  Nations Unies

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**SELF-DETERMINATION, DECOLONISATION, AND THE UNITED NATIONS -
LINKS, LESSONS, AND FUTURE OPTIONS, WITH PARTICULAR
REFERENCE TO THE PACIFIC**

**(Paper prepared for the Pacific Regional Seminar of the United Nations Special
Committee on Decolonization, Noumea, New Caledonia, 18-20 May 2010)**

Edward P. Wolfers*

‘Self-determination’ and ‘decolonization’ are often used as if they include one another or are otherwise interchangeable. But they really have quite distinct meanings. Their implications for the people in non-self-governing territories are different. The *Oxford English Dictionary* (1989) defines ‘self-determination’ as including -

[t]he action of a people in deciding its own form of government; free determination of statehood, postulated as a right,

and ‘decolonization’ as -

[t]he withdrawal from its former colonies of a colonial power,

and, more controversially - or, at least, less accurately - as far as the Pacific islands region is concerned, as -

the acquisition of political or economic independence by such colonies.

Thus, self-determination involves choice; decolonization refers to the end or the ending of colonial rule.

While self-determination and decolonization can be closely related - with self-determination leading to decolonization, and decolonization involving or depending on self-determination by people in or of colonial territories - they do not always go together. Historically, they have not consistently done so. There are, for example, countries in the Pacific where decisions about the political future were largely imposed by the former colonial power, or where the colonial power (and even its prospective successors) dared not risk referring decisions about self-government and independence beyond parliament to the people, partly, at least, because they feared they would not be given majority endorsement. In contemporary Tokelau, the failure of two acts of popular self-determination in the form of referenda to secure the two-thirds majority required for progress towards free association with New Zealand has meant that decolonization has not moved ahead (at least, not yet) as the two governments involved have previously agreed.

In countries where minorities have contested their inclusion in a particular nation-state, both in the region and in other parts of the world, nationalists have opposed the holding of referenda offering the possibility of secession by a particular part (or parts) of a country on the basis that determinations made by or on behalf of the national self during decolonization necessarily involve the country as a whole, including potential secessionist minorities.

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The United Nations (UN) Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (usually called simply the 'UN Special Committee on Decolonization') is the body charged with oversight and encouragement of the Declaration to which its full, official name refers (UN General Assembly [UNGA] Resolution 1651 (XVI), Paragraph 3). Fifty years after the Declaration was made – and at the close of the UN's Second International Decade for the Eradication of Colonialism – there are still 16 non-self-governing territories in regard to which the Special Committee exercises certain responsibilities on behalf of the UN (though one of them, New Caledonia, was re-inscribed in 1986, after the Special Committee was formed, and there are advocates of diverse causes seeking to have other names included). Five of the territories on the Special Committee's current agenda are in the Pacific: American Samoa, Guam, New Caledonia, Pitcairn, and Tokelau.

The short paper which follows consists of three parts:

- (1) an overview of the historical relationship between self-determination and decolonization, and their respective contributions to wider, global concerns;
- (2) lessons that have – or might have – been learnt from decolonization in the Pacific islands region, in particular; and
- (3) the implications that the previous assessments might have for the UN's future role in relation to decolonization.

The conclusion outlines a possible strategy for addressing many of the issues previously identified.

Self-determination and decolonization

Self-determination was implicit in the first democratic revolutions. It was linked with decolonization in the anti-colonial revolutions which led to the independence of the United States of America (USA), most South American countries and other countries in the Caribbean and the Americas during the late eighteenth and early nineteenth centuries, but in a truncated form because of the exclusion of persons not of European descent, both migrants, including slaves, and the indigenous inhabitants of settler colonies, from participation in the government of successor societies. Self-determination was a driving force in the nineteenth-century unification of a number of European countries, but accompanied in some cases by a drive towards securing colonies overseas.

Self-determination and decolonization began to be linked closely related again in the break-up of the Austro-Hungarian and Ottoman empires following World War I. This followed President Woodrow Wilson's famous 14 Points address to Congress in January 1918 in which he committed the USA to a programme including:

A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such

questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined (Point V),

and

The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity to autonomous development (Point X).

The distinction and the link between self-determination and decolonization was subsequently imbedded in the *Covenant of the League of Nations* – albeit in rather ethnocentric, and patronizing terms – which provided that former German and Turkish colonies and territories ‘inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world’ should be governed according to the principle that –

the wellbeing and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant (Article 22).

This principle was subsequently given practical effect through the mandates system, the third class of which, the C class mandates, applied to a number of Pacific islands territories – Nauru, New Guinea, (Western) Samoa, and in Micronesia.

An important feature of the mandate system was a set of requirements that would nowadays be widely regarded as key elements of good governance - transparency and accountability – albeit administered through a body, the Permanent Mandates Commission, whose members were representatives of the colonial powers (most of the inhabitants of non-self-governing territories, especially the indigenous people, would not have had ready access to the administering powers’ reports, let alone institutions to hold them accountable for their policies and actions). The issues on which the mandate powers were required to report, sometimes in considerable detail, included:

Status of the Territory; Status of the Native Inhabitants ...; International Relations; General Administration; Public Finance; Direct Taxes; Indirect Taxes; Trade Statistics; Judicial Organisation; Police; Defence of the Territory; Arms and Ammunition; Social, Moral and Material Condition of the Natives; Conditions and Regulation of Labour; Liberty of Conscience and Worship; Education; Public Health; Land Tenure; Forests; Mines; and Population (Anghie 2004: 183).

Following World War II, the League of Nations was replaced by the UN, and the trusteeship system replaced the previous mandates. The *United Nations Charter* contains both a general Declaration regarding non-self-governing territories (Articles 73-74) and provisions establishing the trusteeship system (Articles 75-91).

Unlike the subsequent UNGA Resolution 1514(XV), the Declaration regarding non-self-governing territories in the *UN Charter* does not refer to eventual independence for non-self-governing territories, though it does not explicitly exclude it. Thus, it –

recognizes that the interests of the inhabitants of these territories are paramount (Article 73, Preamble),
and commits the UN –
to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement (Article 73, b).

The provisions establishing the UN trusteeship system go somewhat further in holding out the possibility of independence as the eventual outcome. Thus, the purposes of UN trusteeships include promoting –

the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the people concerned, and as may be provided by the terms of each trusteeship agreement (Article 76, b).

Both sets of provisions contain what might be regarded as the seeds of a commitment to self-determination, but without referring to decolonization to the point of independence in the first case, or guaranteeing that the wishes of the people of trust or other non-self-governing territories will prevail.

The two sets of provisions also provide for transparency and accountability in the administration of non-self-governing territories (but, as with the previous League of Nations mandates, in regard to other member-states, rather than the inhabitants of non-self-governing territories) by committing UN members to report regularly to the UN Secretary-General on economic, social and educational conditions in their respective non-self-governing territories – for consideration by the UN General Assembly's Fourth (Special Political and Decolonization Committee), and to the UN Trusteeship Council in respect of trust territories. The UN Trusteeship Council was suspended in 1994, when the last of the UN trust territories, the Republic of Palau, previously part of the United States' Trust Territory of the Pacific Islands, became independent.

Some 80 territories, including all of the previous trust territories, have become independent since the UN was established in 1945, 18 of them in 1960 - the most dramatic year for decolonization. Reinforced by the accession of so many new members – and in the diplomatic context of the Cold War – the UNGA then passed Resolution 1514 (XV), the Declaration on the granting of independence to colonial countries and peoples, a document which has been described – somewhat extravagantly, when the *UN Charter's* existing provisions on non-self-governing and trust territories are taken into account – as the 'Magna Carta of Decolonisation' (Aldrich and Connell 2006: 158). In addition to the references to 'the passionate yearning for freedom in all dependent peoples' and their decisive role in attaining independence, and to the ardent desire of the world's peoples for 'the end of colonialism in all its manifestations', which made liberation 'irresistible and irreversible', the Declaration goes on to declare that –

subjection ... to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights ...;

All peoples have the right to self-determination ...; and

Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

By implication, there can only be pretexts, not reasons, for deferring, let alone denying, independence to the people of non-self-governing territories.

A subsequent Resolution, 1541 (XV), restored a direct link between self-determination and decolonization by acknowledging that a territory could be regarded as having attained 'a full measure of self-government' not only through –

Emergence as a sovereign independent State,

but also through –

Free association with an independent State; or

Integration with an independent State.

The Resolution specified the conditions which should apply in the latter two cases:

in the case of free association –

- 'a free and voluntary choice ... expressed through informed and democratic processes', with the freedom to modify that status democratically and constitutionally, and
- the right of the associated territory to 'determine its internal constitution without outside interference; and

in the case of integration –

- the integrating territory should have already attained 'an advanced stage' of free and democratic self-government,
- the decision be made democratically, following the informed and freely expressed wishes of the territory's people,
- there must be 'complete equality' between the peoples of the territory and the country it is joining.

The idea that self-determination is a human right (at least, for societies recognized for the purpose by nation-states which make up the UN) was reinforced by the inclusion in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of an Article stating that –

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

This was followed by a commitment by the states party, including the remaining colonial and trusteeship powers, to promote and respect that right. The two Conventions came into effect in 1976, ten years after they were made.

However, as the United Kingdom has pointed out, the options available for self-determination are not confined, either in law or in practice, to those specified in UNGA Resolution 1541 (XV). Implementation generally requires agreement and a measure of co-operation between the decolonizing power and the people undergoing decolonization. As recognized in the UN's Declaration on Principles of International Law concerning

Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, which calls for 'a speedy end to colonialism having regard to the freely expressed will of the peoples concerned, the available options include not only independence, free association or integration, but what is loosely referred to as –

any political status freely determined by a people (UNGA Resolution 2625 (XV)).

In the event that the preferred choice involves an existing state, the outcome will necessarily depend on whether or not – or on what terms – it agrees.

In the lead-up to the thirtieth anniversary of its Declaration on the Granting of Independence to Colonial Countries and Peoples, the UN General Assembly addressed the challenges involved in bringing an early end to colonialism by resolving that the period 1990-2000 would be the 'International Decade for the Eradication of Colonialism'. In doing so, the UNGA requested the UN Secretary-General to prepare a report which would enable the adoption of an action plan aimed at ensuring that the twenty-first century would usher in 'a world free from colonialism' (UNGA Resolution 43/47). In 1991, the UN General Assembly declared that –

the ultimate goal of the ... Decade ... would be the free exercise of the right to self-determination by the peoples of each and every remaining Non-Self-Governing Territory ...;

and that –

the exercise of the right to self-determination should be carried out freely and without outside pressure, in a form reflecting authentic interests and aspirations of the people of Non-Self-Governing Territories' ((UNGA Resolution 46/181).

At the end of the Decade, the UN's Millennium Declaration (UNGA Resolution 55/2) echoed previous commitments to self-determination through the inclusion of the right to self-determination among its Values and principles.

Also in late 2000, the UN General Assembly reviewed the previous Decade, and resolved that the period 2001-2010 would be the Second International Decade for the Eradication of Colonialism. However, while the relevant Resolution (UNGA Resolution 55/146) refers to previous Resolutions on decolonization, the operative provisions do not specifically mention self-determination or independence. Whether or not the omission was deliberate or is otherwise significant, it serves to highlight the issue under discussion – the relationship (or distinction) between self-determination and decolonization.

Thus, in summary, have self-determination and decolonization developed (and been limited) as guiding principles of the UN and, arguably, of international law. According to some writers, they have been among the driving forces of international law-making, though others see them as hindrances, even blocks, to further progress.

However, while the UN's Special Committee on Decolonization and the General Assembly's Fourth Committee have been attending to the decolonization of the remaining territories on the UN's list of non-self-governing territories, no similar mechanism has been established to deal in a similarly systematic way with the break-up of what has often been described as the former 'Soviet Empire' (which tends to be

regarded as posing challenges for security, sovereignty, and human rights, but does not come before the mechanisms established to deal with self-determination and decolonization as previously understood).

Meanwhile, the remaining non-self-governing territories in the Pacific still on the UN's list raise some interesting questions about the relationship, the difference, and, in practice, the tensions and difficulties involved in trying to reconcile self-determination and decolonization, particularly in territories whose people cannot agree how – and, in some cases, even whether – to reconcile the two, or the colonial power is reluctant, or unable, often for domestic political reasons, to proceed. The continuing dilemmas posed by such situations are, presumably, among the reasons why the latest UN General Assembly Resolution on a number of non-self-governing territories has explicitly reaffirmed the principle of self-determination as an inalienable and fundamental human right, and recognized that –

the specific characteristics and the aspirations of the peoples of the Territories require flexible, practical and innovative approaches to the options for self-determination, without any prejudice to territorial size, geographical location, size of population or natural resources.

Perhaps in response to issues and points similar to some of those made earlier in this paper, the operative provisions of the same Resolution formally reaffirm that –

in the process of decolonization, there is no alternative to the principle of self-determination;

stress the need for the Special Committee on Decolonization to be supported in meeting its responsibilities by –

being apprised of the views and wishes of the peoples of the Territories and enhancing its understanding of their conditions, including the nature and scope of the existing political arrangements between the Non-Self-Governing Territories and their respective administering Powers;

and call for the development of political education programmes to promote public awareness of people's rights (UNGA Resolution 64/104).

Lessons from the Pacific

In its report to the UN General Assembly on its activities in 2009, the UN Special Committee on Decolonisation observed that, 'in addition to general problems facing developing countries', the remaining non-self-governing territories also suffer from what are described as 'handicaps' arising from a variety of factors, such as –

size, remoteness, geographical dispersion, vulnerability to natural disasters, fragility of ecosystems, constraints in transport and communications, great distances from market centres, a highly limited internal market, lack of natural resources and vulnerability to drug trafficking, money-laundering and other illegal activities, as well as from the current financial crisis.

Without wishing to question or trivialize the issues outlined, one is tempted to wonder how many - and, in each case, how much - of the preceding factors are functions of a metropolitan rather than a regional perspective, or of a view from the centre of

government rather than the subsistence-based villages in which most Pacific Islanders continue to live, or which many absentees call home. Echoing some of the observations of the late Epeli Hau'ofa (2008), one wonders why size is a problem for people who continue to choose to live in relatively small island communities; from where they are remote – from the centre of their lives, or – in an age of globalising media – from news and entertainment; whether the seas link or divide them from other communities (an issue raised in regard to the Caribbean by H. E. Ambassador Donatus Keith St Aimee of St Lucia earlier in this Regional Seminar); and so on? The point of these questions is not to criticize or dismiss other perspectives but to ask whether, how widely and how deeply they are shared by Pacific Islanders, especially people who live in or intend to return to the region. These and similar questions might help to explain the various ways in which different communities view the prospect of decolonization and especially the options available for self-determination.

Following World War II, the non-self-governing territories in the Pacific have been of diverse kinds:

- mainly colonies, including the five remaining non-self-governing territories; but also
- four UN trust territories - the Trust Territory of the Pacific Islands, New Guinea, Nauru, and Western Samoa, the first of which was a strategic trust;
- a protected state - Tonga, and
- a protectorate - Solomon Islands, whose distinguishing characteristics were not always clear; and
- a condominium - New Hebrides, now Vanuatu.

Administrative arrangements added to the complexity of the situation in that Papua and New Guinea were formally administered – but, for political and governmental purposes, fully integrated in practice – as a single entity; Australia administered Nauru on behalf of its partners in trusteeship, New Zealand and the UK; while the Governor of Fiji was also the UK's High Commissioner for the Western Pacific, and accordingly responsible for the government of the Gilbert and Ellice Islands Colony, Pitcairn Islands, Tonga, and the UK's role in governing the Anglo-French Condominium of New Hebrides.

While colonial rule had generally been imposed, there were significant elements of local participation in the early establishment of foreign control in Fiji, Samoa and Tonga, in particular.

With the strong exception of Western Samoa - and largely localized pressures in other cases - decolonization in most now-independent or freely associated Pacific island countries was generally driven from outside (by the administering powers, and the pressures at the UN and elsewhere to which they were subject). As decolonization gathered momentum around the world – and the economic and other costs of development continued to rise – the former colonial powers frequently saw advantage, not least in determining the pace and eventual outcome of decolonization, by proceeding ahead of popular demand. Consistent with practice in most of the former colonial world, successor states have generally inherited former colonial boundaries (plus additions

mandated by the *UN Convention on the Law of the Sea*). An unusual exception was the Gilbert and Ellice Islands Colony, which was decolonized as two independent countries - Kiribati and Tuvalu respectively. Another exception was the US-administered UN Trust Territory of the Pacific Islands, which divided into the Commonwealth of the Northern Mariana Islands, and three other US freely associated states, the Federated States of Micronesia, the Republic of Marshall Islands and the Republic of Palau.

A number of countries have maintained essentially symbolic links with their former colonial rulers by retaining the Queen of the UK as head of state (Papua New Guinea, Solomon Islands, and states in free association with New Zealand). Others have maintained much more substantial connections through entering into free association with their former colonial rulers - Cook Islands and Niue with New Zealand, and the Commonwealth of the Northern Mariana Islands with the USA). It is amid such diversity that the future of the remaining non-self-governing territories is being determined - or, at least, those on the UN's list (the situation in regard to other political entities, such as French Polynesia, Wallis and Futuna, and Australia's Norfolk Island territory, is essentially a matter for the governing power and its relations with leaders and people in the respective territories).

Self-determination in the Pacific has had a number of aspects: the negotiation of changes in status; timing; and constitution-making. While the people of other Pacific Islands countries have been actively involved in all three, Samoa and Papua New Guinea stand out for the manner in which their national constitutions were made and then given effect. In both cases, a commitment to developing and implementing a 'home-grown' constitution has meant that the national constitution does not owe its authority to the laws of the former colonial power (such as an Order-in-Council in the case of former UK colonies), and that it was made and adopted in-country, with regard to maintaining and building on nationally shared institutions, practices and values (a challenge more readily addressed in Western Samoa than amid the diversity of the many stateless societies which constitute Papua New Guinea). The 'home-grown' character of these two constitutions may help to explain their relative, uninterrupted longevity since Samoa became independent in 1962, and Papua New Guinea in 1975. In the case of the latter, quite apart from a commitment to shared Papua New Guinean values and ways, itself now embodied in the *Papua New Guinea Constitution*, there was also a significant element of a lesson learnt from precedent in Western Samoa.

In most Pacific island countries, precedents inherited or set in the former colonizing countries influenced the systems of government established at independence. In the case of the former British territories in particular, they also drew on precedents in other non-self-governing territories. Thus, the ministerial committee system set up in Solomon Islands in 1970 drew on precedents in the Channel Islands. The human rights provisions in the *Constitution of Solomon Islands* built on a pattern of migration of human rights legislation from the Caribbean across Africa from West to East and eventually into the Pacific. The *Papua New Guinea Constitution* drew on diverse precedents and sources of advice (including academics, lawyers and other consultants with substantial experience of constitutions and government in Africa, the Caribbean, and elsewhere in the Pacific). As

the Constitutional Planning Committee, a key contributor to the making of the Papua New Guinea Constitution, observed in its *Final Report* (1974: Chapter 1, Paragraph):

we have taken the idea of a "home-grown" constitution seriously. In other words, we have assumed that if it had been intended merely to follow some firm precedent, Westminster or otherwise, no planning committee would have been required, least of all one composed of the people's elected representatives. A lawyer or two could have made up a constitution with scissors and paste in much shorter time than we have required.

However,

It is not that we have ignored precedents, for there is such a rich variety among the world's constitutions if one looks beyond the more immediately familiar. An examination of our recommendations would send a specialist in many directions if he was looking for origins, and in some cases there are no external precedents at all.

The diverse influences on the Committee's recommendations were explained by the statement that -

What has influenced us above all in seeking formulations and adapting them, has been the desire to meet Papua New Guinean needs and circumstances and, in particular, to base our recommendations on the kind of principles we discuss [in the *Final Report*].

The diverse ways in which Pacific islands countries have learnt from one another's experiences – or exchanged ideas – include involvement in various forms of regional co-operation, institutions and exchanges. The South Pacific Conference was an early forum in which Pacific Islander leaders met and exchanged ideas. So was the Central Medical School in Fiji, many of whose graduates subsequently returned home to become political leaders. When the University of the South Pacific was established, it played a critical role for the next generation, the more so because of student and other exchanges with the University of Papua New Guinea (which also attracted students from Solomon Islands).

South Pacific regional organisations continue in a similarly open and flexible mode in being willing to find ways of including representatives from non-self-governing territories in their deliberations. Thus, what might be regarded as the single most important South Pacific regional organization, the Pacific Islands Forum (PIF), includes all 16 of the independent and freely associated states in the region (among them, Australia and New Zealand), while New Caledonia and French Polynesia participate in formal sessions as associate members, and Tokelau, Wallis and Futuna, together with the more distant Timor-Leste, have observer status. The Forum Fisheries Agency has all PIF countries as members, as well as observers from American Samoa, French Polynesia, Guam, and the Commonwealth of the Northern Mariana Islands. Obviously, co-operation in relation to activities with such significant cross-border implications as fisheries benefits from - indeed, depends for its effectiveness on – co-operation across international boundaries irrespective of formal political status. What is striking in this case is that states in the region are willing to be flexible about the formalities – much more so than many regional organisations in other parts of the world - for the sake of the benefits which accrue. Meanwhile, the South Pacific Secretariat (successor to the South Pacific Commission, with which the South Pacific Conference was affiliated) has a

membership which includes both independent and freely associated states in the region, France and the USA as administering powers, as well as a number of non-self-governing territories - American Samoa, French Polynesia, Guam, New Caledonia, Pitcairn, Tokelau, and Wallis and Futuna.

Clearly, anti-colonial sentiment is not as strong and pragmatism stronger in the Pacific than in some other parts of the world. The views of states in the region towards decolonization and self-determination of non-self-governing territories tend to follow suit. There appears to be willingness to learn from experience on all sides. Evidence of this can, in fact, be seen not only in government but in other areas of life, including the expressive arts – where an emphasis on indigenous art draws on regional precedents, and some literature draws on expressions of anti- and early post-colonialism in French Africa and elsewhere. The constitutions of Vanuatu and Solomon Islands drew on Papua New Guinean precedents (in some cases, by seeking advice from the same foreign consultants). The precedents include the Leadership Code, the office of Ombudsman, and, in the case of Solomon Islands, the provincial government system and a proposed law on the integrity of political parties (defined mainly in terms of how Members of Parliament vote on the floor of the House). The secessionist movement in the Western Province of Solomon Islands in the late 1970s drew on sentiments felt and expressed previously in Bougainville. New Caledonia's (and Western Sahara's) deferred referenda on self-determination appear to have influenced the constitutional entrenchment of Papua New Guinea's guarantee of a referendum on Bougainville's political future between 2015 and 2020 – with a separate independence for Bougainville's political future an available option (*Papua New Guinea Constitution*, Ss 338-339). It might also be relevant to observe that the innovative character of aspects of government and the constitution in Tokelau – which include the concept of the Ongoing Government, and rotation of the office of head of government (known as the Ulu) among the three atolls - may owe something to the strong commitment to the making of 'home-grown' constitutions elsewhere in the Pacific.

One academic observer has recommended that legislators in Fiji could learn from New Caledonia's experience in forming and managing multi-party governments (Fraenkel 2005). The same author has warned against Solomon Islands following Papua New Guinean precedent in respect of legislation intended to strengthen the cohesion and role of political parties (Fraenkel 2008).

While some observers of developments in independent Pacific islands countries draw positive conclusions about the legitimacy of 'home-grown' constitutions and other developments in the region, others view the region in less favourable terms. Thus, another academic has concluded – in less than tactful terms – that, judging from his observations of Kanak reactions to President Jacques Chirac's visit to New Caledonia in 2004,

a very large majority of ethnic Kanaks do not want to end up like their Pacific neighbours (McIntyre 2004: 12).

A former Australian diplomat in the region has ranged more widely, boldly, and positively by suggesting that New Caledonian leaders might find it useful – and mutually beneficial – to try to move beyond current disagreements by looking closely at the diverse range of innovative political formulas already evident in the Pacific. These include ‘self-government, integration, association, or even federation (the Hawaiian option)’ (Fisher 2008: 2).

More generally, a growing body of regional agreements and international law provides positive evidence of cross-influences and co-operation across the boundaries of nation-states and non-self-governing territories.

It is against the background of the cross-influences outlined – and many others - that people in the remaining non-self-governing territories and other Pacific Islanders learn lessons both positive and negative from one another’s experiences, and draw on them in formulating their views on self-determination and decolonization, as well as their hopes and fears for the future which lies beyond. Lessons learnt from experience and observation, almost certainly, help to explain both the issues at stake and what many observers regard as the current impasse in decolonization, itself a product of a certain kind of self-determination, in the remaining non-self-governing territories in the Pacific.

The UN’s future role in relation to decolonization.

UN Secretary-General Ban Ki-moon has described 2010 – the fiftieth anniversary of the UN’s Declaration on the Granting of Independence to Colonial Countries and Peoples, and the end of the Second International Decade for the Elimination of Colonialism – as ‘an important year for the Special Committee on Decolonization.’ Calling for ‘creative solutions’ to a situation in which only one of the territories on the UN’s list of non-self-governing territories at the start of the International Decade, Timor-Leste, has since achieved independence - in very difficult circumstances – he has called for

a pragmatic and realistic approach – taking into account the specific circumstances of each [territory],

which he believes is ‘most likely to lead to concrete results.’ The Chairperson of the Special Committee, H. E. Donatus Keith St Aimee of St Lucia – has said, ‘We need to do better’. There is –

a “crucial need” ... to generate new momentum so as to ensure that the ... remaining Territories would be able to exercise their right to self-determination, on a case-by-case basis,

and

to find creative ways to resolve the difficulties of the decolonization process while paying genuine attention to the socio-economic needs of the Territories’ peoples as well as their interests (UNGA/COL/3199).

But might it not be the case that the existence and activities of the Special Committee on Decolonization have helped to maintain, and even reinforced, a political climate in which the rights of people in non-self-governing territories are respected, or at least not overridden or ignored – even if self-determination appears to be moving quite slowly, or

is, in some cases, perhaps stalled for a time? Might this more positive perspective on the Special Committee's role and impacts be made clearer by altering focus away from its present functions (and even its name) to a more clearly rights-based approach?

Is it inappropriate to suggest that the problem in, at least, some non-self-governing territories is not that people are unaware of their situation and prospects but that they are only too well aware? If this is the case, the challenge is not simply one of raising public awareness or of political education but of addressing people's real concerns – which may have more to do with access to services and / or opportunities to participate in development than with political status. A pragmatic and realistic approach sensitive to people's own understanding of the issues might, therefore, involve self-determination in terms of the full range of options recognized in the UN's Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the *Charter of the United Nations*, namely –

any political status freely determined by a people.

In the case of the five remaining Pacific territories on the Special Committee's list, might it not be appropriate to adopt a number of different strategies?

In respect of New Caledonia, it might be argued that the status quo combined with the ongoing oversight of the Special Committee on Decolonization helps to safeguard both the right to self-determination and continuing peace. The guaranteed referendum scheduled by the *Noumea Accord* to be held between 2014 and 2019 seems to offer the optimal, internally acceptable way forward – provided peace is maintained and the referendum is held as agreed (and not deferred, or the agreed arrangements otherwise altered, except by agreement), and that it contains a full range of options between the status quo (which will by then involve considerable, legally irreversible, local control over public affairs) and full, formal independence – perhaps, with an opportunity or opportunities for voters to indicate preferences. The invitation to hold the present Regional Seminar here in Noumea might itself be an expression of the Special Committee's significance to the parties most closely concerned with New Caledonia's political future.

In American Samoa and Guam, there are special issues arising from the particular circumstances of the indigenous people, the will and ability of the United States Congress to consider alternatives, and, in the case of Guam in particular, the military build-up planned by the USA. Again, the Special Committee on Decolonization might be playing an important, if generally unacknowledged, role in helping to maintain peace and important rights simply by being there and taking an active interest in the two territories. There might nonetheless be opportunities in both cases for the UN Special Committee to play a more direct role – or to make special arrangements, including the appointment of facilitators with a sound, comparative understanding of relevant issues and possible outcomes – to assist in identifying mutually acceptable options, and encouraging and providing such support as might help in the identification of practical ways of proceeding and implementation in the legal systems involved.

In regard to Tokelau, which UN documents have cited as a model for properly prepared and transparent self-determination, the holding of repeated referenda is itself an indication of support for self-determination, despite the lack of the two-thirds majority required to bring about change. The clear and strong over-all support for change might itself be a case for recommending a fresh threshold for passage, perhaps one which takes less account of the over-all total and greater account of the distribution of support. Or, perhaps, just for trying again.

The case of Pitcairn is especially difficult because, whatever one's views on the relevance of size and resources to decolonization – and they have generally been used in other contexts less as genuine criteria for viability than as arguments for delay – it is difficult to imagine that Pitcairn will have funds or personnel required to operate even the most basic institutions of independent statehood, free association or integration in another, larger entity (but which?) with anything more than the equivalent of local government at any time in the foreseeable future. This reality is already evident in the way that Pitcairn currently draws on the New Zealand courts system, and relies on the provision of other aspects of the justice system, as well as medical services, from the UK.

In this situation, might it not be worth pursuing the possibility of a special arrangement for the government of Pitcairn, administered through a regional body such as the Pacific Islands Forum Secretariat – with special guarantees for security against external threats - and funded by an end-of-dependency grant similar to those the UK has provided for other former territories, invested, in this case, in a sovereign fund designed to provide adequate revenues on a sustainable basis in perpetuity? While the proposal might seem unduly innovative in its regional aspect (though not very different from joint trusteeships, the Western Pacific High Commission's mandate, and condominium in an earlier age), and risky in its reliance on a sovereign fund (especially, in light of experience in the case of Nauru), might it not be worth developing and exploring? The obvious alternative would be to hand over Pitcairn to another state in the region, though it is difficult what incentive there would be for the other participant in such an arrangement (other than access to an additional Exclusive Economic Zone and a site of possible historical and scenic attraction to tourists).

To return to the issue with which this paper opened, the challenge before the UN at the close of the Second International Decade for the Elimination of Colonialism is not simply to do away with colonialism in the Pacific but to ensure continuing recognition of the overriding importance of self-determination. In this context, the options appear to be to:

- (1) admit to failure, or the need for delay;
- (2) consider a third, similar International Decade; or
- (3) change the name of the Decade – and, perhaps, even the Special Committee – to emphasise the overriding importance of self-determination, not simply the end of colonial rule.

Unattractive as they might otherwise appear, all of these options are clearly preferable to decolonization without recognition of relevant rights.

More positively, a focus on – perhaps, even a Decade for - the Realisation of Self-Determination by Colonial Territories and Peoples would highlight both the main purposes of, and the challenges before, the Special Committee without raising a serious risk of unnecessary distraction or dilution.

If the actual and the opportunity costs incurred by the Special Committee, the regional seminars and the support staff are issues, there might also be a case for making even greater changes to existing arrangements in regard to the UN's role and responsibilities for non-self-governing territories generally.

However, in cases where self-determination as well as its possible outcomes themselves appear to be issues – and to ensure the integrity of decolonization processes generally - it is vital to ensure continuing international supervision.

Drawing on some related precedents, might there now be a case for the UN to consider even replacing the Special Committee on Decolonisation, especially in regard to territories where violent conflict is not a likely prospect, with a fresh arrangement involving a monitoring authority or high-level representative accountable, say, to the Fourth Committee of the UN General Assembly rather than a specialist body?

In the case of disputed territories, such as Western Sahara, there is a very strong case for continuing monitoring and efforts to promote accountability – perhaps, through mechanisms otherwise focused on the prevention, management and resolution of disputes, and not specifically decolonization (the political evolution of Timor-Leste might reinforce the point).

Conclusion

The thrust of this paper has been to highlight the issues involved in self-determination and decolonization, and the links – and gaps – between them, both in principle and in practice. In doing so, it has sought to draw attention to lessons which might be learnt from experience and prospects in the Pacific, and to propose possible ways in which the UN might address them.

The preceding analysis suggests that one way of addressing the issues outlined might be for the United Nations General Assembly to prepare and pass a resolution which:

- states quite clearly that self-determination is basic to decolonization and the means by which decolonization should proceed;
- integrates the outcomes consistent with self-determination into a single list which follows precedent by containing independence, free association, integration, as well as any political status freely determined by a people – and, presumably, acceptable to other people with whom the same status is to be shared;

- builds on existing procedures for transparency and accountability by providing, both in principle and practice, for improved transparency and accountability in all aspects of self-determination and decolonization through mechanisms which ensure that relevant information and issues are accessible by people in the remaining non-self-governing territories; and
- provides for the establishment and ongoing operation of mechanisms (including both those identified above, such as the appointment of special facilitators in certain cases, and/or such others as may be agreed) to ensure orderly, effective, ongoing implementation.

The outcome would be intended to strengthen the procedures which currently apply to the Special Committee – for the sake of self-determination, decolonization, peace, human rights and the other goals to which the United Nations is committed.

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