

The Territory of French Polynesia

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This paper provides a general introduction to the rules which govern the constitutional status and organisation of the Territory of French Polynesia. It deals in particular with the statutes of France, Law no 84-820 of 6 September 1984 and Law no 90-612 of 12 July 1990 relating to the status of the Territory of French Polynesia.

I INTRODUCTION

A major step was taken in the legal development of French Polynesia when France granted the Territory internal autonomy. The Law of 6 September 1984 proclaimed that French Polynesia was an overseas territory "endowed with internal autonomy within the Republic" and that its special organisation and development were as defined by that statute.¹

¹ The agreement on autonomy and its corollary, the grant of a status adapted to the particularities of French Polynesia, have been a dominant theme throughout the political history of the Territory of French Polynesia. It was present from the beginning in 1947 with Senator Pouvannaa Oopa, in the form of a confrontation between the parties who wanted autonomy and a State which was resolutely opposed to any decentralisation.

The struggle finally resulted in a victory for the parties for autonomy at the elections of May 1977. Sanford then succeeded Flosse (who with his party the Tahoeraa Huiairatira supported the position taken until then by the French Government) by condemning the autonomy that he had as being simply the prologue to independence. By unanimous vote of the French Parliament, French Polynesia obtained an autonomous status from 12 July 1977. Notwithstanding this autonomy, the debate on status matters was quickly reopened. Flosse, as leader of the local opposition and the Deputy for French Polynesia in the French Parliament, rallied to the support of those who favoured autonomy by presenting a proposal in March 1980 which had as its goal the amendment of the existing statute to give more autonomy. The local majority was unable to restrain the initiative and the State-Territory Committee drew up a proposal in August 1981 which, as the law of 6 September 1984, was finally approved unanimously by the French Parliament just as had the proposal in 1977.

Flosse had in the meantime returned to power in May 1982 and, elected by the Territorial Assembly in September 1984, became the first President of the Government of the Territory. He was re-elected in April 1986, his party having won a majority in the territorial elections held in March 1986 after the dissolution of the former Assembly in December 1985 at the request of the Territory. Flosse was replaced by Teuira, and then by Leontieff who, in the light of the first years of operation of the statute, obtained an amendment of the 1984 statute on 12 July 1990. Flosse's party once again won a majority in the territorial elections in 1991 and he was elected President of the Government.

Organic laws grant territorial authorities new powers which are designed in large part to satisfy the aspirations of the local people.² The Law of 1984 was based on 3 principles: the recognition of Polynesian identity, the direct responsibility of the territorial representatives in the management of local affairs, and an increase in authority for local institutions.³

Thus article one of the statute provides that the Territory of French Polynesia "is administered freely by its elected representatives and freely decides on the distinctive measures which will enable it to mark its identity, in public and official ceremonies, alongside the emblems of the Republic". The identity of French Polynesia is solemnly recognised for the first time in this law which allows the Territory to have its own flag, to affix a seal, and to have an anthem.⁴

As a direct consequence, recognition of the Polynesian identity leads to the recognition of an increased role for government at the local level.

The organic law envisages a sharing of power between the State and the Territory. It defines the powers of the territorial institutions and of the High Commissioner and provides for the judicial and financial supervision of the Territory.

II DISTRIBUTION OF POWER BETWEEN THE STATE AND THE TERRITORY

The Law of 6 September 1984 goes beyond what is envisaged in texts which relate to decentralisation in France. The Territory has been given much more important powers than those granted to the regions, the departments and the communes of France.⁵

2 The term *statut* can give rise to confusion and be thought to indicate that a rule superior to a *loi* is involved. A *statut* is in fact a piece of legislation made by Parliament like any other and therefore can be amended by the French Parliament just as can any other law of the French Republic. In 1992, the 1984 law became an "organic" law which can still be amended by another French "organic" law.

3 Law number 84-821 of 6 September 1984 relating to the status of the territory of French Polynesia was published in JO 7 September 1984-2840; Law number 90-612 of 12 July 1990 was published in JO 14 July 1990-8319. *Juris-Classeur Administratif*, Schultz, fascicule 21 Bis number 27. The consolidated text is available as *Statut du Territoire de la Polynésie Française* from the Imprimerie Officielle, Papeete, Tahiti.

There is now extensive French literature on these laws. The most valuable and most accessible is perhaps JY Faberon *Le Statut des Territoires d'Outre-Mer* (Centre Territorial de Recherche et de Documentation Pédagogiques, New Caledonia, 1991).

4 Some Polynesian politicians wished, and still wish, to see in it the first steps towards sovereignty and therefore towards independence. Statute for development (*statut évolutif*) within the framework of the French Republic or statute of emancipation (*statut d'émancipation*) vis-à-vis the French Republic - both these approaches exist without being mutually exclusive or even very clear in the minds of the local politicians.

5 See the travaux préparatoires on the Law in the National Assembly.

The basic principle, and this was already the structure of the statute of 1977,⁶ is that the authority of the Territory is general while the powers of the State are listed restrictively.⁷ The actual sharing of power is very similar, in a number of ways, to that which exists in federal states.⁸

A *State Powers*

Article 3 of the Law is the key provision in so far as the sharing of power between the State and the Territory is concerned. The authority of the State is restricted to matters which relate to sovereignty, the unity of the Republic and to the equality of rights of French citizens. Depending on the matter in question, the authority of the State is total, partial, or is conditional on consultation with the Territory.

1 *Areas of total State authority*

The State has the monopoly of power in the areas of public order, defence, civil law, nationality, the justice system, judicial organisation and the organisation of the legal profession, criminal law and criminal procedure, the public role of the State, local government, currency, the treasury and exchange control, and tertiary education.⁹

2 *Areas of partial authority of the State*

In principle the State is competent in relation to other matters but it may transfer part of its power to the Territory.¹⁰ This transfer has taken place in the following areas: external relations, exploration and exploitation of the economic zone, air services, financial and commercial relations with other countries, labour law, primary and secondary education, and audio and visual communication.

3 *Matters in relation to which the State must consult the Territory*

The principle of consultation with the Territory a priori enables, within the areas of authority of the State, the gathering of comment and ideas from the territorial institutions. Thus the territorial institutions must be consulted about immigration control and foreigners, on changes to telephone charges and postal rates, on civil

6 Article 2 of the Organic Law picks up the principle of the general legal competence of the territorial authorities as it appeared in article 44 of the Law of 12 July 1977.

7 The corollary of this is: All the powers that article 3 does not give to the State are, by the application of article 2, within the competence of the authorities of the Territory of French Polynesia.

8 JY Faberon above n 3, p 11-13.

9 Article 3(2), (4), (6), (7), (8), (10), (11), (12), (14), (15) and (17).

10 The debates of the National Assembly and the discussions with the representatives of French Polynesia have shown that in many areas a strict separation is not only not possible but not always desirable. This is why there are explicit cross references to articles of the Bill in order to reserve a concurrent and complementary authority as the case requires in either the Territorial Assembly or the Council of Ministers (Law of 6 September 1984 - Report of the Romani Commission des lois du Sénat no 415, p 30).

security, on the organisation of the civil status system, on the definition of the network of State bodies and their teaching programmes to suit the needs of the Territory, about the creation, abolition and changing of territorial administrative divisions, and on the nomination of heads of the divisions.¹¹ And the Territory gives its advice on credit arrangements through the intermediary of the Consultative Committee on Credit.

B *The Powers of the Territory*

The principle is that the Territory has common law power in respect of all matters which have not been reserved to the State.¹² The Territorial Assembly can therefore legislate in matters relating to its legislative authority and further can amend existing legislation in the areas of its territorial authority. The extent of the new powers granted in 1984 was great though in certain cases territorial authority was reduced.

1 *Post and telecommunications office*

This territorial authority manages the postal and telecommunications arrangements within the territory. By agreement the State has also entrusted the Territory with the management of the international system. But the State reserves some authority vis-à-vis the post and telecommunications office since it has 3 seats on the Board of Administration and the Director-General is appointed by the local government from a list provided by the Minister of Post and Telecommunications of France.¹³

11 A consultative committee on immigration was set up in 1990 composed of equal numbers of representatives of the State and of the Territory (article 31). Immigration and the control of aliens has for a long time been and remains today one of the points of sensitivity, if not of dispute, for the State. The freedom of establishment which is a principle set out in the Treaty of Rome (article 52) is applicable in French Polynesia (even after the redrafting of 232 of the Association agreement between the EEC and the overseas states and territories). Therefore European citizens could freely set up residence in French Polynesia though this is not acceptable according to the Polynesia leaders. There was even an appeal to the President of the Republic to act as arbiter in this dispute. Article 2(3), must be understood subject to the application of article 31(6) which requires obligatory consultation with the Council of the Ministers of the Territory - see Ph Lechat "La préférence territoriale en Polynésie Française - élément de réflexion" in *Les Annales du Centre Universitaire de Pirae 1990-1992* no 5 (Tahiti, 1992) 73-86.

12 See above n 7. R Calinaud "De quelques problèmes de la répartition des compétences" *Première Table Ronde sur le Droit Territorial*, (Université Française du Pacifique Tahiti, 1991).

13 Decree number 62-145 of 30 June 1962 relating to the post and telecommunications service of French Polynesia had converted the local office into a public national establishment under the authority of the French Minister of Post and Telecommunication Services. The order of representation on the Board of Administration has been inverted to the advantage of the Territory of French Polynesia.

2 *Education*

The first cycle and the second cycle of secondary education are within territorial competence. From 1988 all secondary education has been managed by the Territorial Government but paid for by the State. Tertiary education is under the control of the State.¹⁴ The Tahitian language must be taught in kindergartens and primary schools.

3 *Investment*

The Territorial Government approves all foreign investments whatever the amount of the investment.¹⁵

4 *Foreign relations in the Pacific region*

The President of the Government of the Territory can, along with the High Commissioner, represent the Government of France at regional organisations in the South Pacific. It is in this capacity that the Territory has a seat in the South Pacific Commission. The President of the Executive Council of the Territory can propose to the Government of France that negotiations be entered into, with one or more states or territories of the Pacific region for agreements in the economic, scientific, technical and cultural fields which concern the Territory. The President is linked with and participates in any such negotiation, and also takes part in the negotiating of agreements concerning air and sea services to French Polynesia. In the Pacific region, the State can delegate to the Territorial Government powers to negotiate economic, scientific, technical and cultural agreements.¹⁶

14 For the history of the University Centre of Pirae (a territorial organ of higher education), see G Sem "La brève histoire du Centre Universitaire de Pirae (1985-1991)" in *Les Annales du Centre Universitaire de Pirae 1990-1992* no 5 (Tahiti, 1992) 88 - 120.

15 The control of foreign investments by the Territorial Government can have attractions which are less direct or apparent. It is thus that certain transactions for the transfer of social rights are subject to prior agreement of the Territorial Government which can if necessary exercise a right of preemption. See the critical note by M Alter and YL Sage "Les cessions d'actions des sociétés commerciales dans les cadre de l'article 26-14° et 15° de la loi du 12 juillet 1990" in *Première Table Ronde sur le Droit Territorial (Université Française du Pacifique, Tahiti, 1991)*.

16 D Dormoy "Les compétences du Territoire dans les relations extérieures" *Première Table Ronde sur le Droit Territorial (Université Française du Pacifique, Tahiti, 1991)*.

5 *Labour law*

The general principles of labour law are subject to State control but the Territorial Assembly has the authority to draw up labour legislation within the framework of the basic Law of 1986 which sets out the general labour law principles.¹⁷

6 *The powers of the Territory which were reduced in 1984*

In 1977 only military equipment was controlled by the State. From 1984 however, arms and ammunition of every kind fell within the authority of the State.¹⁸ Furthermore, since 1957 the Territory has set the categories and the level of penal sanctions to be applied for the breach of its regulations. Since 1984 the penalties must be in conformity with the table provided by the Penal Code.¹⁹ Finally the State can grant the Territory the right of exploitation of the exclusive economic zone for 188 miles beyond the territorial limits. The statute of 1977 envisaged that the exploitation of this zone would be within territorial authority. Despite the change of 1984, the local government continues as before to issue fishing licences to ships flying foreign flags.²⁰ The organisation of the legal profession was within territorial control in 1984 but came under State control by law in 1990.

III THE TERRITORIAL INSTITUTIONS

These are principally the Government of the Territory, the Territorial Assembly, and the Economic, Social and Cultural Council. Two new institutions were created by the Law of 1990: the Councils of the Archipelagos and the College of experts for land matters.

A *The Government of the Territory*

This is the principal innovation of the Law of 1984 relative to that of 1977. From 1984 there is no longer a Council of Government presided over by the High

17 The basic Law of 1986 which established the broad lines and the guiding principles for labour law in the Territory of French Polynesia led to the suppression of the code of 1952 which many found inadequate and obsolete. It was not until 1990 however that the new texts were at last published and brought into force.

18 Article 3(7). Trade in firearms of the fifth category, that is to say, as collectors items for sporting and for fairs, was according to the Territory to remain within its authority but the French legislator decided otherwise.

19 The application in French Polynesia of the Code of Penal Procedure of France in 1981 (the legislative and regulatory part) automatically meant that the fixing of the schedule of penalties and criminal matters could no longer be left to the discretion of the Council of Ministers or of the Territorial Assembly.

20 The Territory each year signs fishing agreements with the Governments of Japan and Korea which provide in addition to a financial return also for a policy on technology of fishing on the high seas.

Commissioner but a true territorial government or a Council of Ministers directed by an elected representative chosen in the Territorial Assembly from among its members.²¹

1 *Composition and formation*

The Government includes a President and between 6 and 12 Ministers.²² The President is elected by the Assembly by a majority ballot after 3 votes²³ and then, in the five days following his election, the President chooses the Ministers, one of whom is appointed Vice-President. The Ministers can be chosen from outside or from within the Assembly.²⁴

2 *Operation*

The Government must meet at least 3 times a month in Papeete or elsewhere.²⁵ The President draws up the agenda for each meeting and sends a copy to the Council of Ministers and to the High Commissioner. The Government draws up projects for consideration which are then presented to the Assembly for its vote. The decisions of the Government and the decisions of the Assembly are executory immediately following their communication to the High Commissioner and their publication in the Official Gazette of French Polynesia or notification to interested parties. Legality is controlled a posteriori by the Administrative Tribunal of Papeete. The auditing of the accounts of the Territory is subject to the control of the Territorial Chamber of Accounts (*Chambre Territoriale Des Comptes*).²⁶ The work of the Government is supported by a General Secretariat which was created in 1984.

21 On the presidential character of the status provided by the Law of 1984 see Y Brard "La présidentialisation du système institutionnel territorial" in *Première Table Ronde sur le Droit Territorial*, (Université Française du Pacifique, Tahiti, 1991).

22 Article 5 envisaged in 1984 that the Government would include 6-10 Ministers. The Law of 1990 lifted the maximum number of Ministers to 12 in order to allow Leontieff who was then the president of the Territorial Government to meet the claims of one section of the majority.

23 If after the first two ballots no candidate obtains an absolute majority there is a third ballot and then a relative majority is sufficient for elections.

24 Article 8 of the law provides that prior to the presentation of new Ministers to the vote of the members of the Assembly the President must notify the High Commissioner and President of the Territorial Assembly the order "by which he names the Vice-President ... and the other Ministers". The Assembly has 24 hours after notification to enter a motion of censure failing which the Vice-President and Ministers are deemed to be approved.

25 The drafting of article 19 of the law suggests that the meeting in the chief town of the Territory is the rule and that only exceptionally will the meeting take place elsewhere.

26 See below Part V.

3 *The powers of the Council of Ministers*

The powers of the Government are collegial in so far as they relate to the general management of matters within the power of the Territory.²⁷ The Government has its powers which are listed limitatively while the Territorial Assembly has the general power. The Council of Ministers for example makes the rules which apply to:

- the organisation of services and the public offices of the Territory;
- education (in those areas which are within territorial competence), and the student scholarship system;
- the control of prices and of internal commerce;
- quantitative restrictions on imports.²⁸

In these matters the Council has an autonomous regulation-making power and the Territorial Assembly cannot intervene.

In other matters the Council has decision-making power and not a general regulation-making power. For example, it is able to settle the annual importation programme, grant landing rights for charter flights, appoint the heads of services and of territorial offices, and approve foreign investment up to 80,000,000 French francs as well as immovable property transfers.²⁹ In all these areas the Government makes its decisions within the framework fixed by the statutes and regulations of the State and the Territorial Assembly.³⁰ Finally the principle of collective responsibility applies to the Council - that is to say, every decision binds all the Ministers.

4 *The powers of the President*

The powers of the Chief of the Executive were reinforced by statute of 12 July 1990. The President of the Government of the Territory is responsible for the execution of the decisions of the Assembly and of its standing committee.³¹ The President is the head of the territorial administration and the author of the Territory's budget. The President chooses the Ministers, delegates to them the powers appropriate to their areas of responsibility, and may also dismiss them. The President is responsible to the Assembly which can dismiss him by motion of censure. The passing of a motion of censure entails the dismissal of the whole Government.³²

27 Articles 24 and 41 of the Law.

28 Article 25 of the Law.

29 Concerning transfer of immovable property and the controls on the transfer of shares see M Alter and YL Sage, above n 15.

30 The Council of Ministers can specify a term of imprisonment or a fine for breaches of regulations, but that punishment must correspond to the schedule of criminal penalties, see above n 19.

31 Article 38. See above n 21.

32 The Territorial Assembly can pass a motion against the Territorial Government if the motion has the signatures of at least two-fifths of the members of the Assembly.

The President also represents the Territory in respect of those matters that he thinks necessary.³³

5 *The Ministers*

Personal responsibilities of the Ministers devolve by delegation from the President within the framework of the decisions taken by the Council. Each Minister is responsible to the Council for the management and operation of the matters within his responsibility. The Ministers deal directly with the Chief Executive Officers of the territorial services and, in relation to the agreements between France and the Territory, to the Chief Executive Officers of France in respect of all matters necessary for the fulfilment of the tasks entrusted to these services. The Ministers countersign all documents for whose administration they are responsible. One of the Ministers has the title of Vice-President.³⁴ He acts for the President in the case of the President's absence or inability to perform his functions.³⁵

B *The Territorial Assembly*

The Law of 12 July 1990 conferred financial autonomy on the Territorial Assembly with the President having control of the budget (article 40).³⁶

1 *Sessions*

Each year the Assembly holds two ordinary sessions. It can be called to special session on the request of the majority of its members or of the President of the Government or of the High Commissioner.³⁷

2 *Supervision*

Decisions of the Assembly and of its Standing Committee are immediately applicable. The High Commissioner has no power to suspend the execution of a

33 See above n 16.

34 Article 8.

35 Article 8.

36 See above p 8.

37 The Territory of French Polynesia has since December 1991 experienced an institutional situation of a somewhat confused nature. The fortunes of political alliances led Vernaudeau, President of the Territorial Assembly who was angered by the association of Flosse, his former political ally, with Juventin, his former rival, to make use of powers inherent in his role to refuse to call the Assembly to meeting. The High Commissioner after having received the opinion of the Council of State on 8 January 1992 called a meeting of the Territorial Assembly. But immediately Vernaudeau decided to suspend the session and prohibited the entry of the councillors of the majority who were then constrained to meet in the Economic, Social and Cultural Council premises. Until 2 April 1992 the Territory had 2 Presidents of the Territorial Assembly. The legality of the acts of the second assembly presided by Juventin is at present the subject of proceedings before the Administrative Tribunal.

decision by requiring second debate or by submitting the decision to the Council of State. Nevertheless the High Commissioner can take a matter to the Administrative Tribunal if the decision appears to him to be illegal. In such a case the High Commissioner can ask that execution of the decision be suspended pending the decision of the Administrative Tribunal.³⁸

The President of the Government can demand a second debate of a matter and that has the effect of suspending the implementation of a decision.

3 Powers

The decision-making powers of the Assembly are limited only by the international treaties which apply to the Territory. The Assembly has authority in all matters which are not reserved to the State or the Government of the Territory. In respect of matters within the authority of the State, the Assembly can express its views relating to the extension to the Territory of laws and regulations of the State or concerning the cancellation, amendment or development of laws and regulations applicable to the Territory. The Assembly must be consulted on all legislative proposals which relate to international conventions concerning matters within the competence of the Territory. The Assembly approves the budget and confirms the Territory's accounts. By a vote of censure, on the request of at least two-fifths of the members, the Assembly can challenge the conduct of the Government.³⁹

When the functioning of the territorial institutions is found to be impossible the Territorial Assembly can be dissolved by decree in the French Council of Ministers on the advice of the President of the Territorial Assembly and of the President of the Government of the Territory. The Assembly can also be dissolved by decree in the Council of Ministers at the request of the Government of the Territory.

C *The Economic, Social and Cultural Council*

This Council advises on projects of an economic, social or cultural character which are submitted to it by the Government or by the Territorial Assembly. The Council cannot consider a matter "proprio motu" but it may put forward, for the approval of the Government, proposals that it would like undertaken. It can also give its opinion on the broad direction of the investment programme.

38 Provided in article 92 of the Law, this procedure described as "deferred" (the High Commissioner demands that the legality of the action be considered by the Administrative Tribunal: he defers the action to the Administrative Tribunal) is above all used when the illegality is blatant. The High Commissioner prefers in other cases to wait for the person deprived to institute proceedings before the Administrative Tribunal.

39 Article 79 of the Law of 1984 was modified in 1990.

D *The Councils of the Archipelagos*

In each island group of French Polynesia there is a Council made up of "members of the Territorial Assembly and the elected mayors" of the islands which make up the group.⁴⁰ The Council is a consultative body and it must be consulted by the President of the Territory any time that the development of the island group in question is involved. Each Council can, through the intermediary of its President, give advice on economic, social and cultural matters which concern its own group.⁴¹ Such advice can also be requested by the President of the Government of the Territory, by the President of the Territorial Assembly, or by the High Commissioner.

E *The College of experts on land matters*

There have been many attempts over a number of years to solve questions relating to land. They present a political and economic problem for which to date there has been no satisfactory solution.⁴² The Law of 12 July 1990 set up a consultative body whose composition is decided by, and its members are nominated by, the Territorial Assembly.⁴³

IV THE HIGH COMMISSIONER OF THE REPUBLIC

In the statute of 1977 the High Commissioner was the head of the Territory and the representative of France in French Polynesia. Nowadays he is simply the representative of France in French Polynesia.⁴⁴

In this capacity he must defend national interests, secure respect for the law, protect public liberties and public order, and take charge of the French administration. He has

40 Article 81 of the Law of 1984 was modified in 1990.

41 The Law of 12 July 1990 aims expressly in article 89 bis at the Windward Isles, the Leeward Isles, the Australs, the Tuamotus and the Gambiers and the Marquises. There must therefore be 6 different Councils. To date these Councils have not yet been established. The President of the Government of the Territory and the High Commissioner are present as of right at sittings of the Councils of the Archipelagos. This involves, though the list is not exhaustive, education, employment and professional training, and the development of local cultures and languages.

42 See in particular R Calinaud "Création des titres fonciers en Polynésie" 9ème *Conférence Judiciaire du Pacifique Sud*, Papeete 21-24 May 1991.

43 Article 90 bis. This policy development group has done nothing yet; its members have not as at 1 June 1993 been named.

44 Only 4 articles (articles 91-94) of the Law (out of 111) relate to the powers of the High Commissioner. This clearly shows if proof was needed, that the intention of the French Government is not to intervene in the operation of the local institution except at the level of control of legality. Successive High Commissioners in French Polynesia never fail to reiterate this principle (see in particular the declarations of Michel Jau, High Commissioner in "La Dépêche de Tahiti", the issues of 31 March 1992 and of 2 April 1992).

control of the income and expenditure of the State, and can proclaim a state of emergency in accordance with prescribed conditions.

The High Commissioner also checks the legality of documents which emanate from the territorial authorities. Thus he can refer to the Administrative Tribunal decisions of the Government or of the Assembly within 2 months of their being notified to him. He can request a stay of implementation if he finds that there is a "serious reason of a kind which would justify the annulling of the action challenged".⁴⁵

V JURISDICTIONAL AND BUDGETARY CONTROLS

A *The Administrative Tribunal of French Polynesia*

This replaces the former Administrative Law Council (Tribunal du Contentieux Administratif) and has the responsibility of determining the legality of acts of the territorial authorities, in particular at the request of the High Commissioner. Moreover each member of the Assembly can challenge the legality of the actions of the Assembly or of the Standing Committee since each member is interested in the observance of the rules which govern the validity of the decisions of the Assembly; it is these rules which guarantee the fulfilment of the member's mandate. Thus members of the Assembly brought matters to the Administrative Tribunal on numerous occasions between 1986 and 1991. Moreover, any person who has an interest affected can seize the Tribunal of a matter with a view to the nullifying of the decision taken by the territorial authorities or by the State.⁴⁶

This ex post facto judicial control replaces the former administrative a priori control by the High Commissioner.

It is possible to appeal the decisions of the Administrative Tribunal in Papeete to the Administrative Court of Appeal of Paris, and the case can go by way of case stated to the Conseil d'Etat.⁴⁷ The Law of 1990 gave the Administrative Tribunal a consultative role vis-à-vis the High Commissioner, the President of the Territorial Assembly and the Government. In this role the Administrative Tribunal can a priori express a view on the legality of a law.⁴⁸

45 See above n 38.

46 It was natural that the Administrative Tribunal, which is the guarantor of the legality of the actions of the Territorial Administration, had dealt with and continues to deal with a number of important disputes of territorial authority having at times painfully supervised the apprenticeship in autonomy. It is still frequent for the decisions of the Administrative Tribunal to be criticised when the decisions given are not in conformity with the desires of the political majority of the moment.

47 In this case the normal application of the rules of administrative law is involved when there is a challenge of an administrative action.

48 J Lavoignat "L'article 101 bis du statut du Territoire" in *Première Table Ronde sur le Droit Territorial* (Université Française du Pacifique, Tahiti, 1991).

B The Territorial Chamber of Accounts

The body exercises budgetary supervision of the kind that was previously undertaken by the High Commissioner or by the Minister in charge of Overseas Departments and Territories. The Chamber acts when obligatory expenditure has not been made or been provided with insufficient money and when the Territory's budget is in a state of imbalance.⁴⁹

VI CONTRACTUAL RELATIONSHIPS BETWEEN THE STATE AND THE TERRITORY

These relationships are characterised by the development of a contractual policy and the establishment of joint organisations. Now agreements between France and the Territory apply to all forms of cooperation where formerly they related only to technical and financial assistance. These agreements have made possible the transfer of skilled personnel in the field of post and telecommunications and for secondary education. Likewise these agreements arrange for the provision of State servants to work in the territorial government service. And, in the same way, it is by means of contract that problems created by the provision of State services for the Territory are resolved. Examples are the customs service, the labour inspectorate and the national police force.

In addition cooperative procedures exist and joint committees have been created such as the State Territory Committee which concerns itself with all matters relative to the application of the law for the Territory. The Territorial Consultative Committee on Credit gives advice on matters of currency and credit. Finally at the request of the Territory the State can, within the framework of an agreement, provide financial aid to educational and development programmes. In no case can any such agreement limit the power of the Territory.

VII CONCLUSION

Has the evolution of the status of French Polynesia ended after a Franco-Tahitian history of 150 years? Is the reform of 1990 which improved the 1984 statute, the last within the French legal framework? Putting it another way, has the level of internal autonomy been reached beyond which the only institutional change possible is political independence? The answer is clearly no, and that for a number of reasons. First of all, at the purely formal level, an ordinary statute passed in 1990 by a parliamentary majority can very easily be modified by another such majority in the future without any amendment to the Constitution being necessary.

⁴⁹ This was for a long time claimed by at least some of the politicians of the Territory in order to provide a control over the use of the territorial funds which were not always used only for the public service. The Territorial Chamber of Accounts was established by article 97 of the Law of 1990. The High Commissioner seized it of a matter in February 1992 in the context of the failure to balance the 1992 budget.

And the State can still transfer a number of powers to the Territory. Article 3 of the Law of 1984 sets out a long list of matters which could one day be within the competence of the Territory, eg tertiary education, external trade, and audio-visual communication.

In the same way it would be possible to apply the law of decentralisation to the district administration of French Polynesia. Finally the workings of the institutions of the Territory may perhaps demonstrate one day the need to review the particular power-sharing arrangement between the executive and the legislature. And some people have already demanded that the President of the Government of the Territory be elected by universal direct suffrage. Other people would like the creation of a second chamber and an increase in authority in economic matters.⁵⁰

Further development in the status of the Territory is therefore possible without there having, inevitably, to be political independence. In fact political independence is of little value without economic independence. It is therefore hard to envisage that future unless the indebtedness of the Territory, and therefore its financial dependency on France, is reduced. This problem will remain difficult to resolve whatever form the local institutions might take.⁵¹

50 The leaders of the main political movements of the Territory do not agree on the future of the statute. It is true that the evolutionary character of the law permits a total and unlimited range of intellectual speculation. Flosse envisages a future status similar to that of the Cook Islands, Taomaru looks to true independence, and Vernaudeau and Millaud envisage an association with France.

51 At the beginning of April 1992 President Mitterand announced the suspension of nuclear testing in the South Pacific until 1993. This decision with its important economic effects for French Polynesia, led the local politicians to consider the future of the Territory and a commission called the Ateliers Generaux de Developpement was, after consultation with all the social, economic, political and religious partners, set up to provide a report with concrete proposals. It is also known as the Development Charter - "Chartre du Developpement". See "La Dépêche de Tahiti" of 16 April 1992.