The Kingdom Of The Netherlands In The Caribbean. Constitutional In-Betweenity: Reforming The Kingdom Of The Netherlands In The Caribbean

The Kingdom of the Netherlands is an ambiguous construction that served a useful purpose in the 1950s by accommodating the desire for autonomy in the Caribbean territories within a structure that still appeared to uphold Dutch sovereignty, while also silencing international demands for decolonisation **[i]**. Since the 1960s, dissatisfaction with the structure has been mounting. In many similar situations the mounting tensions were relieved by the drastic move of declaring the independence of the overseas territories. In the case of the Netherlands Antilles and Aruba a conscious decision was made not to sever the ties. Since then, it has often been stated (mainly in the Netherlands) that the constitution of the Kingdom is outdated, but nothing came of the various attempts at modernisation.**[ii]** Currently a new attempt is being made, which will perhaps involve a redesign of a number of key elements of the Kingdom structure.

Since 1981 it has been recognized by the governments of the Countries and the island territories that the populations of the islands have the right to self-determination. This right should play a prominent role in any process of constitutional reform of the Kingdom, it has often been repeated. Reference is also often made to the law of decolonization as developed at the United Nations, although difference of opinion exists on what this means for the Kingdom relations.**[iii]** While the law provides no readymade solutions to the constitutional problems of the Kingdom, it does contain some principles that should guide the restructuring of the Kingdom.

The constitutional character of the Kingdom

The constitutional reform of the Kingdom that has been on the cards for several decades now, has been made more difficult by the persistent differences of opinion on the legal character of the relations between the Netherlands and the Netherlands Antilles and Aruba. Some view the Kingdom as a confederation or some other very loose form of entirely voluntary cooperation between the Netherlands and two semi-independent states. Others see the Kingdom as a fully-fledged state with its own powers and responsibilities. Both views have their merits, because the Kingdom is an example of constitutional in-betweenity**[iv]** that defies classification in any of the traditional models of statehood.

The Kingdom consists of three equivalent Countries (*Landen in Dutch*). The two Caribbean Countries 'Aruba and the Netherlands Antilles' have a large amount of autonomy, even larger than the Country in Europe some would say, because that Country has delegated many of its authorities to the European Union. The constitution of the Kingdom, entitled *Het Statuut voor het Koninkrijk der Nederlanden* (the Charter for the Kingdom of the Netherlands), authorizes the government of the Kingdom to enter into relations with foreign states, and also charges the government with the ultimate responsibility in the areas of human rights, good government and the military defence of the Kingdom. The Kingdom government has few other tasks. Whether the Kingdom has any other institutions or organs has been the subject of a legal debate, which is probably of little importance because most of the other tasks of the Kingdom are performed by the Country of the Netherlands. The Kingdom Charter contains some elements that resemble a federal system**[v],** but these elements have played only a minor role in practice.

It has sometimes been defended that the Country in Europe is a state under international law,**[vi]** but it is generally assumed that only the Kingdom as a whole possesses statehood. Writers on international law nonetheless often classify the Kingdom as a form of association, which is also how the Netherlands defended it at the UN in 1955 and afterwards.**[vii]** The recognition of the right to self-determination of the Caribbean Countries at the Round Table Conference of 1961, confirmed many times thereafter, also suggests that the Netherlands Antilles and Aruba have a separate legal status that could perhaps best be described as a *constitutional association* with the Netherlands. This captures the somewhat paradoxical position of the Caribbean Countries – belonging to the Kingdom, but not belonging to the Netherlands – which seems to have been the aim of the framers of the Charter in 1954.

The need for reform

This is not simply a legal issue to be settled by constitutional lawyers. The many legal misunderstandings and uncertainties that keep cropping up with respect to the Kingdom in some sense reflect the fundamental debate on the future of the islands that currently occupies the minds of many in the Caribbean and in Holland. Should the islands seek the benefits of belonging to the Netherlands and the economic bloc of Europe, or should they hold on to their Caribbean identity and economic links with the Americas? It seems unlikely that this fundamental question will be resolved any time soon, if ever. But as long as it remains unanswered, the various roads which lead to constitutional clarity appear to remain impassable.

Nonetheless, the dire financial situation of the Netherlands Antilles and its problems with law enforcement force the Kingdom to again attempt a constitutional reform, which (again) revolves around the structure of the Netherlands Antilles. Most island politicians have long defended the thesis that they would be better able to handle things without the allegedly costly and burdensome central government of the Antilles. They would prefer to deal directly with The Hague, abolishing the structure of the Netherlands Antilles which currently holds five of the islands together in a single 'Country'. Dutch politicians have traditionally opposed this fragmentational drive, which is basically the same centrifugal force that has divided the entire Caribbean into mini- and micro-states, and which has already led Aruba to leave the Netherlands Antilles in 1986.

Since 2004, the attitude of Dutch politics has changed. The long-standing complaint that the Antillean government is unable to deal with problems that spill over into the Netherlands now leads to the conclusion that the Netherlands Antilles should perhaps be abolished as a Country.**[viii]**More importantly (at least from the point of view of international law), the populations of three out of five Antillean islands have recently voted to leave the Antilles and establish direct constitutional relations with Holland. St. Maarten expressed a preference for becoming a separate Country within the Kingdom, while Bonaire and Saba favour *direct links* with the Netherlands. Referendums on Curaçao and St. Eustatius are scheduled for April of 2005. Although the outcome of these referendums is hard to predict, it does appear that 'the time is now' for a thorough restructuring of the Kingdom relations.**[ix]**

The Jesurun Committee

A committee named after its chairman Edsel 'Papy' Jesurun was asked by the governments of the Netherlands Antilles and the Netherlands to review the financial and administrative problems of the Netherlands Antilles. The committee's members soon decided, however, that these problems involved the constitution of the Kingdom as a whole, and devised a ground scheme for new relations between the Netherlands and the five islands of the Netherlands Antilles. The committee recommended the abolishment of the central government of the Netherlands Antilles as well as its parliament, the '*Staten*'. The powers and responsibilities of those institutions should be redistributed between a number of existing institutions of the island territories and the Kingdom, and some new institutions that should be created. The islands should be given the opportunity to choose between becoming autonomous countries within the Kingdom (similar to Aruba) or 'Kingdom Islands', a new status as yet to be defined. Most controversially, the Jesurun Committee recommended that the jurisdiction of the Kingdom should be enlarged in the areas of law enforcement and the budget of the Caribbean Countries. The Kingdom should have its own institutions, civil service, and a budget, all of which it does not have at present.

The status of the so-called Kingdom Islands could certainly not be considered as an association (*see below*) and a choice for this option clearly represents a change in political status. The implementation of the Jesurun Report would also affect the character of the islands that wish to retain (or obtain) the status of Country within the Kingdom. This raises the question of how these changes could be realized while taking into account the right to self-determination and decolonization.

Decolonization and self-determination under international law
Since the 1960s it is no longer in debate that there exists a right to decolonization and self-determination under international law for territories that were occupied during the colonial era and which have not yet become independent. This right probably still applies, at least to some extent, to the Netherlands Antilles and Aruba.**[x]**

The right to decolonization is based on the Charter of the United Nations, and a number of General Assembly resolutions which have interpreted and expanded the scope of Chapter XI of the Charter regarding Non-Self-Governing Territories.

For a long time, the actions of the UN were based on Resolution 1514 of 1960, which demands immediate independence for all colonial countries and peoples.

Alongside this political decolonization rush, a more steady development has taken place towards the legal definition of colonial status and the modes of ending it. Resolution 1541, adopted one day later than 1514, explains that when a territory is 'arbitrarily subordinated' to another, it falls under the scope of Chapter XI of the Charter, which means that there exists an obligation to guide the territory towards 'a full measure of self-government'.**[xi]**

With regard to the Netherlands Antilles and Aruba, the Netherlands has taken the position that Resolution 945 of 1955 confirmed that the decolonization of the Netherlands Antilles (and Aruba) was completed. This Resolution declared that it was no longer appropriate for the Netherlands to report on the Netherlands Antilles and Surinam. The Netherlands deduced from this that Chapter XI of the Charter no longer applied, which is not really what the GA intended to declare. The resolution was the result of a tense and political debate, in which the Netherlands convinced the United States and Brazil to submit a very noncommittal draft resolution. A majority in the GA agreed to abstain from the vote under the condition that the resolution would not prejudge the question as to the status of the Dutch territories under Chapter XI.**[xii]**

The debate showed that many states considered that the Kingdom Charter did not comply with the standards for decolonization adopted by the GA two years earlier, and which would be laid down in Resolution 1541 a few years later with the active support of the Netherlands. The criticism concerned the powers of the Governor and the fact that this official was appointed by the Kingdom government. Many states criticized the Kingdom's authority to intervene in the autonomous affairs of the Caribbean Countries, and also disapproved of the fact that the Netherlands had not recognized the right to self-determination of the peoples of the Netherlands Antilles and Surinam, and that the new status had not been explicitly approved by the population.**[xiii]** In the legal literature it has often been defended that the GA would probably not have accepted the Kingdom Charter as a form of decolonization had it been discussed any time after 1960.[xiv] Formally, the GA is probably still authorized to require the Netherlands to resume reporting on the Netherlands Antilles and Aruba, if it finds that the self-government of these Countries does not comply with the standards of Resolution 1541.**[xv]** It is therefore interesting to see what these standards are, and whether the proposals of the Jesurun Committee would bring the Kingdom more in line with them.

Free association

The concept of freely associated statehood represents a range of possibilities that extend from semi-sovereign autonomy schemes to independent statehood. There are freely associated territories which are considered independent states, for instance the Federated States of Micronesia (freely associated with the United States).**[xvi]** This state is a member of the UN, it has its own nationality and the capacity to enter into relations with other states.**[xvii]** There are other accepted forms of free association which have probably not led to the creation of independent statehood under international law, for instance in the cases of the Cook Islands and Niue, which are associated with New Zealand.**[xviii]**

The United Nations has created some guidelines for this status, which are binding as minimum requirements under international law. Principle VII of General Assembly Resolution 1541 (XV) of 1960 provides that free association may be considered as a form of full self-government if the population retains the right to change its political status at a future date, and if the territory can determine its internal constitution without outside interference. For this reason, territories such as the Cook Islands and Micronesia can unilaterally choose for independence and they have an unrestricted right to amend their own constitutions. Although the UN practice does not paint a very clear or consistent picture of the concept of free association, the UN has only approved decolonization schemes under Principle VII of Resolution 1541 that guaranteed complete internal autonomy for the associated territory.**[xix]**

The Netherlands Antilles and Aruba also have the right to choose for independence,**[xx]** but they do not have an unlimited right to amend their own constitutions. These constitutions, the '*Staatsregelingen*', are legally subordinated to the Kingdom's constitution, the Kingdom Charter, which provides that the Caribbean Countries may not amend the most important articles of their '*Staatsregelingen*' without the consent of the government of the Kingdom.**[xxi]** The Kingdom government, in which the Netherlands has the final say, furthermore has the authority to intervene in the affairs of a Caribbean Country on the grounds that international obligations or the law of the Kingdom is not upheld in that Country. The government also appoints the Governors in the Caribbean Countries, who hold extensive powers to block legislative and administrative acts of those Countries. These powers are rarely openly used,**[xxii]** but their existence does mean that the status of Country within the Kingdom does not fully comply with the UN criteria for free association.**[xxiii]**

It has been proposed, at various instances in the negotiations on Aruba's *status aparte* during the 1980s and its continuation in the 1990s, that Aruba could become a state in free association with the Netherlands. All of these proposals were rejected at an early stage, either because they were considered too complicated, or because they seemed to offer fewer guarantees than the Kingdom Charter. Nonetheless, the concept of free association might offer a mutually agreeable solution to the perceived problems between the Netherlands and the larger islands of the Antilles and Aruba,**[xxiv]** and it is therefore somewhat unfortunate that the option was never offered in the various referendums on the islands.**[xxv]**

The Jesurun Report explicitly aims to make sure that the new Kingdom structure will comply with the UN criteria for free association.**[xxvi]** To this end, the Caribbean countries will have the right 'to determine their own administrative organisation'. This is clearly not enough to qualify the relation as 'free association', especially in view of the Commission's proposals to further institutionalize the powers of the Kingdom government in the Caribbean Countries. The Report, for instance, recommends that the judiciary should become mostly an affair of the Kingdom. The existing instruments for the supervision of the administration and legislation of the Countries by the Kingdom would be reinforced. The Countries could furthermore be forced by the Kingdom to cooperate with other Countries or Kingdom Islands and the Kingdom in a number of areas. This undoubtedly means that the countries would not be in full control of their internal constitutions, and would make clear that the Kingdom relations are not a form of free association.

Integration

The law of decolonization offers another possibility for creating a full measure of self-government, namely by integration into an independent state. Principles VIII and IX of Resolution 1541 provide that integration should be based on 'complete equality' between the peoples of the territory and the metropolitan population, including equal status and rights of citizenship, and equal guarantees of fundamental rights and freedoms without any distinction or discrimination. The Resolution also stresses that integration should be the result of the freely expressed wishes of the territory's people acting with full knowledge of the change in their status. The integration should furthermore lead to the representation of the territory's population at all levels and branches of

government of the state. Examples of integrated territories are the French *départements d'outre-mer* and Hawaii.

It would be hard 'or rather impossible' to argue that the status of Country within the Kingdom represents a form of integration under international law, and it therefore seems rather pointless to determine whether the criteria laid down in Resolution 1541 for integration are met by the Kingdom order. The idea behind the Kingdom Charter was to create three Countries that voluntarily cooperate as equivalent partners. This is an entirely different conception from the integration of the Caribbean islands into the Netherlands. A comparison with generally accepted cases of integration shows a wide range of differences, both legally and in other areas. There is currently hardly any legislation that is valid for all three Countries of the Kingdom,**[xxvii]** and the social, economic and cultural differences between the Countries are also much too large to be able to consider the Caribbean Countries as integral parts of the Netherlands.

It is possible, however, that the new status of Kingdom Island (*Koninkrijkseiland*), as proposed by Jesurun, could lead to a form of integration, although this is far from certain because the proposals are vague and have not yet been elaborated in crucial areas. But in case the status of Kingdom Island would amount to something comparable to the status of a French DOM, it would be important to realize that a choice for integration not only has far reaching consequences for the government of the island, but it also may have consequences on the level of international law. The law is uncertain on this point, but it has been defended that an integrated territory loses its right to self determination as a separate entity under international law. This theory assumes that the population of the territory is subsumed under the 'people' of the state it integrates into, and only retains a right to self-determination as part of that larger whole. It therefore loses the right to unilaterally choose a different status. This theory has not yet been proved or disproved in practice.**[xxviii]** Of course, the risk of extinguishing the right to self-determination under international law could be eliminated by creating a special self-determination provision in the constitution of the Netherlands for islands that choose integration, but there probably exists no international obligation for the Netherlands to realize such a provision. This explains why Resolution 1541 demands that territories which choose for integration 'should have attained an advanced stage of self-government', and that the choice 'should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge

of the change in their status'.**[xxix]** As the Kingdom government is ultimately responsible for the correct implementation of the right to self-determination and decolonization within the Kingdom, it should make sure that when an island chooses for integration, this choice was arrived at through a democratic process, based on objective and detailed information regarding the consequences.

Other options?
There is no compelling reason to assume that a new status for the islands is limited to the options defined in Resolution 1541, i.e. independence, free association or integration. The Resolution itself does not present these options as a limitative list, and a later and also authoritative re-interpretation of the UN Charter (General Assembly Resolution 2625 of 1970) opens up the possibility that the exercise of the right to self-determination leads to 'any other status freely chosen by a people'. Could this include a status that does not represent 'a full measure of self-government'? Some states have opposed this idea at the UN, claiming that 'a slave cannot voluntarily choose to remain in slavery'. The Netherlands and most other states did not share this view. The more common interpretation is that self-determination, in the sense of freedom of choice, takes precedence over decolonization.

Even though the assumption has always been that each people will want to attain independence eventually, it is now recognized that other options may need to be pursued in small, resourceless islands.**[xxx]** Even the radically anti-colonial Special Committee of 24 (Decolonization Committee) has accepted this. In similar cases as the Netherlands Antilles and Aruba the UN organs have since 1960 quite consistently considered one factor to be decisive: has the population freely expressed its consent with the new status? In 1955 the UN grudgingly accepted the fact that there had been no outspoken opposition to the Kingdom Charter in Surinam and the Netherlands Antilles, but in more recent cases it was demanded that the population should express a real desire for a new status (if it falls short of independence).**[xxxi]**

A modern reading of Chapter XI of the UN Charter, and the GA Resolutions based on it, leads to the conclusion that there exists a duty for metropolitan states to promote self-government in its dependencies, but there is no duty for the nonself-governing peoples to proceed towards self-government if they do not want it. Perhaps we should interpret Resolution 2625 as meaning that a dependency may exercise its right to self-determination by agreeing to a form of government that

does not (yet) represent full decolonization. Such a choice should be made in freedom and with full awareness of the consequences, while there should be other options on the table as well. A non-self-governing status should be assumed to be a temporary one, because full self-government legally remains the goal of all overseas dependencies. For the islands of the Netherlands Antilles and Aruba this means that they may freely agree to one of the new status options that the Jesurun Committee has proposed, even though these options should probably not be considered as the final chapter in the decolonization of the Dutch Caribbean.

Conclusion

The smaller islands of the Netherlands Antilles, which have voted for 'direct links' with the Netherlands in referendums, appear to be heading towards a form of integration with the Netherlands, or perhaps a status as separate dependencies. St. Maarten and Aruba appear to want to hold on to the form of constitutional association that the current Kingdom represents, with the Netherlands only being responsible for foreign affairs, defence of the Caribbean countries and ensuring that good government and fundamental rights and freedoms remain guaranteed.

Under the international law of self-determination and decolonization both these options are open to territories that have not yet been fully decolonized or which are associated with their former mother country. International law creates certain safeguards and minimum requirements for other status options than independence. In the case of free association, the territory should be able to choose another status in the future, and determine its own constitution. Integration means that the population of the territory is incorporated into the population of the mother country, which should lead to equal rights and legal status for the overseas population.

The Jesurun Commission does not propose to create such traditional forms of association and integration, but instead outlines two new forms of government, that do not necessarily represent 'a full measure of self-government' under the UN standards. Such constitutional in-betweenity is not necessarily a problem, but it does require constant attention to avoid legal uncertainties or the development of a constitutional no-man's land where might equals right. Vague schemes favour the stronger partner (which is not necessarily in each case the metropolitan state) and undermine the rule of law.

Also, choosing a form of government that does not meet with the international

legal standards for full self-government means that extra attention should be paid to the requirement that the new status is really desired by the island populations. The international law of self-determination and decolonization is sufficiently flexible to accommodate many new forms of government, but it does insist on unequivocal support from the population, which is needed anyway if a durable solution is to be found.

NOTES

i. An earlier version of this paper was presented at the University of St. Martin on 23 October 2004, as part of the author's PhD research on the right to self-determination at the University of Leiden. The author is currently employed at the Constitutional Affairs and Legislation Department of the Dutch Ministry of the Interior and Kingdom Relations, but the ideas expressed in this paper should in no way be construed as reflecting those of the government of the Netherlands.

ii. For the attempts at constitutional reform during the 1980s and 1990s, see A.B. van Rijn, Staatsrecht van de Nederlandse Antillen, Deventer: W.E.J. Tjeenk Willink 1999.

iii. See for instance the information provided on the website of the Referendum Committee of Curaçao, www.referendum2005.an.

iv. In-betweenity has been used by Eric Williams to describe Trinidad's position in-between dependence and independence in the 1970s, and more recently by Howard Fergus to describe the current constitutional position of Montserrat as an overseas territory of the United Kingdom.

v. The Kingdom government has the authority to annul legislative and administrative acts of the Caribbean countries, and to adopt measures to ensure the fulfilment of legal obligations by the Caribbean countries. The Caribbean countries, in turn, have been granted various instruments to influence the legislative process in The Hague.

vi. The representative of India in the UN General Assembly of 1955, for instance, considered that the European part of the Kingdom was member of the UN, and that the Netherlands Antilles and Surinam were two Non-Self-Governing Territories. Most other representatives did not appear to share this view, which is not supported in the legal literature either.

vii. The Jesurun Report (see below) at some points also considers the Kingdom as a form of association, see the Report on p. 42. At other points, however, it seems to think of the future Kingdom relations as a form of decentralization, which would suggest that the Kingdom is (or should become) a unitary state.

viii. Spokesmen for a number of political parties represented in the Dutch Lower House welcomed the conclusions of the Jesurun Report, including the recommendation to abolish the Netherlands Antilles (NRC Handelsblad, 28 September 2004). The Lower House asked the government to quickly reach an agreement with the Netherlands Antilles on the implementation of the Report (Kamerstukken II 2004/05, 29 800 IV, nrs. 15 and 16). The Dutch minister for Government Reform and Kingdom Relations responded that such an agreement would have to wait until the islands had given their opinion on the Jesurun Report, but did announce that the Netherlands was prepared to discuss the abolishment of the Netherlands Antilles if the islands supported this, and if the future cooperation between the islands was properly safeguarded (Kamerstukken II 2004/05, 29 800)

ix. See the title of the report of the Jesurun Committee, 'Nu kan het… nu moet het! The time is now, let's do it! Awor por, ban p'e!'. Despite its multilingual title, the report was only published in Dutch.

x. See P.J.G. Kapteyn, De Nederlandse Antillen en de uitoefening van het zelfbeschikkingsrecht' Mededelingen der KNAW, afd. Letterkunde, nieuwe reeks, deel 45, no. 6, 1982; A.B. van Rijn, cited in note 2, p. 49 et seq; and A. Hoeneveld, De reikwijdte van het zelfbeschikkingsrecht van de Nederlandse Antillen en Aruba, Openbaar Bestuur Vol. 14 (2004), Nr. 10, p. 21-5. The Jesurun Report also assumes that the right to decolonization still applies, see the Report on p. 42.

xi. Article 73 of the UN Charter.

xii. The Resolution was adopted by 21 votes to 10, with 33 abstentions in the 557th Plenary meeting of the GA on 15 December 1955.

xiii. The debates actually started in 1951, when the Netherlands announced it would no longer report on the Netherlands Antilles and Surinam and lasted until 1955. The most important debate took place in the Fourth Committee of the GA. These debates took 8 meetings on 7 days, see the Official Records of the General Assembly (Tenth Session), Fourth Committee, 520th-527th Meeting.

xiv. See for instance Kapteyn, cited in note 10, p. 178.

xv. The GA has taken similar decisions with regard to a number of French overseas territories. The Netherlands and most other states have (implicitly) accepted that the GA has this authority with regard to territories that were once considered colonies but which have not yet become independent. See also GA Resolution 2870 (XXVI) of 20 December 1971, which contains a paragraph on the authority of the GA in this area, which is adopted unanimously each year, with usually only France abstaining from the vote.

xvi. See Chimène I. Keitner and W. Michael Reisman, Free Association: The United States Experience, Texas International Law Journal, Vol. 39, Nr. 1 (2003), p. 54.

xvii. Nonetheless, some UN members wondered whether these states were really independent, mainly because of the US defence umbrella. See Keitner & Reisman, o.c. p. 55.

xviii. These territories have not acquired a separate nationality and are not members of the UN. They do have limited capacity to enter into relations with foreign states, and New Zealand retains no formal power to intervene in the affairs of these islands.

xix. For a number of examples of association arrangements that probably fall short of the UN standards (such as Puerto Rico), see Roger S. Clark, Self-Determination and Free Association: Should the United Nations Terminate the Pacific Islands Trust? Harvard International Law Journal, Vol. 21, No. 1 (Winter 1980), p. 1-86.

xx. With regard to Aruba, this right to independence is guaranteed by the Kingdom Charter, in Articles 58 to 60. For the Netherlands Antilles, this right can be derived from the frequently repeated promise by the Netherlands government that it will not oppose the independence of that Country, nor of any of the islands which constitute the Country.

xxi. Article 44 of the Kingdom Charter.

xxii. A recent description in English of the Kingdom relations is provided in Gert Oostindie and Inge Klinkers, Decolonising the Caribbean. Dutch Policies in a Comparative Perspective, Amsterdam: Amsterdam University Press 2003.

xxiii. In a similar sense, see Kapteyn, cited in note 10, p. 177-8, and Clark, cited in note 19.

xxiv. This idea has been elaborated upon by J.A.B. Janus in his contribution to the Staatsrechtconferentie of 1993, entitled 'Het Statuut voor het Koninkrijk der Nederlanden: Terugblik en perspectief. Naar een nieuwe structuur van het Koninkrijk (Publikaties van de Staatsrechtkring), Zwolle: W.E.J. Tjeenk Willink 1993. See also H.F. Munneke, Een gemenebestconstitutie voor het Koninkrijk der Nederlanden. De strijd tegen de bestuurlijke desintegratie op de Antillen. Tijdschrift voor Openbaar Bestuur, Vol. 16, Nr. 15 (1990), p. 348 et seq.

xxv. Up till now, the referendums have been mainly about the question whether the Netherlands Antilles should stay together as one Country within the Kingdom. Once this issue has been decided, the next question should really be: how close should the islands be with the Netherlands? This question has never been put

directly to the islanders, but this is really what the law of self-determination and decolonization is about.

xxvi. See the Report on p. 42 where Principle VII of GA Res. 1541 is cited.

xxvii. The Kingdom is authorized to legislate on a limited number of subjects, listed mainly in article 3 of the Kingdom Charter. The Kingdom could also provide legislation on other subjects, but only with the approval of the Countries in which that legislation would apply. This opportunity has been used only very rarely.

xxviii. Resolution 1541 does not demand that an integrated territory retains the right to choose another status as it does for freely associated territories. This probably means that the choice is final, unless the state voluntarily agrees to let the territory make another choice. It remains doubtful whether states and the UN have really accepted this as a rule. With respect to a number of French territoires d'outre-mer and the Portuguese overseas 'provinces' in Africa, the GA rejected the French and Portuguese claims that the UN was not allowed to discuss these territories because they were integrated with the mother country. But one could also argue that the GA denied that 'a full measure of self-government' had been achieved because the integration was not complete, and had not been the result of a free and informed choice of the population.

xxix. Principle IX of Resolution 1541.

xxx. For an overview of the approximately 40 small island territories that are in a similar position, see Robert Aldrich and John Connell, The Last Colonies. Cambridge: Cambridge University Press 1998. Arjen van Rijn recently recommended that the UN should redefine the right to self-determination of small island territories and take away the sword of Damocles of independence, see A.B. van Rijn, Vijftig jaar Statuut: hoe verder? Nederlands Juristenblad, 2004, Nr. 44.

xxxi. See for instance the UN debate on the British West Indies Associated States in 1966, Official Records of the General Assembly, Annexes, Addendum to agenda item 23 (Part III), p. 173 et seq.

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