Political decolonization and self-determination : the case of the Netherlands Antilles and Aruba

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1 Introduction

In 2005, a referendum was held on the island of Curaçao on its future political status. The results showed a preference for an autonomous position within the Kingdom of the Netherlands, and local politicians claimed that the Netherlands had to cooperate with realizing the outcome of the referendum and could not set conditions to the desired constitutional status of the island in relation to the Netherlands. A surprised Dutch senator stated with dismay that 'there is talk of a right to self-determination' and recommended that the Netherlands should not accept the outcome of the referendum.[1]

Perceptions on the role of the right to self-determination in the Kingdom of the Netherlands tend to diverge considerably. The Charter for the Kingdom of the Netherlands, which regulates the constitutional relations between the Netherlands and two Caribbean Countries, the Netherlands Antilles and Aruba, does not mention the right to self-determination. But when the Charter was promulgated in 1954, it was hailed as the end of the colonial era for the Kingdom. Since then, some have claimed that the right to self-determination simply does not exist within the Kingdom, or that it only means that the islands may leave the Kingdom and become independent if and when they want to. Others see it as an absolute right for the islands to determine their constitutional position within the Kingdom, which the Netherlands should simply accept.

In this study, I will look at what international law has to say about self-determination in a context of decolonization, in order to determine if – or to which extent – the legal rules that emanate from this fundamental principle of the international legal order might still have a bearing on the constitutional relations between the Netherlands and the Dutch Caribbean islands.

To obtain a view of the general rules concerning decolonization and self-determination, especially of small overseas territories with a colonial history such as the Netherlands Antilles and Aruba, I have used some of the research methods that are common in international legal research, by trying to deduce rules of customary law from the practice of states and the organs of the United Nations, in combination with statements which could be taken as evidence that this practice is considered to be based on legal rules. This is not an exact

1 *Handelingen I* 2004/05, p. 1029.

science, for which reason the reader will often encounter phrases such as 'probably', 'perhaps' and 'it could be argued that'.

The first Chapters will outline the development of international law in the area of decolonization since 1945, from the recognition that all overseas territories of the Western states should be 'decolonized', to the definition of three forms of self-government that can be chosen by the 'colonial peoples' when they exercise their right to self-determination. Then it will be discussed whether this law can or should be applied to the constitutional relations between the Netherlands, the Netherlands Antilles and Aruba, and if so, which obligations could be derived from this law. These are the central questions this study will try to answer.

To this purpose, I will describe the historical debate on the nature of the Kingdom of the Netherlands, especially that part of the debate which took place in the UN General Assembly. I will also try to categorize the Kingdom as a form of government, from the perspective of constitutional theory and international law. Two additional questions will be dealt with in the final Chapters: the right to self-determination of the individual islands of the Netherlands Antilles, and the role of this right in the relations with the European Union. Since these two issues have played a prominent role in the status debates of recent decades, I consider it useful to see how the answer to the central question of this study could play a role in these debates.

I have found it necessary to study many of the cases which have been considered comparable to the Netherlands Antilles and Aruba, because the legal scholarship is not very developed in this area, and there is little literature that has extracted general legal rules from the practice of states and the UN organs. I have looked into a number of precedents that might be important for the Kingdom of the Netherlands, and I have described some of them at considerable length, while explaining why they are relevant for the Kingdom of the Netherlands. The descriptions of these cases are usually entirely based on existing literature and the UN documents, since I have not been able to visit most of these islands. But since some of the sources I have used are hard to come by in most parts of the world, and simply not available in the Dutch Caribbean, I have included a number of purely descriptive paragraphs for the benefit of those readers who do not have access to a UN depository library or such interesting journals as the *Victoria University of Wellington Law Review*.