



Universiteit  
Leiden  
The Netherlands

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

Hillebrink, S.

### **Citation**

Hillebrink, S. (2007, February 28). *Political decolonization and self-determination : the case of the Netherlands Antilles and Aruba*. Retrieved from <https://hdl.handle.net/1887/11003>

Version: Corrected Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/11003>

**Note:** To cite this publication please use the final published version (if applicable).

## 4 Self-Government under the Charter for the Kingdom of the Netherlands

In this Chapter, I will briefly describe the self-government that the Netherlands Antilles and Aruba have achieved under the current constitution of the Kingdom of the Netherlands, before attempting to categorize this form of self-government in the next two Chapters. I will start off with a very brief overview of some relevant facts and figures concerning the Netherlands Antilles and Aruba.

### 4.1 FACTS AND FIGURES

#### 4.1.1 Geography and demography

*Aruba* consists of a single island located 25 kilometres off the coast of Venezuela. The *Netherlands Antilles* consists of five islands, Curaçao, St. Maarten, Bonaire, St. Eustatius and Saba. Curaçao and Bonaire are located some 70 kilometres off the coast of Venezuela. St. Maarten, St. Eustatius and Saba are located some 900 kilometres to the north, close to Puerto Rico, Anguilla and St. Kitts. St. Maarten is the Dutch side of an island that is called Saint-Martin on the French side.

|                             | <i>area (sq. km.)</i> | <i>population</i> <sup>1</sup> |
|-----------------------------|-----------------------|--------------------------------|
| <i>Aruba</i>                | 193                   | 100,000                        |
| <i>Netherlands Antilles</i> | 800                   | 186,000                        |
| Curaçao                     | 444                   | 136,000                        |
| Bonaire                     | 288                   | 11,000                         |
| St. Maarten (Dutch)         | 34                    | 35,000                         |
| St. Eustatius               | 21                    | 2,600                          |
| Saba                        | 13                    | 1,400                          |

---

<sup>1</sup> The numbers for the Netherlands Antilles and its islands are based on a recent estimate by the *Centraal bureau voor de statistiek* of the Netherlands Antilles (see [www.cbs.an](http://www.cbs.an)). The number for Aruba is derived from estimates reported by various newspapers.

In Aruba, Bonaire and Curaçao, the local language Papiamentu is used most often. In St. Maarten, St. Eustatius and Saba, English and Caribbean English are dominant. Dutch is taught in schools. Laws and many other government documents are still written in Dutch.

All of the islands are quite diverse when it comes to religious, ethnic and national background of the population. Catholicism is widespread in the southern islands, but less so in the northern islands, where the methodist and Anglican churches, and many other religions are present. Some of the islands are inhabited by more than 50 different nationalities, although Dutch nationality is still prevalent.

#### 4.1.2 History and economy

The islands were occupied by the Dutch West India Company during the 17<sup>th</sup> century. Most of the indigenous population had already been exterminated before that time. Slaves were brought in from Africa to work in the plantations and salt ponds. Curaçao and St. Eustatius became important trading posts. After the WIC became bankrupt near the end of the 18<sup>th</sup> century, the islands came under the control of the Dutch state. The islands gradually obtained a restricted form of self-government. Slavery was abolished in 1863. In the 20<sup>th</sup> century, oil refineries in Curaçao and Aruba gave these islands an economic boost which lasted until after World War II. In recent decades, the economy of most islands has depended heavily on tourism from the US, Latin America, and Europe. Curaçao, on the other hand, derives substantial parts of its income from its harbour, oil refinery, and financial services.<sup>2</sup>

### 4.2 A NEW LEGAL ORDER

The Kingdom Charter of 1954 claims to create 'a new legal order'<sup>3</sup> which prevails over the Constitution of the Netherlands.<sup>4</sup> This new order consists of three autonomous Countries ('*landen*') which together form a single state, called the Kingdom of the Netherlands. One of the Countries is also called

---

2 For more information in English on the history of the Netherlands Antilles and Aruba I refer the reader to Oostindie & Klinkers 2003 and Oostindie 2005. In Dutch, there exists an encyclopedia on the Netherlands Antilles and Aruba (Palm 1985). An analysis of the economy of the Netherlands Antilles is provided by Haan 1998. Sluis 2004 provides an accurate overview of the troublesome relations between the islands of the Netherlands Antilles, and their relation with the Netherlands. More literature can be found in the *Caribbean Abstracts*, Published yearly by the Koninklijk Instituut voor Taal-, Land- en Volkenkunde ([www.kitlv.nl](http://www.kitlv.nl)) in Leiden.

3 See the Preamble of the Charter.

4 Article 5 proclaims the primacy of the Charter over the Constitution.

the Netherlands. The other two Countries were originally Surinam<sup>5</sup> and the Netherlands Antilles. In 1986, one of the islands of the Netherlands Antilles, Aruba, became a separate Country on its own. The Netherlands Antilles and Aruba are therefore part of the *Kingdom* of the Netherlands, but not of the *Country* of the Netherlands.

The Charter leaves it to the Countries to determine their own constitutions in most areas. In this area, the Netherlands has a different position than the other two Countries. Article 44 of the Charter provides that the Caribbean Countries may not amend their constitutions with regard to a number of subjects without the approval of the Kingdom government. The Kingdom government can therefore block certain amendments to the internal constitutions of the Caribbean Countries, mainly those concerning the protection of basic human rights, the powers of parliament and the courts, and the authorities of the Governor. Amendments to the Constitution of the Netherlands do not require the approval of the Kingdom government, unless they concern Kingdom affairs.<sup>6</sup>

It was the intention of the drafters of the Charter to grant self-government to Surinam and the Netherlands Antilles within a single constitutional structure, while changing as little as possible to the constitution of the European part of the Kingdom. For that reason, the Charter has delegated many constitutional subjects to the Constitution of the Netherlands. The Charter only provides a number of basic elements of the Kingdom order and a few procedural rules. This means that the Charter has not really replaced the Dutch legal order as it existed before 1954, but merely added something to it. It also means that the Charter and the Constitution have become interwoven and should be read together.

The 'interwovenness' of the Charter and the Constitution is perhaps too complicated to function correctly in practice, also because the limited political importance of Surinam, the Netherlands Antilles and Aruba to the Netherlands has meant that Dutch politicians and lawyers have usually not found it worthwhile to invest the time and effort that is needed to understand 'the many labyrinthian and twisting paths of the Charter'.<sup>7</sup> In fact, Dutch politicians are often not aware of the contents of the Charter, and they are sometimes unpleasantly surprised that the Caribbean governments or parliaments should be consulted on certain 'Dutch' affairs. This Dutch attitude was already pre-

---

5 Surinam became an independent state in 1975.

6 According to Article 5, para. 3 of the Charter such amendments concerning Kingdom affairs have to follow the procedure prescribed for Kingdom acts in articles 15 to 20 of the Charter. Article 45 of the Charter furthermore provides that amendments to the Constitution on certain important subjects are considered to affect the Netherlands Antilles and Aruba in the sense of Article 10 of the Charter, which means that such amendments have to be discussed in the Council of Ministers of the Kingdom.

7 This description derives from a speech by Dutch minister for Justice (Van Oven) in the Senate, *Handelingen I* 1956/57, p. 29-30.

dicted in 1948 by *Van Helsdingen*, who suggested that the quasi-federal structure of the Kingdom could only work if the common affairs were kept to an absolute minimum. He suggested that the federal organs should be the same as the organs of the Netherlands, with the addition of Caribbean representatives when it concerned a subject that was of real importance to the Caribbean Countries.<sup>8</sup> These principles have become the cornerstones of the Kingdom.

#### 4.2.1 Equivalence and Voluntariness

According to the Preamble of the Charter, the three Countries administer their common affairs on the basis of equivalence. The term 'equivalence' intended to confer the idea that Surinam and the Netherlands Antilles would no longer be subordinated to the Netherlands and that they would be involved in decisions regarding the common affairs of the Kingdom.<sup>9</sup> The Charter does not, however, treat the Countries entirely equally. Apart from the general rule that the Countries are autonomous in all affairs except those that the Charter reserves for the Kingdom, the Netherlands and the Caribbean Countries are treated differently in many respects.<sup>10</sup> The term 'equivalence' does have a symbolic function, meaning that the interests of one Country should not automatically outweigh those of another. The Charter is the result of an attempt to realise the principle of the equivalence of unequal partners, as *Borman* puts it.<sup>11</sup>

The principle of equivalence is sometimes used by politicians in the Netherlands Antilles and Aruba to support a claim that the Netherlands violates the Charter when it tries to enforce its policies against the will of the Caribbean Countries. In this interpretation, it seems to mean that all decisions that affect the Kingdom as a whole should be based on consensus between the Countries.<sup>12</sup> But the Charter does not prescribe this. In the Netherlands, the idea

---

<sup>8</sup> Van Helsdingen 1957, p. 163.

<sup>9</sup> Resolution I of the RTC of 1948, cited in Borman 2005, p. 20. See also Van Helsdingen 1957, p. 33, and Van der Pot/Donner/Prakke et al. 2001, p. 829.

<sup>10</sup> See Article 44 of the Charter, and also *below* for other examples. See also Ooft 1972, p. 197. De Jong 2002, p. 31 describes the practice of the Kingdom (especially since 1990) under the title 'Splits of inequality' (*'Spagaat van ongelijkheid'*).

<sup>11</sup> Borman 2006, p. 20-1.

<sup>12</sup> Fernandes Mendes 1989, p. 27 describes that during the negotiations on the Charter, the Netherlands government stated that the overseas territories confused equivalence with equality, for which reason they made 'wrong' demands regarding rights of co-decision.

of equivalence is sometimes rejected as a fiction,<sup>13</sup> or described as no more than a matter of etiquette<sup>14</sup> or psychology.<sup>15</sup>

The *voluntariness* of the Kingdom order was intended to express that the relations between the Countries are based on mutual consent, and will not be continued against the wishes of a Country. Its main function in 1954 was probably to convince the world – both in- and outside of the Kingdom – that the era of colonial domination had ended. It also means that the Kingdom organs cannot act outside of the limited area of Kingdom affairs unless the Countries voluntarily accept the Kingdom's authority to do so.

#### 4.2.2 Autonomous Affairs and Kingdom Affairs

The Countries are autonomous except with regard to the affairs of the Kingdom, which are listed exhaustively in the Charter. These are foreign affairs, defence, nationality, extradition and a number of other subjects.<sup>16</sup> The Kingdom is also charged with safeguarding fundamental human rights and freedoms, legal certainty and good governance in the entire Kingdom.<sup>17</sup>

The Countries are autonomous in all other affairs. They create their own legislation and policies for these areas autonomously. The Countries can decide to create additional Kingdom affairs, but this has never happened.<sup>18</sup> The Countries can also choose to handle a non-Kingdom affair jointly, which they have done, for instance to combat international terrorism. The economic development of the Netherlands Antilles, its public debt, and the problems with youth crime (both in the Netherlands and in the Netherlands Antilles) have also become somewhat of a common affair since the late 1990s. This does not mean that the Countries can no longer develop their own policies on these subjects, it merely means that their efforts are to some extent coordinated.

The delineation of Kingdom affairs has sometimes caused difficulties, especially in the area of foreign affairs and law enforcement. A prominent example of a delineation issue was the establishment of a coast guard for the

---

13 See for instance the statement by member of the Lower House Herben (*LPF*) that the Netherlands and the Netherlands Antilles 'are not equivalent (...) We should normalize the relations as soon as possible. We are in charge.' (*HP/De Tijd* of 12 September 2003).

14 De Jong 2002, p. 53. Boersema 2005, p. 92 argues that the *raison d'être* of the Charter is the un-equivalence of the Countries.

15 Munneke 1993, p. 858.

16 The other Kingdom affairs are the regulation of knighthoods and royal decorations; the nationality of ships and safety standards for seafaring vessels; the supervision of the rules regarding the admission and expulsion of Dutch nationals to and from the Countries; the general conditions for the admission and expulsion of aliens; and the regulation of the functioning of the Kingdom organs (see Article 3, para. 1 of the Charter).

17 Article 43, para. 2.

18 Article 3, para. 2 of the Charter demands that the procedure for amendments to the Charter is followed when new Kingdom affairs are created.

Netherlands Antilles and Aruba.<sup>19</sup> A number of other conflicts are described in a study of 2003 conducted by the ministry for Foreign Affairs in order to evaluate its handling of the foreign affairs of the Netherlands Antilles and Aruba. The study notes that there exists a grey area between autonomous and Kingdom affairs which forces the parties involved to find pragmatic solutions in individual cases.<sup>20</sup> The implementation of treaties concerning the safety of seafaring ships has also caused some differences of opinion.<sup>21</sup>

The Caribbean Countries are allowed to maintain contacts with foreign states and international organizations more or less independently, as long as the position of the Kingdom as a whole is not at stake.<sup>22</sup> It is up to the Kingdom government to decide when this is the case. The Caribbean Countries are member of several international organizations, either as full or associated member, or as observer.<sup>23</sup> They cannot join such organizations against the will of the Kingdom government, which sometimes creates conflicts.<sup>24</sup>

The Countries cannot conclude international treaties, because this capacity is exclusively attributed to the Kingdom. The Charter does provide that the Caribbean Countries will be involved in the conclusion of treaties which affect

---

19 The Netherlands government considered this to be a Kingdom affair (defence), but the Caribbean Countries, supported by an advice of the *Raad van State* of the Kingdom (*Bijvoegsel Stcrt.* 1996, nr. 31), considered it to be an autonomous affair of the Countries (law enforcement). The *Raad van State* changed its opinion in 2005, based on the idea that different circumstances now meant that the coast guard had an important task in defending the sea borders of the Kingdom, and in fulfilling the international obligations of the Kingdom in the areas of crime control and the safety standards for seafaring vessels (*Kamerstukken II* 2005/06, 30531 (R 1810), nr. 4). The Kingdom government chose to give the coast guard a dual legal foundation, both in the Kingdom affair of defence, and in the joint administration of a number of autonomous affairs (*Kamerstukken II* 2005/06, 30531 (R 1810), nr. 2).

20 IOB 2003, p. 3.

21 According to a letter by the minister for Transport, Public Works and Water Management, the delineation of the Kingdom affair 'safety and navigation of seafaring vessels' should be based on the situation of 1954, because the official explanation to the Charter gives a description of this subject which is clearly based on the international standards as they were in 1954. The minister states that it is therefore an autonomous affair of the Countries whether they wish to adhere to additional international standards for ships which have been formulated since then, for instance with regard to the protection of the environment (*Kamerstukken II* 2003/04, 29 200 XII, nr. 136, p. 3-4).

22 See Article 12 and 26, and the official explanation to article 7 of the Charter.

23 The Netherlands Antilles and Aruba are full member of Parlatino, the Universal Postal Union, and the World Meteorological Organization. They are associated members of the Association of Caribbean States, UNESCO, and the UN Economic Commission for Latin America and the Caribbean, and they are observers at CARICOM (Van Rijn 1999, p. 124, and Hoogers & De Vries 2002, p. 202-3). The Kingdom as a whole is observer at the Organization of American States, but in practice this role is performed by the Caribbean Countries. The Netherlands Antilles has expressed the intention to pursue separate membership of the WTO.

24 See IOB 2003, p. 85 et seq. for the difficult procedure leading up the associated membership of the Caribbean Countries of the ACS.

them.<sup>25</sup> Such treaties are sent to their parliaments, but not for their consent. Treaties which need to be approved by parliament before being ratified are always approved by the *Staten-Generaal* only.<sup>26</sup>

The Caribbean Countries can negotiate international agreements with foreign states, and then request the Kingdom to conclude such an agreement on their behalf. The Countries make use of this opportunity, especially in the area of trade agreements. Requests from the Caribbean governments for the conclusion (or termination) of a certain treaty are complied with by the Kingdom, unless the treaty conflicts with 'the unity of the Kingdom'.<sup>27</sup> The Caribbean Countries have a right of veto on the application of financial and economic treaties to their territory if they expect to be negatively affected.<sup>28</sup> The Kingdom usually leaves it to the Caribbean Countries to decide whether a treaty should be applied to their territory. The Kingdom government can decide that a certain treaty should apply to the entire Kingdom if it is of the opinion that the unity of the Kingdom would not tolerate a partial application of that treaty.<sup>29</sup>

The autonomy of the Caribbean Countries is not revocable without the consent of the parliaments of these Countries. It is legally guaranteed by the Kingdom Charter in Articles 3 and 41. *Ooft*, in his thesis on Surinam's constitutional law, nonetheless concluded that 'the autonomy is surrounded by so many restrictions and guarantees that it depends upon the good will and tolerance of the parties involved'.<sup>30</sup> To what extent the reserved powers of the Kingdom could indeed be used to annul the autonomy of the Caribbean Countries is discussed *below*.

---

25 Article 28 of the Charter.

26 Article 24 of the Charter and Article 91 of the Dutch Constitution.

27 Article 26 of the Charter. This Article formally only applies to financial and economic treaties, but in practice it is also applied to other treaties, *see* Sondaal 1986, p. 191 et seq., and Van Rijn 2005a, p. 95.

28 Article 25 of the Charter.

29 This situation occurs when a treaty concerns a Kingdom affair that affects all of the Countries. According to *Sondaal*, human rights treaties should always apply to the entire Kingdom (Sondaal 1986, p. 193, *idem* Van Rijn 2005a, p. 95 who claims that this rule also applies to other treaties that concern constitutional subjects). While this interpretation could certainly be defended on the basis of the text of the Kingdom Charter, it has not been adopted explicitly in practice. In the ratification process of the ICCPR and ICESCR the Kingdom government stated that the 'the Kingdom as a whole' should become a party to these Covenants. Perhaps it intended to declare that the Covenants should apply to the entire Kingdom, but since it left it to the Netherlands Antilles to decide whether and how the Covenants should apply to that Country, this seems unlikely (*Kamerstukken II 1975/76*, 13932 (R 1037), nr. 3, p. 12). This ambiguous practice is often followed with regard to human rights treaties. As the Antilles and Aruba have not opposed the application of most of the important human rights treaties to their territories, it remains somewhat unclear how the Kingdom government (and the *Staten-Generaal*) really views this situation.

30 *Ooft* 1972, p. 190.



Since the 1990s, there has been increasing criticism, mainly in the Netherlands, but also in the Caribbean Countries, of the way in which the Caribbean Countries have made use of their autonomy. It is often stated (in increasingly plain terms) that the Caribbean governments are not able to effectively maintain the rule of law, provide good government and protect the human rights of their inhabitants.<sup>31</sup> Much criticism has also been directed at the economic policies and the public spending of the Antillean government, an area in which the Country is fully autonomous.<sup>32</sup>

#### 4.2.3 The Organs of the Kingdom

The quasi-federal structure of the Kingdom requires that it has its own organs. The most important organ is the Kingdom government, which is composed of the King and the Council of Ministers of the Kingdom. The Council of Ministers consists of the ministers of the Country of the Netherlands, and one Minister Plenipotentiary for each Caribbean Country.<sup>33</sup> The Kingdom government is responsible for the administration of the Kingdom, and usually initiates Kingdom legislation. Article 2, paragraph 1 determines that the King is inviolable and the ministers shall be responsible. This means that the ministers are politically responsible to parliament (except the Ministers Plenipotentiary, *see below*), also with regard to Kingdom affairs. This means that the powers of the government are vested in the ministers, not the King.

The Ministers Plenipotentiary are voting members of the Council of Ministers, but they can always be outvoted by the Dutch ministers.<sup>34</sup> The Council strives towards consensus, but the fact that the Netherlands commands a majority obviously influences the decision making process. The position of the Ministers Plenipotentiary is not the same as the Dutch ministers. They cannot submit bills for Kingdom legislation to parliament and they cannot countersign Kingdom acts, regulations, or other decisions by the Crown. For this reason, it could be questioned whether they are really part of the Kingdom government. As representatives of the governments of the Caribbean Countries, they are not responsible to the *Staten-Generaal*, but only to their respective

---

31 See Broek & Wijenberg 2005 for a brief overview of recent criticism by *Verton*, *Oostindie*, *Munneke*, *De Jong*, and others.

32 See for instance Haan 1998, and the letter by the Dutch minister for Administrative Reform and Kingdom Affairs to the Lower House, dated 24 August 2005 (*Kamerstukken II* 2004/05, 29 800 IV, nr. 29).

33 Article 7 of the Charter.

34 In case the Council of Ministers of the Kingdom takes a decision that one or both Ministers Plenipotentiary do not agree with, they can ask for a continued session of the deliberations in which only they, the Dutch premier and two other Dutch ministers take part. The Ministers Plenipotentiary can also be joined by special delegates appointed by his government, but the Dutch ministers will in each case constitute a voting majority during these sessions. See Article 12 of the Kingdom Charter

governments. They also perform a number of duties comparable to ambassadors.<sup>35</sup>

There is no Kingdom parliament, although it could be argued that the Dutch parliament, the *Staten-Generaal*, functions as such, because it approves Kingdom acts and international treaties, also when these apply to the Netherlands Antilles and Aruba. In practice, it exercises political control over the Kingdom government, because the Dutch members of the Council of Ministers of the Kingdom are also members of the Dutch cabinet, and as such responsible to the *Staten-Generaal*.<sup>36</sup>

In spite of this, it was decided in 1952 that the inhabitants of the Netherlands Antilles and Surinam should not have the right to vote for the *Staten-Generaal*. The Netherlands Antilles and Surinam expected that the election of representatives in the *Staten-Generaal* (as proposed by the Netherlands in 1950) would lead to few results and would have several disadvantages. It was expected that the other proposed forms of participating in the drafting and approval of Kingdom acts (*see below*) would be more effective.<sup>37</sup> In recent years, considerable attention has been devoted to the so-called 'democratic deficit' of the Kingdom, which refers mainly to the limited role of the Caribbean parliaments in the creation of Kingdom legislation.<sup>38</sup>

The government of the Country of the Netherlands is represented in each of the Caribbean Countries by a Representative of the Netherlands, who provides information on the Caribbean Countries to the government of the Netherlands, and who acts as a liaison between the Netherlands and the governments of the Caribbean Countries.<sup>39</sup>

The King is the head of state of the Kingdom, but also presides over the governments of each Country. In the Netherlands Antilles and Aruba, the King is represented by a *Governor* (one for each Country). The Governors are appointed by the Kingdom government for a period of six years.<sup>40</sup> The government of the Country concerned recommends candidates to the Kingdom government. According to *Borman*, it would be hard to imagine that a candidate would be appointed against the wishes of the Country government

---

35 Borman 2005, p. 87-9, and Hoogers & De Vries 2002, p. 45.

36 The Ministers Plenipotentiary are probably not directly responsible to any parliament. Their governments are responsible to the *Staten* for their actions.

37 See the explanation to point 11 of the draft for a Charter of 1952, Werkstuk 1952, p. 19. See also Van Helsdingen 1956, p. 156.

38 See Nap 2003a, p. 68 and p. 115 et seq., and De Werd 1996.

39 Borman 2005, p. 101. The Representatives of the Netherlands should not be confused with the Governors, who do not represent the Country of the Netherlands, and who have quite a different function.

40 Article 2, para. 3 of the Charter, and Article 1, para. 2 of the Regulation for the Governor of the Netherlands Antilles (*idem* for Aruba).

concerned, although this has happened once.<sup>41</sup> The Governors have always been persons of Antillean and Aruban descent since the 1960s.

The Governor has a dual capacity: he heads the government of the Country, but at the same time, he represents the Kingdom in his Country. In his first capacity, he is an organ of the Country, and his powers are determined by the Constitution of the Country. The Governors have a similar position in the governments of the Netherlands Antilles and Aruba as the King in the government of the Netherlands, which means that only the ministers are responsible to parliament for the government's actions.<sup>42</sup> In the Netherlands Antilles and Aruba, the ministers are responsible to the parliaments of the those Countries, which are called the *Staten*. When the Governor acts as an organ of the Kingdom, however, he is only responsible to the Kingdom government<sup>43</sup> and the Antillean and Aruban ministers do not have to give account of his actions to the *Staten*. The Governor's most important powers as representative of the Kingdom are in the area of supervision of the legislation and administration of the Caribbean Countries. The Netherlands Antilles during the 1950s in vain attempted to have some of these powers – which mainly date from the colonial era – removed, but the Netherlands refused.<sup>44</sup> In practice, these powers have only rarely led to conflicts between the Governor and his ministers.<sup>45</sup>

There is no constitutional court for the Kingdom. The Countries can bring some of their conflicts before the civil courts of the Netherlands or the other

---

41 Borman 2005, p. 99. After the riots in Willemstad in 1969, the Kingdom government in 1970 appointed a different candidate than had been recommended by the government of the Netherlands Antilles (see Reinders 1993, p. 86).

42 Article 11 of the Constitution of the Netherlands Antilles and Article II.1 of the Constitution of Aruba. See also Hoogers & De Vries 2002, p. 97 et seq. and Van Rijn 1999, p. 211.

43 Article 15 of both the Regulation for the Governor of the Netherlands Antilles and the Regulation for the Governor of Aruba. These Regulations are enacted by the Kingdom in the form of Kingdom acts.

44 Oostindie & Klinkers 2001b, p. 41. The Netherlands Antilles claimed that the right of the Governor to refuse to ratify a decision of his ministers, and to refer the decision to the Kingdom government, constituted a form of *preventive* supervision. This was claimed to be in contradiction with the Charter, which only creates a form of *repressive* supervision in Article 50. The Netherlands government did not agree, and the conflict remained unresolved.

45 Articles 15 to 26 of both Regulations for the Governor specify the functions of the Governor as Kingdom organ. See also Borman 2005, p. 99 et seq. See Oostindie & Klinkers 2001c, p. 396-400 on the functioning of the Governors in recent practice. The Governor's authority to refuse the appointment of a minister led to a conflict in 1998 when the Governor of Aruba initially refused to appoint Glenbert Croes because of a criminal investigation that was conducted against him at the time. The issue was raised in the Council of Ministers of the Kingdom, which instituted a committee ('*Commissie Biesheuvel*') to investigate the matter. The committee recommended the Kingdom government to use its authorities with restraint, and the Aruban organs to make sure that the Kingdom would not need to use its authorities.

Countries, but they have so far done this on only one occasion.<sup>46</sup> It has been noted in the legal literature that the civil courts are not really equipped to settle these conflicts, and it has been recommended that a constitutional court should be created.<sup>47</sup> Recent history shows a number of examples where a Caribbean Country is taken to court by an individual because an underlying conflict between the Netherlands and the Caribbean Country had remained unresolved.<sup>48</sup> The *Raad van State* of the Kingdom<sup>49</sup> and *ad hoc* committees are sometimes used to arbitrate in conflicts, but their non-binding recommendations are not always carried out, at least not fully. Most conflicts are eventually settled through compromise or by a trade-off, but some conflicts are simply left to fester. As a result, the constitutional law of the Kingdom remains contested and unclear in some areas.

#### 4.2.4 Supervision by the Kingdom

The Kingdom has a duty to safeguard fundamental human rights and freedoms, legal certainty and good government in each of the Countries. This duty is aimed mainly at securing the rule of law and democracy in the Caribbean Countries. The Kingdom and the Country of the Netherlands contributes to this aim in various ways, but the Kingdom Charter only provides for two concrete powers of the Kingdom government in this area. It is authorized to annul legislative or administrative acts by the overseas countries if they are considered to be in violation of the Charter, an international treaty, a Kingdom act or regulation, or with the interests that the Kingdom has to look after or safeguard (Article 50).<sup>50</sup> The Kingdom government can also adopt Kingdom regulations to provide for situations when an organ of the Netherlands Antilles or Aruba does not live up to its duties under the Charter, a treaty, a Kingdom act or a Kingdom regulation (Article 51). These are potentially very broad powers, and it is the Kingdom government itself that decides when they should

---

46 Judgment of the Supreme Court (*Hoge Raad*) of 10 September 1999 (*AB* 1999, 462), concerning an Antillean request to forbid a Dutch minister to vote in favour of the mid-term revision of the EU OCT Decision of 1997, *see* Chapter 9.

47 *See* for instance De Werd 1997 and De Werd 1998.

48 Examples are the cases of *Oduber & Lamers vs. Aruba* and *Matos vs. the Netherlands Antilles*.

49 In its function as advisor of the Kingdom Government, the *Raad van State* of the Kingdom was asked to provide an advice on the interpretation of Article 25 of the Kingdom Charter (W01.98.0081) in order to settle a conflict between the Countries. *See further* Chapter 9 on the sugar and rice conflict.

50 It is also possible for the Kingdom government to provide instructions to the Governor on how he should guard the 'general interest of the Kingdom'. *See* both Articles 11 of the Regulation for the Governor of the Netherlands Antilles and the Regulation for the Governor of Aruba.

be used.<sup>51</sup> The official explanation of the Charter states, however, that these powers should be used only as an *ultimum remedium*.

These powers have never been used, although since 1990 it is no longer uncommon for members of the Dutch parliament to speculate on whether the Kingdom government should use them to rectify an overseas situation that is considered unacceptable in the Netherlands. Dutch ministers have rarely admitted that a situation might be bad enough to justify an intervention. It is often assumed that an intervention would incur high costs for the Netherlands and that it would encounter considerable opposition in the Caribbean,<sup>52</sup> and that it would generate few positive effects. Former Antillean Governor Debrot was cited as saying in 1973 that if the Netherlands would try to guarantee legal certainty, human rights and good governance in the Netherlands Antilles, there would be big trouble.<sup>53</sup> But despite the reluctance to use them, the existence of these unused Kingdom powers must have had an effect on the Kingdom relations,<sup>54</sup> although it is hard to determine how large this effect really is.

The supervision by the Kingdom also pertains to amendments to the Constitutions of the Netherlands Antilles and Aruba (concerning a number of subjects),<sup>55</sup> the Islands Regulation of the Netherlands Antilles (*'Eilandenregeling Nederlandse Antillen'*, ERNA),<sup>56</sup> and the articles concerning the judicial and legal system in the Joint regulation concerning the cooperation of the Netherlands Antilles and Aruba.<sup>57</sup> The Kingdom cannot change these provisions, but the amendments adopted by the Netherlands Antilles and Aruba cannot be promulgated without the approval of the Kingdom government.

In the Netherlands Antilles, there exist additional means for intervention by the Kingdom, which *have* been used. Based on Article 93 of the Constitution of the Netherlands Antilles, the Kingdom government can adopt a regulation to redress a situation of gross neglect in the government of one of the island territories.<sup>58</sup> According to *Borman*, this form of supervision is different from

---

51 Article 50 and 51 state that the Kingdom government '*could*' intervene, and therefore do not appear to create an *obligation* to intervene.

52 *Ooft* claims that the Kingdom did not use this power because of 'the internationally accepted principle of decolonization', *Ooft* 1972, p. 270.

53 Cited in Oversteegen 1994, p. 263. *See also* Dip 2004, p. 329. Debrot also claimed that Article 43, para. 2, had become defunct and could no longer be considered as law.

54 *Borman* 2005, p. 183.

55 Article 44 of the Charter.

56 Article 88 of the Constitution of the Netherlands Antilles and Article 44, para. 2 of the Charter.

57 Article 74, para. 4 of the Joint regulation (*'Samenwerkingsregeling'*).

58 In 1959, the Kingdom government, upon a request by the government of the Netherlands Antilles, dismissed the members of the Executive Council of Curaçao, who had refused to step down after the Island Council had requested their resignation. In 1992 the Kingdom decided that the Governor (and from 1994 the government) of the Netherlands Antilles should approve beforehand any important decision of the Executive Council of St. Maarten,

Articles 50 and 51 of the Charter, because there is supposed to be an unwritten rule that this power can only be used with the approval of the central government of the Netherlands Antilles.<sup>59</sup> The Constitution of the Netherlands Antilles and the ERNA furthermore make it possible for the Antillean Governor to annul or suspend decisions by the Executive Council and the Island Council of an island territory.

#### 4.2.5 Kingdom Legislation

Legislation regarding affairs of the Kingdom is provided by Kingdom acts and regulations. When it concerns legislation which will only apply to the European part of the Kingdom, the legislator of the Country of the Netherlands is authorized to provide this legislation itself, but this authority does not exist *vice versa* for the Caribbean Countries. The Netherlands makes ample use of this option. When it is desirable to create legislation on Kingdom affairs that will apply only in one or both of the Caribbean Countries, this can only be realized through a Kingdom act or regulation, which occasionally happens.<sup>60</sup>

Kingdom regulations are adopted by the government of the Kingdom, which means that the Ministers Plenipotentiary will be able to vote on the proposal in the Council of Ministers of the Kingdom. When a Minister Plenipotentiary thinks that a Kingdom act or regulation should not apply to his Country, he has a right of veto, which can only be overruled by the Council when 'the unity of the Kingdom' requires the application of the act or regulation in the Country concerned.<sup>61</sup> What this clause means, is uncertain. The official explanation to the Charter only states that the Council decides in which cases the 'unity of the Kingdom' is at stake.<sup>62</sup> There is no evidence that the Council of Ministers has often used this reasoning to force a Caribbean Country to accept a certain Kingdom act or regulation.

The procedure for the adoption of Kingdom acts by the *Staten-Generaal* follows the same procedure as acts of the Dutch legislator, but with a few adaptations. Bills for Kingdom acts are sent to the *Staten* of the Netherlands Antilles and Aruba for their comment before they are considered by the *Staten-Generaal*. The Ministers Plenipotentiary may attend the debates in the Lower

---

in order to restore the adherence to principles of good government. See Van Rijn 1999, p. 404 et seq.

59 Borman 2005, p. 188.

60 For example: extradition (a Kingdom affair) is regulated in the Netherlands by an act of the legislator of the Country of the Netherlands (*Uitleveringswet*) and in the Netherlands Antilles and Aruba by a Kingdom regulation (*Nederlands-Antilliaans Uitleveringsbesluit*).

61 Article 12, para. 1 of the Charter.

62 A first draft for the Charter provided that it should concern a situation where 'the well-being of the Kingdom demands that each part of the Kingdom is bound by the regulation' (Werkstuk 1952, p. 17).

House and the Senate, and furnish such information as they may find desirable. The *Staten* of the Caribbean Countries can send delegates to participate in the debates. The Ministers Plenipotentiary may request the Lower House to initiate Kingdom legislation,<sup>63</sup> and they, or the special delegates, may propose amendments to bills. The Ministers Plenipotentiary and the special delegates do not have the right of vote in the Lower House or the Senate, but they can force the Lower House to postpone the vote on a bill until the next meeting, unless the House approves the bill by at least three fifths of the number of votes cast.<sup>64</sup>

The Caribbean *Staten* sometimes use their right to comment on bills for Kingdom acts, and they have occasionally sent special delegates to participate in Lower House debates. Most of the other means for participation have never been used, as far as I am aware.<sup>65</sup>

The Kingdom legislator is obligated to observe the Charter – and the Dutch Constitution as far as the Charter has delegated the establishment of rules concerning Kingdom legislation to the Constitution – but the courts may not test Kingdom acts to the Charter.<sup>66</sup> Other Kingdom legislation (regulations, decisions) can probably be tested against the Charter.<sup>67</sup> The courts have never been asked to do this, which can be explained from the limited body of existing Kingdom legislation, which contains few provisions that are directly binding on the inhabitants of the Kingdom.

#### 4.2.6 Ambiguities

The constitutional relations between the Netherlands and the Caribbean territories have always been full of ambiguities and contradictions.<sup>68</sup> The islands belong to the Netherlands, but at the same time they are not *part* of the Netherlands. They are part of the *Kingdom* of the Netherlands, but not of the *Country* of the Netherlands. This creates an ambiguous situation, since the

---

63 The Ministers Plenipotentiary may not submit bills to parliament on behalf of the Kingdom government. They can merely request the Lower House to adopt a bill for a Kingdom act, which would subsequently have to be approved by the Senate and the Kingdom government.

64 Articles 15 to 18 of the Charter.

65 See Nap 2003a, p. 71 et seq. on these methods for participation.

66 See the judgment of the *Hoge Raad* of 14 April 1989, AB 1989, 207 (*Harmonisatiewet*).

67 The judgment of the *Hoge Raad* of 7 November 2003 (*Nederlands-Antilliaans Uitleveringsbesluit*, Nr. R02/037HR JMH/AT) suggests that a Kingdom regulation is not impervious to judicial review, which is consistent with the rule of Dutch constitutional law which stipulates that acts of parliament cannot be tested against the Constitution, but regulations and other lower forms of legislation can.

68 Some of the uncertainties described here also exist (or existed) in British overseas constitutional law, see Roberts-Wray 1966, and with regard to the overseas territories of the US (see Chapter 3 on Puerto Rico). See also Hillebrink 2005.

Kingdom and the Country of the Netherlands are largely the same thing. This reflects a long-standing wish to treat the constitution of the metropolis as a closed system 'which only needs a short appendix about those peculiar and distant extensions that disrupt the beauty of the system', as *Van Vollenhoven* complained in 1934. He referred to 'a curious formula that is sometimes encountered, whereby these territories and their populations belong to the state internationally, but not nationally'.<sup>69</sup> This 'curious formula' became the basis for the Kingdom order in 1954.<sup>70</sup>

It means that the Netherlands Antilles and Aruba are distinct and separate territories from the Netherlands, but at the same time share a single, indivisible nationality with the Netherlands, and intend to represent a single state under international law. The three Countries sometimes present themselves outwardly as united, but more often as three entities that have little to do with each other. This occasionally leads to criticism or lack of understanding among foreign governments and international organizations.<sup>71</sup> The Countries are not independent, and according to the Charter depend on each other for support, but nonetheless sometimes seem to aim to do as little together as possible. The Kingdom consists of three – or seven, if one considers each island separately, which many people do – very different worlds that hardly connect, except through the narrow legal corridor that the Kingdom has created.

There have always been many connections between the islands (especially Curaçao) and the Netherlands based on personal contacts and initiatives which do not involve the governments. On this level, it could be said that there exists a limited amount of communality, and that the islands are actually more Dutch than they might appear at first sight. At the same time, the more than 100,000 Antilleans and Arubans that are currently living in the Netherlands, have made that Country a little bit Caribbean as well.

The Kingdom does not have a single national identity.<sup>72</sup> The only national symbol that the Countries share, is the house of Orange. The Countries compete separately in sporting events, they have their own flags, national anthems, stamps and currencies. The shared Dutch nationality has been invoked in calls for solidarity between the Kingdom partners and equal protection of funda-

69 See Van Vollenhoven 1934, p. 343-4, who describes and rejects the 'appendix theory'.

70 See Hoogers & De Vries 2002, p. 38: 'in reality the Netherlands Antilles and Aruba are mainly a constitutional appendix of the Kingdom in Europe'.

71 See for instance the discussion between a member of the Human Rights Committee and representatives of the Netherlands concerning the initial state report of the Netherlands on the ICCPR, UN Doc. CCPR/C/SR.321, par. 27 and SR.325, para. 3.

72 Logemann 1955, p. 57 already noted that the overseas territories had developed their own national consciousness, and 'the people of the Caribbean territories do not feel that their societies are parts of the Dutch nation in the sociological sense'.



mental rights for all citizens of the Kingdom,<sup>73</sup> but in practice it seems to mean little more than that Antilleans and Arubans have a Dutch passport.

The existing ambiguities reflect two different views on the Kingdom: the first stresses that the Kingdom is one, and should therefore be based on solidarity and common goals for the entire Kingdom. It emphasizes that the Kingdom is a single state under international law, with a single nationality and the obligation to uphold its international obligations in all parts of its territory.<sup>74</sup> The other view of the Kingdom stresses that there are three Countries which are autonomous in almost all affairs, which have their own separate territories, governments, and legislators, and which do not necessarily share the same moral standards and values. Politicians on either side of the Atlantic often do not adhere to either view consistently, but can easily switch from one view to the other depending on the circumstances. It is possible (in each Country) for politicians to unanimously push for measures based on the reasoning 'that we are still a single Kingdom', and the next day promote policies of self-reliance, or give precedence to regional integration.<sup>75</sup>

In the *Staten-Generaal* there is often evidence of an ambiguous or even internally contradictory attitude towards the Kingdom relations. On the one hand, almost all of the Dutch political parties participate in the mantra of overseas self-reliance that is an invariable part of any parliamentary debate on the subject, but at the same time the Dutch government is often exhorted by parliament that it should not sit back and let the Caribbean Countries make their own mistakes.<sup>76</sup>

The Kingdom changes its shape depending on the perspective of viewer. The Charter often does not favour or exclude one perspective or the other. When two different views collide, the text of the Charter often does not provide a solution, forcing those involved to seek a political compromise, or to accept a stalemate. Thus, the ambiguities of the Kingdom remain unresolved, which means that any analysis of the structure of the Kingdom or a labelling of its character can only be a tentative one, with a large allowance for the Kingdom to shift shape from time to time.<sup>77</sup>

73 See for instance the advice of the *Raad van State* of the Kingdom on the occasion of the 50<sup>th</sup> anniversary of the Kingdom Charter (*Kamerstukken II* 2005/06, 30 300 IV, nr. 26). See also Broek & Wijenberg 2005, who make an appeal for an 'undivided Netherlandship'.

74 This view is defended, for instance, by the *Raad van State* of the Kingdom, and by the *Comité* 2004 that was formed to celebrate the 50<sup>th</sup> anniversary of the Kingdom Charter. The *Comité* consisted of various prominent Kingdom citizens and presented its final report, entitled *Investing in Togetherness* ('*Investeren in gezamenlijkheid*') on 15 December 2005. An English version of this report is available on [www.comite2004.org](http://www.comite2004.org).

75 In a similar sense, see Matos 2002.

76 This attitude is accurately summarized in the current policy of the Dutch political party VVD regarding the Kingdom: 'The Netherlands Antilles are responsible for all their actions, but in view of the situation that has arisen the Netherlands cannot take a passive attitude.' See the website of the VVD, <http://www.vvd.nl>.

77 In a similar sense, see Kranenburg 1955, p. 88.

The somewhat unclear division of power, which is a corollary of this situation, is not uncommon in overseas constitutional relations.<sup>78</sup> This could be considered undesirable, since it places the weakest partner in a situation of having to beg for things that he might or might not be entitled to, and leaves doubts about how and when the stronger partner will use his powers. This uncertainty probably stimulates an atmosphere of distrust, and has been analysed as reinforcing 'colonial' elements in the Kingdom relations.<sup>79</sup>

Also, if the Kingdom Charter is to be considered as a form of association between the three Countries, it should provide the terms of the association 'clearly and fully' and 'in a form binding on the parties', as *Crawford* writes.<sup>80</sup> The Charter is clearly binding on the Countries, but it could be doubted whether it clearly sets down the terms of the 'association'. The Charter is intertwined with the Constitution of the Netherlands to create a legislative maze in which only a few people can find their way. Some of the crucial articles of the Charter use open terms and leave it to the Kingdom government and legislator to interpret them. Because this power of interpretation is only rarely used expressly, it could be argued that the precise terms of the relation are not clearly and fully set down.

#### 4.2.7 Amending the Charter

The procedure for amending the Charter was made relatively light, to facilitate the constitutional development of the Netherlands Antilles and Surinam.<sup>81</sup> Amendments are first approved by the *Staten-Generaal* in a single reading, unless they are inconsistent with the Dutch Constitution. In that case the procedure for amendments to the Constitution is followed (two readings with an intermediary dissolution of the Lower House) but with the proviso that a simple majority will be sufficient in both readings. Both the *Staten* of the Netherlands Antilles and of Aruba must then adopt the proposal as well, in two readings. The second reading is not necessary if the proposal is supported by more than two thirds of the votes cast in the first reading.<sup>82</sup>

---

78 *Leibowitz*, in his study on the overseas territories of the US, provides an analysis which could to some extent also be applied to the Caribbean Countries of the Kingdom 'There is a tendency to assume that their uncertain status is a necessary consequence of their demographic, geographic and cultural circumstance. But it is not. The status uncertainty results primarily from Federal decision (...) combined now with institutional forces in the Federal government and in the territorial governments which make status change unusually difficult' (*Leibowitz* 1989, p. 69).

79 *Broek & Wijenberg* 2005. See also below in the paragraph on anti-colonial discourse.

80 *Crawford* 2006, p. 632.

81 See the official explanation to Article 55.

82 Article 55 of the Charter.

The Charter has so far been amended five times. Three times to accommodate a status change of a Caribbean Country,<sup>83</sup> and two times to facilitate minor constitutional changes in the Netherlands.<sup>84</sup> Since the 1960s, it has often been said that the Charter should be modernized. A thorough modernization of the text of the Charter was drafted in the early 1990s, but the result was not submitted to parliament.<sup>85</sup> In 2004, the Netherlands government announced another attempt to realize such a modernization.

The process of the disintegration of the Netherlands Antilles could ultimately require changes in the Charter to realize a new status for the five remaining islands of the Antilles.<sup>86</sup> The Netherlands government has expressed its willingness to cooperate with breaking up the Netherlands Antilles, if it gains assurance that the new Countries (and/or other entities that might be created) will meet with certain requirements in the areas of government finance and law enforcement, over which the Kingdom currently has little or no control.<sup>87</sup>

#### 4.2.8 The Right to Secession

The Charter provides for a procedure for the secession of Aruba.<sup>88</sup> The *Staten* of Aruba can choose for independence by adopting a regulation, which must be supported by at least two thirds of the members. Such a regulation should then be put to a referendum, in which at least 50% of the total number of persons eligible to vote should support it. This is a high threshold, which deviates from the international practice of decolonization, in which independence was usually based on a simple agreement between the metropolis and the government of the overseas territory, or some other entity or person that could reasonably be assumed to represent the territory. If Aruba has the right to independence under international law, the procedure of the Charter

---

83 These concerned the independence of Surinam (1975), the *status aparte* of Aruba (1985), and the decision that Aruba would not become independent in 1996 (1994). See Borman 2005, p. 41-2.

84 These concerned the introduction of the right to vote for Dutch nationals abroad (1985), and to bring the Charter in line with the new procedure for amendments to the Dutch Constitution (1998).

85 The '*Proeve van een nieuw Statuut*' as it was called, was never published.

86 See the report by the Jesurun Commission of 2004 ('*Nu kan het... nu moet het!*'). See also my analysis of the proposals in the light of the international law of decolonization and self-determination (Hillebrink 2005).

87 Letter by the minister Government Reform and Kingdom Relations (De Graaf) to the Lower House, dated 17 December 2004 (*Kamerstukken II*, 2004/04, 29 800 IV, nr. 18). This position was repeated in several letters to the Lower House and statements in 2005 and 2006. See also the Outline Agreement (*Hoofdlijnenakkoord*) of 22 October 2005 and the Closing statement of the Round Table Conference of 26 November 2005 in Willemstad, Curaçao (available in an English translation on [www.minbzk.nl](http://www.minbzk.nl)).

88 Articles 58 to 60 of the Charter.

might be too strict.<sup>89</sup> It should be assessed whether the people of Aruba really want independence before the Kingdom could legally agree to the secession of the island. Such an assessment could be made through a referendum, but international practice does not indicate that it would be necessary for at least 50% of the Arubans entitled to vote to support independence. Rather, a simple majority of the votes should be enough, as long as there is a reasonably high turnout of the voters.<sup>90</sup>

The Charter contains no procedure for the secession of the Netherlands Antilles, other than through an amendment of the Charter. When the procedure for Aruba was introduced in the Charter, at the request of Aruba, the Netherlands Antilles stated that it saw no need for such a procedure for the Netherlands Antilles.<sup>91</sup> It is generally assumed that this Country also has a right of secession, because the Netherlands government has since 1971 consistently stated that it would cooperate with realizing a desire of the Netherlands Antilles to become independent.<sup>92</sup> If the Netherlands Antilles possesses some sort of international personality, which it probably does (*see* Chapter 5), it could be argued that pursuant to the ICJ's decisions in the Nuclear Tests Cases the Netherlands has created an international obligation with regard to the Netherlands Antilles which it should perform in good faith. It should therefore probably cooperate with the secession of the Netherlands Antilles, and it cannot unilaterally retract its promise. Of course, the right to self-determination could put limits on the Netherlands' ability to cooperate, if it were clear that

---

89 In response to questions in the Lower House, the Dutch government stated that the conditions for independence of articles 58 to 60 were indeed more strict than international law, but they were included because Aruba wished to make sure that a choice for independence would be made in a responsible manner (*Kamerstukken II 1992/93, 22 593 (R 1433), nr. 8, p. 10-11*). Hoeneveld 2005, p. 66 simply considers Articles 58 to 60 as void, because the Kingdom Charter cannot set conditions to a right that Aruba derives from international law. See also the remarks by the representative of Uruguay in the Decolonization Committee concerning a similar provision in the UK West Indies Act, that 'the decision might be in the hands of minorities and the freedom of the peoples concerned might be restricted', and that the provision 'would tend to protect the *status quo* and limit the possibility of self-determination.' The representative of Italy agreed with this statement. (GAOR (XXII), Annexes, Addendum to agenda item 23 (part III), para. 696, 722, and 746). Australia considered a two-thirds majority acceptable, as it could 'prevent precipitate and irrevocable action on important questions' (para. 776, and similarly, the UK in para. 783).

90 In the 2004 and 2005 referendums in the Netherlands Antilles the UN Electoral Assistance Division recommended that at least 50% of those eligible to vote should turn out. If one of the options received more than 50% of the votes, the referendum should be considered valid. These recommendations were followed by the referendum committees on the islands.

91 Borman 2005, p. 40.

92 In 1952, Dutch minister Kernkamp already wrote to the governing Council of Surinam that the Netherlands would not have a right of veto if Surinam would decide to leave the Kingdom. The minister was furthermore of the opinion that a country that wished to secede from the Kingdom should properly consult the opinion of its population (*see* Van Helsdingen 1957, p. 198). This promise has been repeated on countless occasions since then.

the 'peoples' of the Netherlands Antilles did not support the move towards independence of their government.

The right of secession of the Caribbean Countries is not a full representation of the right to self-determination, because it only creates a right to independence, not a right to choose for other status options such as integration or association.

#### 4.2.9 The Right to Self-Determination

The drafting of the Charter suffered a two-year delay, mainly, it seems, because of a conflict of opinion on the right to self-determination, which was brought to light by the Surinam delegation at the Round Table Conference of 1952.<sup>93</sup> Surinam took offence at a statement by the Netherlands minister of Justice that the Charter proceeded from the historical ties between the three countries, which suggested that the ties were not voluntary. The Surinam delegation replied that this proposal offered no guarantees that the new legal order would not be a *colonial* order. The Surinam delegation thought that the preamble of the Charter should express that the acceptance by Surinam and the Netherlands Antilles of the new legal order amounted to an exercise of their right to self-determination.<sup>94</sup> The Charter should not cut short any further constitutional development of Surinam and the Netherlands Antilles, and it should not be an obstacle to a redefinition of the relation between the constitutional partners, should the need arise.<sup>95</sup> The Netherlands delegation was not prepared to recognize this.

Surinam used the upcoming debates at the UN on the cessation of transmission of information on Surinam and the Netherlands Antilles. It threatened that Surinam and the Netherlands Antilles would not join the Dutch delegation to the UN to defend the Dutch position. Surinam claimed that its participation in the UN debates had been based on the assumption that the Netherlands recognized its right to self-determination. In the UN debates that took place shortly before the RTC, the representative of the Netherlands Antilles had expressly stated, with the approval of the head of the delegation, that: '*Las Antillas Neerlandesas sí poseen la auto-determinación*', which was translated in

---

93 Van Helsdingen, who participated in the negotiations on the part of the Netherlands, and wrote an authoritative commentary on the Charter, describes the debates on self-determination as 'completely superfluous, useless, fruitless, time-consuming and causing serious delays' (Van Helsdingen 1957, p. 189).

94 Speech by Kernkamp in the Second Chamber, *Handelingen II* 1952/53, p. 503.

95 Kasteel 1956, p. 267.

the Official Records as: 'The Netherlands Antilles were, however, entitled to self-determination'.<sup>96</sup>

The Netherlands government decided that the Charter should recognize the right of self-determination.<sup>97</sup> A letter was sent to Surinam and the Netherlands Antilles, requesting that Surinam and the Netherlands would participate in the UN delegation, to which was added that the representatives could declare at the UN that they 'defended the ongoing negotiations with the Netherlands at the RTC on the basis of the right to self-determination'.<sup>98</sup>

Surinam was not satisfied. Together with the Netherlands Antilles a statement was issued in which the Netherlands government was requested to clarify its interpretation of the right to self-determination. Surinam and the Netherlands Antilles defined it as follows:

The right to self-determination gives the people the freedom to determine its relation to other countries, whereby it has the right to choose between independence, association with the mother country or with another state, and incorporation.<sup>99</sup>

Pressed for time because the Seventh session of the GA was about to start, the Netherlands sent two cabinet ministers (Luns and Kernkamp) to New York in order to reach an agreement with Surinam and the Netherlands Antilles. A joint Memorandum was drafted,<sup>100</sup> which stated in point five that the right to self-determination would be expressed in the preamble of the Charter. The right was not defined in the Memorandum, and it quickly appeared that there still existed a conflict of opinion on its meaning, but the ensuing discussion

---

96 GAOR (VI), Fourth Committee, 242<sup>nd</sup> Meeting, 10 January 1952, p. 277. The remarks of Debroit went unchallenged in the Netherlands, perhaps because the report of the Netherlands ministry of Foreign Affairs of the Sixth GA translated the phrase '*auto-determinación*' with a non-existing Dutch word '*auto-determinatie*', thus avoiding the controversial term '*zelf-beschikking*', which is the usual translation. See Min. BuZa 28, p. 56 and 61.

97 This decision was taken in September or October during a Cabinet meeting, but it was not made public until January the next year, when Prime Minister Drees explained the course of events before and after the Memorandum of New York. See *Handelingen I* 1952-53, p. 107.

98 Speech by Mr. Kernkamp, minister for Overseas Territories, during the deliberations on the budget of 1953, *Handelingen II* 1952/53, p. 504.

99 Statement by the Governing Council of the Netherlands Antilles and the Surinam mission, cited in Van Helsdingen 1957, p. 197 (my translation, SH). According to *Van Helsdingen*, this definition was derived from a statement by the US representative at the Sixth GA of the UN.

100 Minister Kernkamp stated during the debate in the Second Chamber on the budget of 1953, that he and foreign affairs minister Luns, after they had reached agreement with the delegates of Surinam and the Netherlands Antilles, obtained by telegram the consent of the Netherlands premier and vice-premier on the text of the Memorandum. The delegates of Surinam and the Netherlands Antilles in New York were prepared to view this telegram as a decision of the Netherlands government. *Handelingen II* 1952-53, p. 505-6.

centred entirely on the right of secession, and it is therefore not very relevant anymore.

Surinam and Dutch politicians involved in the negotiations had hoped that a Charter based on the right to self-determination would weaken the position of the nationalist 'extremists' in Surinam. The Surinam government would strike a much better figure if it could claim that Surinam had been offered a choice between independence and a continuation of the ties with the Netherlands. In The Hague, the recognition of the right to self-determination was part of the difficult process of 'mental decolonization' after the independence of Indonesia.<sup>101</sup> The debates in the Netherlands parliament reflected differences of opinion about the future of the Netherlands as a colonial power, and were intensified by feelings of resentment and disappointment about the speed at which the Dutch colonial empire was dissolving. In the Netherlands Antilles, there was some sympathy for the wishes of Surinam to recognize the freedom of the overseas territories to determine their own future, but it was also feared that a guaranteed right of secession might at some point threaten the continuation of the ties with the Netherlands, which was considered very undesirable.

In the Netherlands parliament it appeared that a majority of the members agreed that the Netherlands Antilles and Surinam did have a right to self-determination, or at least that the Netherlands could not prevent them from exercising it.<sup>102</sup> Two right-wing members of parliament did think that the Charter would terminate this right, but a majority of the members did not appear to share this view.<sup>103</sup> Minister Kernkamp, in a letter to the governing Council of Surinam, explained that Surinam would not 'use up' its right to self-determination if the Charter referred to this right.<sup>104</sup>

The Netherlands government proposed in 1953 that the Charter would declare that Surinam and the Netherlands Antilles accepted the Charter on the basis of their right to self-determination, but the official explanation of the Charter should state that secession could only take place through the

---

101 See Blok 1983, p. 439.

102 In the Lower House, the KVP stated that the Kingdom Charter could recognize the concept of the right to self-determination. This concept should however conform to the right to self-determination as it was laid down in the Charter of the UN, and in the official interpretation of that right by the UN, which was generally accepted. The *PvdA* was of the opinion that the cabinet should declare before the resuming of the RTC that the Netherlands recognized the right to self-determination of Surinam and the Netherlands Antilles and all of its consequences (*Handelingen II* 1952/53, p. 481 et seq.).

103 Senator Algra (*ARP*), for instance, stated that he did not think the right to self-determination would be extinguished by the Charter. He pointed out that territories such as Surinam could not be compared with regions such as Friesland, because Surinam had never been an integrated part of the Netherlands, and had never had any say in the government of the Netherlands.

104 Van Helsdingen 1957, p. 198.

procedure for amendments to the Charter.<sup>105</sup> Surinam accepted this offer, but in 1954 stated that it preferred that the right to self-determination would not be mentioned in the Charter at all, for reasons unknown. During the debates about the final version of the Charter the subject of self-determination was 'anxiously avoided',<sup>106</sup> and the text of the Charter therefore does not contain any explicit reference to self-determination.

It had been established, however, that the Netherlands Antilles and Surinam had a right to self-determination, which was re-confirmed by the three Countries at numerous occasions. At the Round Table Conference of 1961 it was concluded that the bonds between the Countries was based on the right to self-determination.<sup>107</sup> During the debate on the ICCPR and ICESCR in the Lower House in 1978, in which delegates of the Netherlands Antilles took part, it became clear that most MPs, as well as the Kingdom government, considered that the two Covenants granted a right to self-determination to the Netherlands Antilles, which – it was stressed – should not be equated to independence. It also included the right to choose for free association or integration. Reference was made several times to GA Resolution 2625 (XXV).<sup>108</sup>

Since the 1960s, the common view has been that the populations of the Caribbean Countries have a right to self-determination,<sup>109</sup> although it has remained controversial what this right entails. The Netherlands has adopted the policy that it will not object to the independence of any island of the Netherlands Antilles or Aruba, but it has reserved the right of co-decision concerning choices that would lead to a different status within the Kingdom. The Caribbean Countries on the other hand, have sometimes claimed that their right to self-determination should mean that their choice for another status should always be respected by the Netherlands. How these differing interpretations should be assessed in the light of international law is discussed in Chapter 8 in the context of the right to self-determination of the island territories of the Netherlands Antilles.

---

105 Van Helsdingen 1957, p. 239-40.

106 Van Helsdingen 1957, p. 247.

107 'Slotcommuniqué' of the RTC, reported in Meel 1999, p. 373.

108 See for instance the statement by minister Van der Stee, *Handelingen II* 1978/79, p. 158.

109 This view was also defended internationally, for instance during the discussion of the Kingdom's state reports on the ICCPR. The members of the HRC seemed to agree that the Netherlands Antilles and Aruba were entitled to a right to self-determination and decolonisation (see CCPR/C/SR.862 to 864).

Member of the Lower House Van Middelkoop (GPV and later *ChristenUnie*) has been like 'the voice of one crying in the desert', when he during the 1990s repeatedly questioned whether the islands of the Netherlands Antilles really had a right to self-determination including a right of secession (see for example *Kamerstukken II* 1998/99, 26 404, nr. 3, p. 2).



*Might Independence Be Imposed by the Netherlands?*

Ever since the Caribbean possessions of the Netherlands stopped being profitable during the colonial era, it has been discussed whether the Netherlands should not abandon or sell the territories. This discussion continued even after the Netherlands had recognized the right to self-determination of the overseas populations.

In 1980, the Netherlands' representatives in a Working Group that had been charged to study the constitutional future of the Netherlands, stated that the Netherlands 'has the right to participate in a decision about its relation with those islands that prefer to maintain constitutional ties with the Netherlands.'<sup>110</sup> This statement was interpreted to mean that – the Netherlands Antilles had entered the so-called intermediate phase on the way to independence – the Netherlands could force any island to become independent.<sup>111</sup> If one or more islands would express a wish to maintain constitutional ties with the Netherlands, this could only be achieved after negotiations with the Netherlands, during which the Netherlands would reserve a right to break off the relations.

*Kapteyn*, who had been a member of the Working Group, in 1982 wrote an influential article on this subject. On the basis of GA Resolution 2625 (XXV) of 1970, and the Advisory Opinion of the ICJ in the Western Sahara case, *Kapteyn* concluded that the essence of the right to self-determination of non-independent overseas territories such as the Netherlands Antilles lay in the need for the mother country to respect the freely expressed will of the population.<sup>112</sup> International good faith entailed that the Netherlands should also respect this will if it was aimed at maintaining the constitutional ties, unless 'serious political implications of an international or internal Antillean nature (...) might cause damage to the Netherlands or the Netherlands Antilles if the constitutional ties were maintained'. It would not be enough if the continued ties with the Netherlands Antilles would merely put the Netherlands in a 'difficult position'. At the RTC of 1981, *Kapteyn* referred to the situation of Comoros and Mayotte as an example of such serious international problems.<sup>113</sup>

---

110 Report of the Kingdom Working Group 1980, p. 47.

111 Gorsira 1988, p. 59. *See also* Post & Van der Veen 1980, p. 155 for a report of a discussion on this subject at a conference in 1980.

112 Kapteyn 1982, p. 17 and 24-25.

113 Report of the RTC 1981, p. 24-25. Three out of the four islands of the French overseas territory of the Comoros had chosen for independence in 1974, but one (Mayotte) chose to stay with France. Based on the principle of *uti possidetis* the international community demanded that France should grant independence to the Comoros as a whole. France was forced to use its veto in the Security Council to prevent the adoption of a condemnatory resolution.

*Nelissen & Tillema* concluded in 1989 that the Netherlands Antilles had 'a continuing right to associate with the Netherlands'. The Netherlands had to respect this right 'as this is their obligation under international law'. The authors reached this conclusion after interpreting the UN law of self-determination on the basis of the principle 'that legal provisions should be so construed as to be effective and useful'. Pushing the islands into independence 'might be considered a colonial attitude'. The authors nonetheless think that under certain extreme circumstances, the Netherlands might have a right to sever its ties with the islands. As 'no right is absolute', the Netherlands Antilles had to take into account the legitimate interests of the Netherlands. A 'persistent forsaking of duties by the Antilles' might justify a breaking off of the constitutional relations by the Netherlands.<sup>114</sup>

*Croes & Moenir Alam*<sup>115</sup> and *Janus*<sup>116</sup> think that the right to self-determination simply forbids the Netherlands to force the Caribbean populations to leave the Kingdom. *Van Rijn* similarly considers that the Netherlands is not allowed to break off the ties unilaterally. It has a duty to respect a choice made by the Antillean population with respect to their political status, including a choice for continued association or integration with the Netherlands.<sup>117</sup>

*Jessurun d'Oliveira* is the only author who maintains that the Netherlands has a right to abandon the Netherlands Antilles and Aruba. He agrees that the Caribbean populations have a right to self-determination, which he describes as an unconditional right, but he also thinks that the population of the European part of the Kingdom has a similarly unconditional right to self-determination, including a right to secede from the Kingdom and choose for 'independence'.<sup>118</sup> This is a somewhat absurd proposition, since the right to self-determination is always invoked by peoples as protection against more powerful nations. The Netherlands, as a Country which is 50 times larger than the Netherlands Antilles and Aruba, has many other ways of making sure its interests are protected in its relations with the Caribbean Countries.

*Jessurun d'Oliveira's* proposition also seems to ignore that the self-determination of the Antillean and Aruba peoples is part of a process of decolonization, which makes all the difference under international law. But according to *Jessurun d'Oliveira*, a 'second round of decolonization' should allow the metropolitan states to force their territories to become independent. At present, international law clearly does not allow such forceable actions, since decolon-

---

114 Nelissen & Tillema 1989, p. 190.

115 Croes & Moenir Alam 1990, p. 89-90.

116 Janus 1993, p. 49.

117 Van Rijn 1999, p. 58 and 73.

118 Jessurun d'Oliveira 2003a. *Jessurun d'Oliveira* also expounded this opinion in a number of letters to the editors of Dutch newspapers. See also my reaction to *Jessurun d'Oliveira's* article (Hillebrink 2003), and his postscript (Jessurun d'Oliveira 2003b). Van Rijn 2004, p. 2278 also rejects *Jessurun d'Oliveira's* proposition.

ization under international law means freedom of choice for the dependent peoples, and an obligation for the metropolitan government 'to pay regard to the freely expressed will of peoples'.<sup>119</sup> The Netherlands would therefore violate international law if it were to abandon the Netherlands Antilles and Aruba.<sup>120</sup>

#### 4.2.10 The Constitutions of the Caribbean Countries

The Country of the Netherlands Antilles originally existed of six islands (Curaçao, Aruba, St. Maarten, Bonaire, St. Eustatius and Saba), which each form a separate administrative unit, called '*eilandgebied*' (island territory). Aruba became a separate Country in 1986, after which the Country of the Netherlands Antilles existed of five island territories.

The constitution of the Netherlands Antilles is called the *Staatsregeling*. It was originally (in 1950) introduced by the Dutch legislator, but it can only be amended by the *Staten* of the Netherlands Antilles. Amendments regarding a number of important subjects can only be realized with the approval of the Kingdom government.<sup>121</sup> The same is true for the *Staatsregeling* of Aruba.

The Countries make their own legislation on all subjects which are not Kingdom affairs. This legislation is often materially quite similar to Dutch legislation. According to Article 39 of the Charter, the Countries are obligated to strive towards concordance of legislation on a number of important subjects, but there are other – more important – reasons for the similarity of legislation. Because the legal system of the Caribbean Countries is based on Dutch law, and since the Countries lack the capacity to develop much new law themselves, it is often considered a practical option to copy or emulate Dutch laws. Also, the judicial system of the Netherlands Antilles and Aruba depends to a large extent on lawyers from the Netherlands. If Antillean and Aruban law would start to deviate too much from Dutch law, it would become more difficult for Dutch lawyers to work in the Caribbean Countries.

---

119 Advisory Opinion of the ICJ on the Western Sahara (16 October 1975), *ICJ Reports* 1975, p. 33. See also Cassese 1996, p. 358, and Crawford 2001, p. 32-33.

120 Article 41 of the proposals on state responsibility of the International Law Commission calls on states not to recognize the results of such an act. Self-determination is one of the 'peremptory norms' referred to by Article 40 and 41 of the proposals which are presumed to codify customary international law (Crawford 2002, p. 246). According to Malanczuk 1997, p. 334, a state which is the result of a violation of the right to self-determination, is 'probably a nullity in the eyes of international law'. According to the ICJ, self-determination creates *erga omnes* obligations, which means that they are the concern of all states, and not just those directly affected (judgement of 30 June 1995 (East Timor)).

121 Article 44 of the Charter. It concerns amendments regarding fundamental human rights, the powers of the Governor, the government, and the *Staten*, the administration of justice, the allocation of *Staten* seats to the island territories, and the provisions which deal with the island territories.

Judges are appointed by the Crown and are usually European Dutch. The public prosecutors are appointed by the Countries and are often Antilleans or Arubans. In civil law and penal law, the Supreme Court of the Netherlands functions as the final instance. In administrative law, the Joint Court of the Netherlands Antilles and Aruba functions as such.

The Caribbean Countries have a parliamentary system similar to the Netherlands, with an executive branch composed of the Governor and a council of ministers, who depend on the support of a majority in parliament (the *Staten*). All Netherlands who are registered as inhabitants of the Country have the right to vote in elections for the *Staten*. The Countries have an electoral system based on proportional representation, but in the *Staten* of the Netherlands Antilles, each of the five islands has a fixed number of seats. Curaçao has a majority of 14 seats on a total of 22 seats. St. Maarten and Bonaire each have three seats, and Saba and St. Eustatius have one seat each. The *Staten* represent the population of the Country as a whole, but because all of the existing political parties have their power base in only one of the islands, the members of the *Staten* are usually considered to represent their own island first and foremost.

The Islands Regulation of the Netherlands Antilles (ERNA) provides that the island territories are autonomous in all areas except civil, penal and labour law, the police, prisons, monetary affairs, health care, social security, taxation, and partly in education, and some other minor subjects.<sup>122</sup> The populations of the island territories elect an Island Council, which appoints a number of Commissioners. Together with the Lieutenant Governor<sup>123</sup> (who is appointed by the Kingdom government), the Commissioners form an Executive Council.<sup>124</sup> The island territory of Curaçao has a special position under the ERNA, with a slightly larger amount of autonomy and more authorities than the other island territories.

#### 4.2.11 The Kingdom in Practice

The first 15 years of Charter practice passed relatively uneventfully. The Kingdom existed of three Countries 'that had rather little to do with each other,

---

122 The ERNA lists the areas in which the island territories are not autonomous, and which must be handled by the Netherlands Antilles (Articles 2 and 2A).

123 'Gezaghebber' is usually translated in English as 'Lieutenant Governor', although this could cause confusion with the function of '*waarnemende Gouverneur*' ('acting Governor'), who replaces the Governor when he is incapacitated. The current Gezaghebber of St. Maarten prefers to be called 'Governor' (see his website at <http://www.governorsxm.com>), in which case the Governor of the Netherlands Antilles should probably be referred to in English as the 'Governor General'.

124 See Duzanson 2000 for further information on the functioning of the organs of the island territories.

and therefore enabled a somewhat inconsequential respect for each others autonomy', as *Oostindie & Klinkers* put it.<sup>125</sup> The fear that the Netherlands might become involved in maintaining order in the Caribbean Countries, inspired by the economic decline of the Netherlands Antilles and the incidents of 30 May 1969 in Willemstad,<sup>126</sup> or that the Netherlands might become embroiled in border conflicts between Surinam and British Guyana, were some of the main reasons why the Netherlands started to push for the independence of Surinam and the Netherlands Antilles. Dutch politics were quite suddenly gripped by the sentiment that overseas possessions were a thing of the past, obviously also inspired by the international wave of decolonization that had decimated the Western empires during the 1950s and 1960s. Surinam agreed to leave the Kingdom in 1975, but the Netherlands Antilles refused.

Around 1990, Dutch politics again unanimously changed direction. The Netherlands Antilles and Aruba no longer needed to become independent if they did not want to. But the Netherlands now insisted that more care was needed to ensure that the principles of good government, legal certainty and human rights would be adequately respected in the Caribbean Countries. The Netherlands government was no longer content to merely respect the autonomy of the overseas Countries, provide aid, and hope that the Antillean economy would take a turn for the better. More attention was paid to the Kingdom affairs, and the involvement of the Kingdom with the autonomous affairs of the Caribbean Countries was increased. A few examples of this new policy were the administrative supervision on St. Maarten, the establishment of a coast guard for the Caribbean Countries, and the refurbishment of the Caribbean prisons after the visits by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).<sup>127</sup> This new policy led to numerous conflicts between The Hague and the Caribbean governments, whereas such conflicts were rare before 1990.

At present, the financial situation of the Netherlands Antilles is of main concern for the Kingdom. The Antillean debt grew exponentially during the 1980s and 1990s, reaching a level of more than 100% of the GDP in 2005. It was established during the 1990s that the Antilles would no longer be able to solve this problem on its own, most authoritatively by a committee chaired by E. van Lennep, which recommended a structural solution, to be realized jointly

---

125 *Oostindie & Klinkers* 2003, p. 218.

126 The historic centre of Willemstad was looted and partly burned to the ground during a labour conflict in the oil refinery. Dutch marines assisted in restoring order, *see* Croese 1998 and *Oostindie* 1999.

127 *See* *Oostindie & Klinkers* 2001c for a description of the conflicts between the Netherlands and the Netherlands Antilles and Aruba on these issues. *Oostindie & Klinkers* 2003, p. 219 summarize the situation as follows: 'Since the 1990s, the transatlantic relations have indeed been characterized by constant political bickering, sparked by the Dutch, regarding the boundaries between local autonomy on the one hand and overall responsibility of the Kingdom on the other'.

by the Antilles and the Netherlands. The committee's recommendations were only partly executed, and the Antillean economy continued to decline.<sup>128</sup> The help of the IMF was enlisted, which recommended drastic cutbacks and a thorough liberalization of the Antillean economy, while the Netherlands should provide financial aid to soften the blow. The Antilles implemented at least a number of the IMF's recommendations, but the Netherlands refused to supply the financial impulse because it considered the Antillean effort insufficient. This decision was vehemently resented in Willemstad, and considered a betrayal of trust.

The economic recession on Curaçao continued, and coupled with the steady growth of the Dutch economy this caused a substantial part of the population of Curaçao to move to the Netherlands, or to seek resort in drugs smuggling through the flight connection between Willemstad and Amsterdam.<sup>129</sup> The constitutional bond with the autonomous Netherlands Antilles came to be perceived as causing concrete problems in the Netherlands when Antillean youngsters with little education, and hardly any command of the Dutch language, started to feature prominently in the Dutch crime statistics. To make things worse – from the perspective of the Dutch media and politics – the perceived anti-Dutch labour party *FOL* won the elections in the Netherlands Antilles in 2002, and formed a coalition government while some of its leaders had been indicted or were serving prison sentences for fraud. The Netherlands Antilles now found themselves at the forefront of Dutch media attention for the first time in the history of the Kingdom, and gained a distinctly notorious reputation in the Dutch public eye.

Whether the short-lived media attention really changed the long-standing Dutch policy of treating the Netherlands Antilles and Aruba as 'posteriority number one',<sup>130</sup> seems uncertain. There are few policies developed for the Kingdom in The Hague, and those that are developed, are often easily abandoned or forgotten. In political terms, Dutch cabinets do not need to develop coherent or productive policies for the Kingdom, because the Dutch Lower House has never seriously challenged a Dutch minister for his policies with regard to the Caribbean Countries.<sup>131</sup>

The troubles of the Antilles and the media attention these have received in recent years do seem to have convinced the Netherlands government that it should cooperate with dismantling the federal structure of the Netherlands

---

128 Korthals Altes 1999, p. 163 et seq.

129 In 2004, it was estimated that some 130.000 inhabitants of the Country of the Netherlands were of Antillean – mainly Curaçaoan – descent. At that time, Curaçao itself had some 140.000 inhabitants.

130 This description was used in an editorial of the *NRC Handelsblad* of 11 June 2005.

131 The limited political importance of the Caribbean 'headache dossiers' can also be gauged from a remark by the Dutch minister charged with Kingdom affairs (among other subjects), who admitted in 2005 that he spent no more than one day a week on the relations with the Netherlands Antilles and Aruba (*NRC Handelsblad* of 21 March 2005).

Antilles, with its double layer of government. In 2005, a process was started to break up the Netherlands Antilles into five separate entities.<sup>132</sup> The Netherlands offered to assume a part of the public debt of the Antilles, but in return demanded that it should have a stronger say in the areas of law enforcement and public spending in the five new entities.

#### 4.3 CONCLUSION

According to the Charter for the Kingdom of the Netherlands, the Netherlands, the Netherlands Antilles and Aruba have voluntarily chosen to create a structure in which a number of affairs are handled jointly on the basis of equivalence. They form three separate Countries which are autonomous in all affairs, except those which are listed in the Charter as affairs of the Kingdom (most importantly: foreign affairs, nationality and defence). The Kingdom has very limited powers to intervene in the autonomous affairs of the Countries.

The Kingdom is a somewhat ambiguous structure, since the islands are part of the Kingdom, but not of the Country of the Netherlands, while the Kingdom is often identified with the Country of the Netherlands. The islands have the right to leave the Kingdom, based on the right to self-determination, but there exists difference of opinion on the question whether they also have the right to choose for free association or integration, or some other political status in relation to the Netherlands. The Netherlands does not have the right to unilaterally terminate the relations.

During the first decades after 1954, the self-government of the Caribbean Countries was virtually unchallenged, but since the 1990s, the Netherlands has become more concerned with the government of the islands, demanding respect for the principles of good government, especially in the areas of law enforcement and public spending. Aruba left the Netherlands Antilles in 1986 to form a separate Country within the Kingdom, and in 2005, negotiations were started to dismantle the Netherlands Antilles entirely.

---

132 See the Outline Agreement (*Hoofdlijnenakkoord*) of 22 October 2005, and the Closing statement of the Round Table Conference of 26 November 2005 in Willemstad, Curaçao (available in an English translation on [www.minbzk.nl](http://www.minbzk.nl)).