



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).

6 | Characterization of the Kingdom Order Under International Law

Between 1951 and 1955 the UN discussed the relationship between the Netherlands and its Caribbean territories in some detail, and a number of authors have written about the Kingdom Charter in English, French, and German, for which reasons the formal aspects of the relationship are well known among the experts on overseas territories and autonomy regimes.¹ Nonetheless, the Kingdom of the Netherlands is categorized in many different ways in the foreign literature. Three main strands of reasoning are prevalent, namely that the Caribbean Countries are integral parts of the Kingdom, associated with the Netherlands or non-self-governing. I will discuss these views, and the UN debate of the 1950s, and try to determine how the Kingdom could be characterized under international law on the basis of the conclusions drawn in the previous Chapters.

6.1 INTEGRAL PART OF THE KINGDOM

There is a number of writers on international law who explicitly or implicitly consider the relations of the Netherlands Antilles and Aruba with the Netherlands as a form of integration, and categorise the Kingdom as a federal, or even as a unitary state.² None of these sources really explain why the Caribbean Countries should be seen as integrated into the Netherlands, although the most convincing element for most writers seem to be the federal traits of the Charter.

Most of these authors base their opinion on the text of the Kingdom Charter, and on an article by *Van Panhuys* of 1958. This article compared the King-

1 The Explanatory Memorandum to the Kingdom Charter, which was submitted to the General Assembly in 1955 by the Netherlands government (UN Doc. A/AC.35/L.206) continues to be an important source for many writers, as well as *Van Panhuys*, who is cited by virtually all authors writing in English on the Kingdom, sometimes as their only source.

2 Rapaport, Muteba & Therattil 1971, p. 70-71, De Smith 1970, p. 32, and Hannum 1996, p. 347 et seq. Others consider the Caribbean Countries as incorporated into the metropolis in the same way as Alaska or Hawaii, or the French DOMs, but these writers must be considered simply misinformed. See for instance Crawford 2006, p. 623, Ince 1974, p. 43, Lopes Reyes 1996, p. 74, and Quane 1998, p. 553, note 82. Pakaukau 2004, p. 305 even speaks of 'The literal absorption (rather than decolonization) of several territories by colonizing powers in the 1950s – e.g., Surinam by the Netherlands'.

dom structure to federal states, and to 'colonies of other States on their way to self-government'.³ *Van Panhuys* considers that 'as to their standing under municipal public law, it may be concluded (...) that Surinam and the Netherlands Antilles have been incorporated as autonomous units – on a basis of equality with the Netherlands – into a *ensemble fédératif*'.⁴

Van Panhuys' article has for a long time been the only legal analysis of the Kingdom order of some substance in English, and it has exercised a great deal of influence on the international opinion regarding the Kingdom. Foreign readers of *Van Panhuys* may not be aware that some of the Charter's elements which are most indicative of the integration of the Caribbean Countries into the Kingdom, have rarely been used, and some not at all. The federal elements of the Charter are furthermore mainly constitutional make-up, as I explained *above*.

The Kingdom is clearly not similar to the internationally accepted examples of integration described in Chapter 3. The Kingdom Charter does not make it impossible to realize a form of integration of the three Countries into a single community by jointly creating additional Kingdom affairs, or by creating common legislation and policies based on Article 36 of the Charter, but this possibility has only rarely been used. As a result, the three Countries have their own legislation and pursue their own policies on virtually all subjects, and the Kingdom remains very far removed from any notion an integrated state.

This is not in debate in the Kingdom. There is a long history of Dutch and Caribbean proposals to integrate the Dutch Caribbean islands into the Netherlands, but these proposals have never been received with much enthusiasm by the governments of the Countries, and they are of course in themselves evidence that the islands are not an integral part of the Netherlands.

In recent years, the idea of full integration has gained more popularity, especially with regard to the Netherlands Antilles. It is usually based on the idea that the grave social and economic problems of that island are caused by the autonomy of the Netherlands Antilles, or at least that the autonomy is blocking a solution to the problems.⁵

3 Van Panhuys 1958, p. 22. This sentence should not be interpreted to mean that the author considers Surinam and the Netherlands as colonies, or as not possessing self-government. *Van Panhuys* considers them to be 'self-governing former colonies' (p. 30).

4 Van Panhuys 1958, p. 21. Near the end of his article, *Van Panhuys* calls Surinam and the Netherlands Antilles 'freely associated with the metropolitan country'. It must be remembered, however, that GA Res. 742 (VIII) of 1953, which was the most recent UN instrument on the status of (former) colonial territories at the time when *Van Panhuys* wrote his article, still referred to integrated territories as 'Free Association of a Territory on Equal Basis with the Metropolitan or other country as an Integral Part of That Country or any Other Form'. It seems likely that *Van Panhuys* was thinking of this category.

5 See for instance the Winter 2005 issue of the journal *Christen-Democratische Verkenningen*, which was dedicated to the Antilles and Aruba, and which contained a special section on the integration option. See also Broek & Wijenberg 2005.

The idea of integration has cropped up in many publications in the Netherlands, and also on Curaçao, especially during the rise to power of the radical Curaçaoan labour party *FOL*, and the short-lived Antillean cabinet of M. Louisa-Godett (2003-2004). During this time, public opinion in the Netherlands became convinced that Antillean politicians were not able to provide good government for the islands, and that the Netherlands should take charge, also because the problems of Curaçao were spilling over into the Netherlands.⁶ Some Dutch politicians proposed the full integration of the Netherlands Antilles into the Netherlands, as a province or a municipality, usually as part of a 'take-it-or-leave-it' offer, where 'leave it' clearly meant independence.⁷

Recent statements and publications by individual members of the Dutch political parties *CDA*, *PvdA*, *SP* and *LPF*⁸ and a recent debate in the Senate suggests that it can no longer be simply assumed that a majority in the *Staten-Generaal* would instantly reject the integration of the Netherlands Antilles into the Netherlands.⁹ The policies of the Dutch political parties are not very developed on this subject, and there has been little public debate on it. It might well be that The Hague would balk at the costs of integrating the islands fully into the Netherlands, or recoil from the negative economic effects for some of the islands.¹⁰ There does currently seem to be a consensus in the

6 *De Volkskrant* in an editorial of 11 March 2005 concluded that some form of integration with the Netherlands was the best option for all of the islands of the Antilles. Another newspaper, *NRC Handelsblad*, in a special supplement of 15 November 2003 presented the future of the Netherlands Antilles as a choice between independence or integration.

7 *Fortuyn's* column on this subject (see Fortuyn 2002) was emblematic of this view. According to *Fortuyn*, the autonomy of the Antilles should be abolished, and a small army of Dutch civil servants should be flown in to set things straight. 'Of course, we will not talk or negotiate this with the corrupt political elite of the Antilles, no, it is simply "take it or leave it".' See also the article by CDA-members Pikeur and Lamers of 2005. Herben (*LPF*) defended the idea of integration in the *NRC Handelsblad* of 15 November 2003 and *HP* of 12 September 2003 (his *LPF*-colleague Eerdmans' proposal to abandon the Antilles was part of Eerdmans' application for membership of the new political movement of Wilders, see *de Volkskrant* of 8 January 2005). Van Bommel (*SP*) defended the idea of integration in the *Amigoe* of 6 November 2004 (co-authored by J. Wijenberg) and proposed that this option should be offered in a well-prepared referendum to the populations. Schrijer and Dijsselbloem (*PvdA*) proposed that a referendum should be held on the Antilles in which only two choices would be offered: integration or independence. According to these two politicians the Netherlands should respect the choice of the population, which would 'choose for integration *en masse*' (*de Volkskrant* of 6 July 2004).

8 These statements, some of which were cited *above*, mostly derive from individual party members. Official party policies are usually unclear on this point, or simply non-existent.

9 In a debate in the Senate on 14 February 2006, many Senators appeared to have a preference for closer ties with the Netherlands Antilles and Aruba, perhaps even in the form of full integration of the islands (at least the smaller ones) into the Netherlands. See *Handelingen I* 2005/06, p. 18-850 et seq.

10 See Smeehuijzen & Ziekenoppasser 2005 for a rough estimate of the costs (to the Dutch treasury and the economy of the islands) of introducing Dutch levels of social security in the Netherlands Antilles and Aruba. The authors admit that a reliable estimate cannot yet be made for lack of research into the costs of all of the different aspects and possible side-

Staten-Generaal that the Kingdom should play a stronger role in the supervision of the internal affairs of the Netherlands Antilles (and possibly also Aruba).¹¹

Antillean and Aruban politicians usually do not react to the Dutch proposals.¹² There are currently no political parties represented in the *Staten* or in the island councils that support the full integration of Aruba or the Netherlands Antilles into the Netherlands. The words '*provincie*' and '*gemeente*' (municipality) are more or less taboo in Caribbean politics, and such a status is considered shameful and colonial by many people, at least on Curaçao, Aruba and St. Maarten. Politicians on the smaller islands do not seem to oppose a larger role for the Netherlands. Opinion polls show that the population is not opposed *per se* to more Dutch control over the local governments, even though the status of '*provincie*' or '*gemeente*' remains unpopular.¹³

In the referenda of 2000, 2004 and 2005, the option of full integration was only on the ballot on Curaçao and St. Eustatius, where it received 25 and 2 percent of the vote respectively. The options of 'direct link with Holland' and 'Kingdom island' that carried the vote on Bonaire and Saba respectively could perhaps be seen as a form of integration, although the precise ramifications of these status options were uncertain at the time the referenda were held.¹⁴

6.1.1 Applying the Criteria of Resolution 1541

The Netherlands Antilles and Aruba are clearly not integrated into the Netherlands, but they are an integral part of the Kingdom. On that level one could apply Principles VIII and IX of Resolution 1541, which contain the criteria for a form of integration that constitutes a full measure of self-government. Some of the writers on international law which characterize the Kingdom as a form

effects of full integration.

- 11 See for instance the motions adopted by the Senate and by the Lower House in February 2006 (*Kamerstukken I* 2005/06, 30 300 IV, B and nr. 32),
- 12 Exceptionally, statements by CDA member of the Lower House Van der Knaap in favour of integration (see *de Volkskrant* of 25 June 2002 and *Algemeen Dagblad* of 12 June 2002) inspired a dismissive response by Antillean premier Ys. Member of the Lower House De Graaf (D66) then asked the state secretary for Kingdom affairs (De Vries, VVD) to react to Van der Knaap's proposals. De Vries avoided the question whether integration would be a good idea, but stated that he did not expect much support for this option in the Netherlands Antilles (*Aanhangsel Handelingen II* 2001/02, nr. 2010211680). When De Graaf himself became minister for Kingdom Affairs shortly thereafter, he stated that integration was 'relatively unthinkable' (*NRC Handelsblad* of 4 March 2004).
- 13 See Oostindie & Verton 1998. An opinion poll on Curaçao in March of 2005 indicated that a majority of the voters was still in favour of Dutch supervision over the public finances and law enforcement of the island.
- 14 This means that the requirements for integration of Resolution 1541 were not fully met, because the population was not (and could not be) accurately informed about the consequences of its choice.

of integration also conclude that it does not comply with Resolution 1541.¹⁵ It should be remembered that integration has always been considered a suspicious form of self-government at the UN. Since 1960 only one case of integration has been accepted as 'a full measure of self-government'.¹⁶

Resolution 1541 does not demand that an integrated territory should be completely assimilated or incorporated into the mother country. Principle VIII merely demands that the integration should be based on 'complete equality' between the territory and the mother country, and should create 'equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination' for the inhabitants.

It would be hard to argue that this is the case within the Kingdom. 'Complete equality' between the three Countries was not envisaged, nor realized in 1954. The citizens of the Kingdom are not mentioned in the Charter,¹⁷ which does not contain a catalogue of fundamental rights,¹⁸ but attributes the realization of these rights to the Countries.

In one respect the citizens of the Kingdom have equal status, because they are all Dutch nationals. The right of access and abode in the Countries is regulated by the Countries themselves. The Charter does not guarantee the freedom of movement of persons within the Kingdom. The Netherlands Antilles and Aruba have created regulations that limit the right of abode and

15 De Smith 1970, and Hannum 1996. One source considers that this does not create legal problems as long as the population is happy with its current status (Rapaport, Muteba & Therattil 1971).

16 The Cocos (Keeling) Islands in 1984, *see* Chapter 3.

17 Articles 31 and 32 mention the inhabitants of the Netherlands Antilles and Aruba, and provide that they cannot be forced to serve in the armed forces of the Kingdom, except on the basis of a regulation adopted by their own Country legislator.

18 An exception is the right to vote in elections, but even this right is not realized 'without any distinction or discrimination' between the citizens of the Countries. The inhabitants of the Country in Europe have the right to vote for the Lower House, and indirectly elect the Senate of the *Staten-Generaal*, which is the parliament of the Country of the Netherlands, but which also functions as the parliament of the Kingdom. Inhabitants of the Caribbean Countries only have the right to vote for the Lower House if they have previously lived in the European part of the Kingdom for at least 10 years (Article B 1 of the *Kieswet*, *see also* the decision of the Council of State of 21 November 2006 in cases 200607567/1 and 200607800/1 which upheld this rule). The same rule currently applies in the elections for the European parliament, but this rule was challenged in 2004 before the *Raad van State* by two Arubans (Eman & Sevinger, *see* ABRS 13 July 2004, *Jb* 2004, 308). The Administrative Jurisdiction Division of the *Raad van State* decided to request a preliminary ruling by the Court of Justice of the EC on the meaning of European citizenship in relation to the right to vote for the European parliament (case C-300/04). The Court answered that member states were not obligated to accord the right to vote in the European elections to the inhabitants of OCTs, but considered the Dutch election law in breach of the principle of equality, because it differentiated between Dutch citizens abroad on the one hand, and in the OCTs on the other hand (Decision of 12 September 2006). The *Raad van State* decided that it was up to the Dutch legislator to somehow rectify this situation (judgement of 21 November 2006 in cases 200404446/1 en 200404450/1).

the right to work for Dutch nationals who do not originate from that Country, although these restrictions have been eased in recent years, due to political pressure from the Netherlands and economic advice from organizations such as the IMF. The Netherlands has not put restrictions on the right of abode for Antilleans and Arubans, but such measures have been contemplated on several occasions since the early 1970s, and were recently requested by the Lower House.¹⁹

Equal rights of citizenship and equal protection of fundamental rights would be very hard to realize within a state where almost all government affairs are attributed to three autonomous governments, and which functions almost entirely as three separate legal orders. The three Countries have, moreover, not made this goal a top priority, which has resulted in the current situation where human rights are guaranteed differently in the constitutions of the Countries, and interpreted differently in practice, and where the inhabitants are entitled to very different levels of government protection and services.²⁰ To list all of the differences would require a separate study. It would perhaps even be easier to list the areas in which the three Countries treat their inhabitants in the *same* way, which sometimes happens when a Caribbean Country copies a European Dutch model or adopts norms and standards that the Netherlands applies in a certain area.

Resolution 1541 also sets criteria for the procedure by which a territory may choose to become integrated with an independent state. Principle IX states that the population should be politically developed and should have experience with self-government, and that it should choose for integration through 'informed and democratic processes', and 'with full knowledge of the change in their status'. The process which led to the adoption of the Kingdom Charter can hardly be considered to conform to these criteria. Self-government was introduced in the Netherlands Antilles in 1951, when the negotiations on the Charter were already underway. There was therefore little experience with self-government. Whether the population was aware of the decisions being made and of the consequences these would have for their future, would probably require more historical research, but it seems very unlikely that this was the case. In any event, the Charter was adopted without a referendum, and it was not a major subject in any election in the Netherlands Antilles. If, therefore, the Kingdom is seen as a form of integration, it was not arrived at through a proper procedure.

19 *Kamerstukken II* 2004/05, 29 800 VI, nr. 79. At the time of writing of this study, the government was preparing a bill to introduce in parliament. See Oostindie & Klinkers 2001c, p. 340 et seq. for an overview of previous discussions on this subject.

20 During the discussion of the Netherlands report on the ICESCR in 1998, one member of the Committee noted with some concern that the level of protection of economic, social and cultural rights appeared to be much lower in the Netherlands Antilles than in the Netherlands. The representatives of the Netherlands responded that this was the responsibility of the Country governments (E/C.12/1998/SR.15).

Dutch politics seems to become increasingly charmed of the idea of full integration of the islands into the Country of the Netherlands, but the population of the islands – at least of the larger ones – do not appear to support the idea of full integration into the Netherlands. This can only be a tentative conclusion since the Netherlands never used to be prepared to discuss this option, for which reason many Antilleans and Arubans probably always assumed that the Netherlands would not agree to realize it anyway. The perception that most people in the Netherlands would prefer the islands to become independent is also an obvious influence on the opinion of Antilleans and Arubans with regard to the closeness of their ties with the Netherlands.

Summing up, it can be concluded that the Netherlands Antilles and Aruba are not integrated with the Netherlands in the sense of Resolution 1541. They are an integral part of the Kingdom, but this is probably not a meaningful form of integration with regard to Resolution 1541.

6.2 ASSOCIATED WITH THE NETHERLANDS

The Kingdom relations clearly bear some resemblance to the West Indies Associated States of the UK, which were intended by the UK to comply with the UN criteria for free association (*see* Chapter 3). The Netherlands government in the 1960s also considered the Kingdom to be a form of free association. Shortly after Resolution 1541 had been adopted, the Dutch ministry of Foreign Affairs explained that Surinam and the Netherlands Antilles had entered into a free association with the Netherlands based on Principle VI of 1541.²¹

However, it was probably clear to the Netherlands government that some of the essential characteristics of the Kingdom relations did not conform to the UN criteria. The government has tried a number of times to transform the relations into a free association that would comply with the international criteria, and – probably more importantly – which would make clear that the Netherlands was no longer responsible for the internal affairs of the Caribbean Countries.

The first time this happened, it was sparked by Surinam's wish to have a more independent role in international affairs, which was uttered at a Round Table Conference in 1961. Surinam wished to create a 'basic Charter' that would only affirm the Queen as head of state, and would require the Kingdom to guarantee the defence, legal certainty and good governance in the Countries, but would leave Surinam free to pursue its own future in all other matters.

21 BuZa 1961, p. 158.

At the Conference the Netherlands rejected this proposition as impossible and internally contradictory.²²

The Netherlands government thereafter quickly changed its opinion. It started to develop a plan for a 'basic Charter' that would make it possible for the Caribbean Countries to handle their foreign affairs themselves, while maintaining constitutional ties with the Netherlands. It would be up to Surinam and the Netherlands Antilles to decide when this new phase in the relations would commence. The plan also specified that it would be possible for Surinam and the Netherlands to voluntarily proceed to a third phase, namely independence. The plan, which might have led to a form of free association between the Netherlands and Surinam and/or the Netherlands Antilles, was not offered to the Caribbean Countries after Surinam seemed to have lost interest in the idea.²³

In 1973, a Dutch proposal for a 'light' Charter that would have substantially decreased the Kingdom's reserved powers, and which would have created a possibility for unilateral termination, was rejected by Surinam and the Netherlands Antilles. The Netherlands saw the proposal as an intermediate phase towards independence, and a way of freeing the Netherlands government from its unwanted role as guarantor of the Caribbean governments. The Caribbean negotiators seem to have feared that the new Charter would authorize the Netherlands to leave the Caribbean Countries to fend for themselves, while it was clear that the overseas populations were not keen on this at all.²⁴

More recently, the Netherlands government seems to have offered the status of 'free association with the Kingdom' to Aruba, as an alternative to independence or Country status, at various points during the 1980s and 1990s.²⁵ Aruba refused these offers for reasons unknown. The proposals were not discussed publicly.

The Dutch government therefore must have viewed free association as substantially different from Country status under the Charter during this period. But in the Netherlands Antilles, the status of Country within the Kingdom was recently considered to be a form of free association by the island

22 See Meel 1999, p. 325-400, and Oostindie & Klinkers 2001b, p. 49-62. Minister for Foreign Affairs Luns stated at the outset that if Surinam wanted a more independent role in foreign affairs, the Netherlands would require a 'radical solution', meaning the full independence of Surinam. It was concluded that the existing potential of the Charter would be maximized, for instance by establishing a Bureau for Foreign Affairs in Suriname that would operate under the control of the premier of Surinam. Such a Bureau was created for the Netherlands Antilles as well, in 1973.

23 Oostindie & Klinkers 2001b, p. 59-60.

24 The Dutch proposal would have deleted Articles 43, 50 and 51 from the Charter. See Oostindie & Klinkers 2001b, p. 111-2, Bos 1976, p. 137, and Kapteyn 1982, p. 24.

25 See 'Rapport Gemengde commissie toekomst Antillen' (1982), p. 65 et seq., Janus 1993, p. 86, and Munneke 1990. The discussions between Aruba and the Netherlands on a possible 'commonwealth' between the Kingdom and Aruba also tended towards a form of free association.

governments of Curaçao and St. Maarten, and also by the Antillean central government.²⁶ Proposals to include the option of free association on the ballot of the referendum in St. Maarten (2000) and Curaçao (2005) were rejected by the local authorities, one of the reasons apparently being that Country status would be the same as free association.

Quite a number of legal writers also see the Kingdom as a form of association. None of them, however, explicitly consider it to comply with Resolution 1541.²⁷ *Clark*, writing about the concept of free association, considered it arguable that the GA in 1955 considered the Kingdom relations as a form of association.²⁸ At the same time, *Clark* thinks the Kingdom Charter does not comply fully with Resolution 1541, and he treats the Dutch case as an example where the GA apparently applied lower standards.²⁹

Kapteyn also came to the conclusion that the autonomy of the Netherlands Antilles was not up to the standards of Resolution 1541, at least not on paper. The author points to the reserved powers of the Kingdom. Because of the strong position of the Dutch ministers in the Kingdom government and of the Dutch parliament in the procedure for creating Kingdom legislation, *Kapteyn* wonders whether the Kingdom Charter does not create 'a position of subordination' in the sense of Principle V of 1541. The fact that certain changes to the *Staatsregeling* (constitution) of the Netherlands Antilles need the approval of the Kingdom government means that the Caribbean Countries are not free to determine their internal constitution without outside interference.³⁰

The elements listed by *Kapteyn* are indeed inconsistent with Principle VII of Resolution 1541, seen in the light of the UN debates on the Cook Islands

26 See the Report of the Antillean committee of preparation for the Round Table Conference of 2005 ('*Toekomst in zicht*'), dated 12 August 2005, p. 8. See also the legal advice of the directorate for Legislation of the Netherlands Antilles to the prime minister, made public around 6 September 2005. The joint Dutch-Antillean Jesurun Committee seemed to start from the assumption that the status of the Caribbean Countries will have to comply with Principle VII of Resolution 1541 (free association), see p. 42 of the report '*Nu kan het... nu moet het!*' of 8 October 2004.

27 *Broderick*, writing about the British West Indies Associated States, found the example of the Kingdom of the Netherlands 'most instructive' as it was 'indicative of a satisfactory solution reached by a country with a similar problem to the United Kingdom' (*Broderick* 1968, p. 400). *Hintjens* considers that 'the whole arrangement resembles a form of free association' (*Hintjens* 1997, p. 538). Other writers who see the Kingdom as a form of association are *Logemann* 1955, p. 51, *Janus* 1993, p. 36, *Van Rijn* 1999, p. 57, *Tillema* 1989, and *Blaustein/Raworth* 2001, p. 1. See also the paragraph on Constitutional Association in the previous Chapter. During the discussion of the second periodic report of the Netherlands to the HRC, Mr. Wilms, representative of the Netherlands (Aruba) called the relationship an 'association'.

28 Some representatives did indeed use the term 'association', but in 1955, this concept had not yet been developed very clearly at the UN and was also sometimes used to refer to forms of integration with the mother country.

29 *Clark* 1980, p. 48.

30 *Kapteyn* 1982, p. 19-22.

and the UK West Indies Associated States. The practice of the Charter has revealed the existence of a convention that the Netherlands always seeks consensus with the Caribbean Countries before using its powers in the Caribbean, but this does not mean that the Netherlands has relinquished its reserved powers.

I think the Kingdom order partly satisfies the criteria for free association. The practice of the Kingdom is to a large extent in line with Principle VII of Resolution 1541. A number of powers attributed to the Kingdom organs by the Charter do not, however, conform to the UN standards. The reserved powers of the Kingdom government with respect to the legislation and administration of the Caribbean Countries' internal affairs, its authority to appoint a number of key officials in the Caribbean Countries, its power of veto over certain elements of the constitutions of the Caribbean Countries, and its power to legislate for the Caribbean Countries in certain affairs without their consent are not in line with the concept of free association as defined by the UN. Also, the lack of express popular approval of the Country status of the Netherlands Antilles and Aruba makes the Kingdom Charter vulnerable to criticism if it were presented as a form of free association.

If the Kingdom relations were really transformed into a free association, the Netherlands Antilles and Aruba would obtain more freedom in foreign affairs and full control over their own constitution, if they should aspire to achieve those things. Free association does not necessarily mean loss of Dutch nationality, but the people of the islands should realize that free association has been used by metropolitan states to distance themselves from territories for which they no longer want to be responsible, and that a choice for free association often leads to a status which closely resembles full independence.

Also, in order for the Kingdom of the Netherlands to be considered as a form of free association, the Netherlands Antilles and Aruba will have to be recognized internationally as self-governing.³¹ The cases of the Cook Islands and the other examples of association discussed in Chapter 3 even show that international recognition of freely associated status is not enough to guarantee that the territories will be able to function independently in international affairs, but that such recognition will have to required almost on a case-by-case basis, in which the assistance of the principal state is indispensable.

6.3 ANOTHER FORM OF FULL SELF-GOVERNMENT?

On the basis of the criteria for integration and free association of Resolution 1541, it is not possible to conclude that the Netherlands Antilles and Aruba

31 *Macdonald* considers that for non-state subjects such as associated territories *Crawford's* view applies that 'Recognition, while in principle declaratory, may thus be of great importance in particular cases' (Macdonald 1981, p. 239 cites Crawford 1979, p. 74).

have achieved a full measure of self-government. This could mean that they are still 'arbitrarily subordinated' in the sense of Principle V of 1541, but it is also possible that they have achieved another form of full self-government. This question was discussed at some length at the UN during 1951 and 1955, and since the GA has the final authority to decide when a territory has achieved a full measure of self-government, it is necessary to take a closer look at how the GA viewed the Kingdom Charter.

6.3.1 The Netherlands Antilles as a NSGT between 1946 and 1951

In 1946, the Netherlands Antilles (at that time still including Aruba³²) was listed as a Non-Self-Governing Territory (NSGT) in GA Resolution 66 (I). The Netherlands had informed the Secretary-General that it administered three Non-Self-Governing Territories: the Netherlands East Indies (Indonesia), Surinam and Curaçao (as the Netherlands Antilles was then still called).³³ This is an important observation, because the application of Chapter XI has been virtually limited by the GA to those territories that were voluntarily listed by the Administering powers in 1946.³⁴

In 1946, Surinam and the Netherlands Antilles were governed similarly to the Crown Colonies of the British empire.³⁵ With respect to the 'internal affairs' of the territories, the Governors could make laws together with the *Staten* which consisted of 10 members elected on the basis of limited suffrage, and 5 members appointed by the Governor. The Netherlands legislator had a principally unlimited right to legislate for the territories 'should the need arise' (*'zoodra de behoefte daaraan blijkt te bestaan'*).³⁶ The budget of the terri-

32 The position of Aruba is slightly different from that of the Netherlands Antilles. It was part of the colony of Curaçao in 1946, but it became a separate Country within the Kingdom in 1986. This change in status probably does not affect Aruba's position with respect to the UN Charter. Leaving aside the reluctance of international law to recognize the breaking up of colonies before independence, changes in the administrative divisions have usually been treated as immaterial to the application of Chapter XI of the Charter. What is important for the application of Chapter XI to Aruba, is the measure of self-government it possesses in relation to the metropolitan government. The GA has not expressed itself on the present status of Aruba, but seeing that this status is similar to the constitutional position of Surinam and the Netherlands Antilles at the time when these territories were discussed by the GA, the opinion of the GA on the Netherlands Antilles and Surinam can probably be applied analogously to Aruba.

33 Some member states challenged the competence of the Netherlands to transmit information on the Netherlands East Indies because that territory had declared its independence in 1946. The Netherlands rejected this challenge by stating that it felt obligated to provide information as long as it exercised sovereignty over the archipelago.

34 The only exception is Oman, which was not listed in 1946, but was discussed at the UN as if it were a NSGT, and perhaps also Algeria. See the previous Chapter.

35 Logemann 1955, p. 48-9.

36 Article 63 of the Constitution of 1938.

territories needed the approval of the Crown. In case of budget deficits (which were common), the budget was determined by a Dutch act of parliament, which gave rise to considerable interference by the Netherlands parliament with the affairs of the territories.³⁷ All of the territory's legislation could be suspended by the Crown and annulled by the Dutch legislator if it conflicted with the Dutch Constitution, a Dutch act of parliament, or with public interest ('*algemeen belang*').³⁸ If the Governor and the Staten could not reach agreement on a legislative issue, the Netherlands government could settle the issue by a regulation ('*Algemene maatregel van bestuur*').³⁹ The executive powers of the Netherlands government with respect to Surinam and the Netherlands Antilles were no longer unlimited, but existed only when the Dutch Constitution or a Dutch act of parliament provided for them. The Netherlands government was, however, authorized to give instructions to the Governors.

In 1948, universal suffrage was introduced in Surinam and the Netherlands Antilles, and the autonomy of the territories was strengthened. Most importantly, the Netherlands legislator could no longer intervene in the budgets of the territories if they were not balanced.⁴⁰ After the Dutch Constitution had been amended to allow for a new relation between the Netherlands and its overseas territories, the Interim Orders of Government ('*Interimregelingen*') of 1950 (Surinam) and 1951 (Netherlands Antilles) provisionally filled in this new relation.⁴¹ The Interim Orders listed the areas of government for which the Netherlands remained responsible, and established the principle that the Netherlands Antilles and Surinam were autonomous in all other affairs. The executive powers in the territories were entrusted to the governments of the countries, which existed of the Governor and a council of ministers. The ministers became responsible to the *Staten*.

6.3.2 The Netherlands Decides to Stop Transmitting Information under Article 73 *e*

As was described in Chapter 2, Article 73 creates an obligation for the Administering State to supply annually to the Secretary-General 'statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories'. In 1951, the Netherlands government decided

37 See De Gaay Fortman 1947, p. 30. In 1929, Curaçao managed to present a balanced budget. The Lower House of the Netherlands was not prepared to accept that it could no longer discuss the situation in the colony, which was therefore discussed during the debate on the budget for the Ministry of Colonies.

38 Article 64 of the Constitution of 1938.

39 See De Gaay Fortman 1947, p. 37 et seq. and Van Rijn 1999, p. 30 et seq.

40 Oostindie & Klinkers 2001a, p. 105-6, Van Helsdingen 1956, p. 7 et seq. and Van Helsdingen 1957, p. 65-8.

41 See Van Helsdingen 1956, p. 14 for a discussion of the Interim Orders of Government.

that the transmission of such information on Surinam and the Netherlands Antilles was no longer necessary because these territories had become 'quite autonomous as regards domestic affairs', as the Dutch government claimed in an 'Explanatory Note' sent to the Secretary-General. The new constitutional order did not allow the Netherlands government to collect information on the subjects enumerated in Art. 73 *e*, as these subjects now belonged to the internal affairs of Surinam and the Netherlands Antilles.⁴²

It appears from the records of the Council of Ministers of the Netherlands that there existed a firm conviction that the Netherlands could present a strong case, because the Netherlands would really not be able to transmit the information of Article 73 *e* due to the autonomy of the Netherlands Antilles and Surinam.⁴³ Besides, in 1948 the UK, the US and France had unilaterally decided to stop transmitting information on some of their NSGTs as well, which decisions had only met with half-hearted criticism by a few states. But since then, the mood had already changed considerably at the UN, and perhaps the Netherlands should have realized that the anti-colonial members of the UN might try to seize the opportunity and make an example of the Netherlands, a small and at that time unpopular state, by applying Chapter XI of the Charter strictly to the Netherlands Antilles and Surinam.

Before informing the Secretary-General, the Netherlands government had asked the opinion of the governments and the *Staten* of Surinam and the Netherlands Antilles, which agreed that the transmission of information by the Netherlands government was incompatible with the new status of the territories, and that the territories would not co-operate with the gathering and transmitting of information, as this would constitute an infringement on their autonomy. Curiously, the Netherlands seems to have informed the Secretary-General of its decision before it had received the answers of these overseas organs.⁴⁴

The Netherlands government expected that some states would not readily accept the Dutch decision.⁴⁵ The participation of the Netherlands Antilles and Surinam themselves in the defence of the Dutch position was therefore expected to be very important. If the Netherlands could show that the overseas countries considered they had achieved a full measure of self-government and wholeheartedly supported the cessation of transmission of information, it

42 Explanatory Note by the Government of the Netherlands of 31 August 1951, UN Doc. A/AC 35/L 55, reprinted in BuZa 1952a, p. 40.

43 See Oostindie & Klinkers 2001a, p. 303.

44 The *Staten* of Surinam expressed their surprise at this turn of events, and wondered why its opinion had been asked at all. See the secret letter of Governor Klaasesz to Dutch minister Peters of Union Affairs and Overseas Territories of 5 July 1951, cited in Oostindie & Klinkers 2001a, p. 302, note 19.

45 Spits 1952b, p. 239-40.

would become much more difficult for states to oppose it.⁴⁶ For the overseas countries to make a convincing case, it would be important that they could show that they had freely accepted the new legal order, or even better, that they had been granted the freedom to choose between independence and their present status.⁴⁷ However, the Netherlands government was not prepared to even discuss the independence of the territories, and feared that the Netherlands Antilles and Surinam would use this situation as leverage in the negotiations on the new structure of the Kingdom, which were conducted at that time.⁴⁸

Another political factor which complicated the Dutch position was the so-called Monroe doctrine,⁴⁹ which had been reaffirmed at the Inter-American Conference of 1948, at which the Organization of American States was established.⁵⁰ The Conference declared that 'the emancipation of America will not be complete so long as there remain on the continent peoples and regions subject to a colonial regime, or territories occupied by non-American countries'.⁵¹

46 See Oostindie & Klinkers 2001a, p. 301-2 (note 19) for a discussion of the role of the representatives of Surinam and the Netherlands Antilles (Pos and Debrot).

47 Logemann 1955, p. 51.

48 See the code telegram of Netherlands Antilles Governor Struycken, cited in Oostindie & Klinkers 2001a, p. 301-2, note 20. In 1952, the Caribbean governments would indeed exploit this situation during the negotiations on the Kingdom Charter, see Chapter 4, in the paragraph on the right to self-determination.

49 This doctrine was named after US President James Monroe, who stated in 1823 that the United States would regard any attempt by European powers to extend their system to any part of the Western hemisphere as dangerous to the peace and safety of the US. The statement was a warning to the colonial powers of Western Europe, which were at that time rapidly expanding their empires in Africa and Asia, not to attempt to conquer new territories in America. See generally Martin 1978.

50 Kasteel 1956, p. 179, and Van Aller 1994, p. 272.

51 Reproduced in BuZa 1952a, p. 95. At the Conference, Venezuela unofficially interpreted the Monroe doctrine to mean that Aruba, Bonaire and Curaçao really belonged to Venezuela. Reported by the Surinam observer at the Conference, Mr. L.A.H. Lichtveld, see Kasteel 1956, p. 180 and *Keesings Historisch Archief*, No. 891, 7671 A. The Netherlands representative at the UN reported in 1951 that the Latin American states would be guided by this doctrine when considering the case of the Netherlands Antilles and Surinam, BuZa 1952a, p. 24. This expectation was partly inspired by the fact that the Cuban representative cited the first four paragraphs of Resolution XXXIII in the Fourth Committee of the Sixth GA.

6.3.3 Preliminary UN debates on Surinam and the Netherlands Antilles⁵²

In line with GA Res. 448 (V) the Secretary-General in 1951 referred the communication of the Netherlands government to the 'Special Committee on Information transmitted under Article 73 *e* of the Charter'. It soon became clear to the Dutch delegation that a majority among the non-Administering members of the Committee (*i.e.* the Socialist, Latin American, African and Asian states) were not at all inclined to accept the cessation of transmission of information. In the eyes of the Dutch delegation, this attitude sprang from three main reasons. First, a general feeling of distrust towards the Administering States. Second, a lack of understanding of Dutch constitutional law. And third, the fact that the Netherlands government had translated only parts of the Interim Orders of Government, which created suspicion.⁵³ To these reasons might be added that the Netherlands had gained a bad reputation among the non-Administering states because of its attitude in the Indonesian conflict.⁵⁴

The debates in the Special Committee and subsequently in the Fourth Committee of the General Assembly (which deals with issues of decolonization) in 1951 also revealed that a number of states feared that the autonomy granted to the territories might only be of a temporary nature, as the new constitutional structure was laid down in *Interim* Orders. Article II of the Interim Orders increased suspicion among the non-Administering States, as it contained a long list of subjects that remained within the exclusive competence of the Netherlands government. Questions were also raised on the subject of the appointment of the Governors by the Crown, on the powers of the Governors, on the appointment of members of the judiciary, on the relation between the executive and the legislative branch, and on the possibility of reversal of Surinam and Netherlands Antilles legislation by the Netherlands government.⁵⁵

According to the member of the Dutch delegation for Surinam, a number of states had already prepared a sharp draft resolution condemning the Dutch decision, but he convinced them not to submit it.⁵⁶ Instead, the representatives of the non-Administering states argued that consideration of the Netherlands

52 For these debates *see generally* BuZa 1952a, BuZa 1954b, BuZa 1956a, Gastmann 1964, p. 225-32, Hasan Ahmad 1974, p. 311-30, Paula 1986, Te Beest 1988, Oostindie & Klinkers 2001a, p. 129-32 and the seven contributions by Spits to the journal *Indonesië* listed in the Bibliography.

53 BuZa 1952a, p. 17

54 Cf. Oostindie & Klinkers 2001a, p. 129,

55 *See* Te Beest 1988 for a discussion of the debates in the Special Committee.

56 Report of Mr. Pos to the Netherlands council of ministers of 29 October 1951, cited in Oostindie & Klinkers 2001b, p. 301, note 19.

communication should be postponed until the constitutional reforms within the Kingdom of the Netherlands had been completed.⁵⁷

In 1953, the issue was discussed at the UN on the basis of a letter by the Netherlands which formed an addition to the Explanatory Note of 1951, and which offered a slightly different legal underpinning of the Netherlands' decision.⁵⁸ The Explanatory Note had claimed primarily that Surinam and the Netherlands Antilles had become fully autonomous with regard to their domestic affairs. The letter of 1953 stressed that the new constitutional relation between the Netherlands and its overseas territories no longer allowed the Netherlands government to collect and transmit the information under Article 73 *e* because this information regarded subjects that were now fully within the autonomous area of Surinam and the Netherlands Antilles. The letter steered away from the subject of the precise extent of the autonomy of the territories, and called attention to the 'constitutional considerations clause' of Article 73 *e*. The Netherlands stated that the factors which should decide whether a full measure of self-government had been achieved should not be applied to this case, as the Dutch cessation of transmission of information was due to constitutional considerations, and not to the achievement of full self-government of the Netherlands Antilles and Surinam. The Netherlands thus tried to separate the obligation under Article 73 *e* from the question of self-government, just as the British government had done in 1949 with respect to Malta.⁵⁹

In the *ad hoc* Committee on Factors the representative of Guatemala suggested a solution to the constitutional obstacles on which the Netherlands based its decision of 1951: the Governors could fulfil the duties of the Netherlands under Article 73 *e*, since they were charged under Article 52 of both Interim Orders with supervising the observance and implementation of treaties and agreements with international organisations in Surinam and the Netherlands Antilles. On the basis of this Article, and as representatives of the King, the Governors could transmit the information required by the UN Charter, the Guatemalan representative argued. The Netherlands delegation did not respond to this suggestion, but the representative of Surinam in the Netherlands delegation observed that the Netherlands government would in any way be unable to act on any recommendations the GA might make, as the subject-

57 Furthermore, it was deemed impossible to assess the relation between the Netherlands and its overseas territories until the GA had formulated the factors which should decide whether a full measure of self-government had been reached. See GA Res. 568 (VI) of 18 January 1952.

58 UN Doc A/AC.67/3. Reprinted in BuZa 1954b, p. 65-68. The letter also made much of a comparison with Article 35 of the Constitution of the International Labour Organisation, a specialized agency of the UN. Article 35 of the ILO Constitution (as amended in 1946) frees states from the obligation to apply conventions to their non-metropolitan territories if 'the subject-matter of the Convention is within the self-governing powers of the territory'.

59 See El-Ayouty 1971, p. 151 et seq.

matter of the reports fell entirely within the autonomous powers of Surinam and the Netherlands Antilles.⁶⁰

During the discussions in the Committee it became clear that the non-Administering members considered the autonomy of the Dutch Caribbean territories insufficient to be termed 'a full measure of self-government'. These members also thought that paragraph *e* of Article 73 should be read in conjunction with the other paragraphs of that Article, which meant that the Netherlands government should continue transmitting reports until Surinam and the Netherlands Antilles had achieved 'a full measure of self-government'. The defence of the Netherlands based on the 'constitutional considerations' clause was rejected. The Netherlands position was supported, however, by the other Administering members, and because the Committee was established on the basis of parity between Administering and non-Administering members, it was unable to reach any conclusion on the matter.⁶¹

The Dutch delegation soon realised that a majority of the UN members did not approve of the cessation of transmission of information. The Netherlands had hoped to profit from the fact that the GA appeared willing to approve the cessation of transmission of information on Puerto Rico by the US which was expected during this same session.⁶²

In the Fourth Committee of the GA, the Netherlands representative implicitly acknowledged that the Surinam and the Netherlands Antilles had not achieved a full measure of self-government. He stated that the territories had not been fully integrated in the sense of Resolution 648 of 1952 (which was a precursor to Resolution 1541) but that constitutional considerations precluded the Netherlands from transmitting information under Article 73 *e*.

The representatives of Surinam and the Netherlands Antilles were allowed to address the Fourth Committee. They again supported the claim that the Netherlands could not provide the information under Article 73 *e* because of the autonomy of the Netherlands Antilles and Surinam. If the Countries themselves would provide it, the Netherlands could not be held responsible for it, nor for the situations which it regarded. The Antillean representative suggested that states might consult the publications that the Netherlands Antilles issued annually on the subjects covered by Article 73 *e*, but the Netherlands Antilles could not be asked to transmit that information to the Netherlands for communication to the UN, as such an action would suggest that the Netherlands government still had jurisdiction over these affairs.⁶³

60 Summary of the debate in the *ad hoc* Committee, UN Doc. AC.67/SR. 6 and 7 (mimeographed only), cited in Engers (1956) p. 178 and in BuZa 1954b, p. 15-19.

61 Report of the Ad Hoc Committee on Factors (Non-Self-Governing Territories), GAOR (VIII), Annexes, Agenda item 33, p. 7 (UN Doc. A/2428).

62 Cf. Spits 1954, p. 450-51, Engers 1956, p. 190-193, and BuZa 1954b, p. 20-21.

63 GAOR (VIII), Fourth Committee, 343rd Meeting, p. 178-81. The full text of the speeches is reproduced in BuZa 1954b, p. 85-90.

During the subsequent debate, the constitutional relation between the Netherlands and the overseas countries did not play an important role, probably because the Netherlands had not claimed a full measure of self-government had been achieved. The relations were nonetheless clearly misrepresented by a number of representatives,⁶⁴ most strikingly by the Indonesian delegate, who stated that the inhabitants of Surinam and the Netherlands Antilles could not vote in the elections for the *Staten*, nor be appointed to the Governing Council, as members of those bodies must possess Dutch nationality.⁶⁵

Only five states spoke in defence of the Netherlands position.⁶⁶ A majority of states was convinced that the Netherlands could find some way to transmit the information required by 73 *e* in order to fulfil its obligations under the UN Charter. Some states also expressed surprise at the attitude of the Netherlands Antilles and Surinam; UN involvement with their territories would be beneficial and would help them develop their self-government. Why would these territories refuse to be helped? Besides, the objections by the overseas countries to the transmission of information could not release the Netherlands from its international obligations.⁶⁷

Many representatives considered that the Netherlands Antilles and Surinam had not achieved a full measure of self-government,⁶⁸ and that the Netherlands itself had conceded this.⁶⁹ Most states doubted whether the Interim Orders really gave a substantial amount of autonomy to the overseas countries.

64 According to the representative of the Soviet Union, Surinam and the Netherlands Antilles were administered by Governors with extensive powers, who were not responsible to the parliaments of the territories. The legislative authority 'was entirely vested in the Parliament and Government of the Netherlands', the Governor appointed the members of the Governing Council and the president of the *Staten*, and the Supreme Court of the Netherlands had jurisdiction in the overseas countries. Although most of these observations were in correct in themselves, they also showed that the Soviet Union was not prepared to discuss the issue on the merits. *see* GAOR (VIII), Fourth Committee, 344th Meeting, p. 183.

65 *See* GAOR (VIII), Fourth Committee, 345th Meeting, p. 191. The representative of Byelorussia also raised this point (345th Meeting, p. 193). Antilleans and Surinamese were in fact already citizens of the Netherlands at this time (as was pointed out by an 'astonished' Dutch representative) and the members of the Governing Councils of both countries already existed entirely of 'members belonging to the indigenous population' (347th Meeting, p. 208).

66 Sweden, Denmark, Belgium, New Zealand, Australia, and the US. The UK and Canada explained their vote against the draft resolution by stating that the UN should have accepted the Dutch decision to stop transmitting information. France also explained its negative vote, but did not go into the question whether the Dutch cessation was justified. Pakistan stated it would be easy to take a decision on the matter (*i.e.* to decide that transmission of information should continue), but preferred to wait until the negotiations on the new constitutional order were completed. Cuba considered a full measure of self-government had not been achieved, but might be achieved after the negotiations on the new Charter had been completed. The Dominican Republic also preferred to wait.

67 *See for instance* the statement by Brazil (GAOR (VIII), 346th Meeting, p. 198).

68 Brazil, Poland, Liberia, Cuba, Soviet Union, Byelorussia, Yugoslavia, Iran, Iraq, India, Mexico and Chile.

69 India, Mexico, Yugoslavia and Iraq.

The fact that there continued to be ‘Governors’, appointed by the Dutch Crown and not directly responsible to the Staten, was an eyesore to many representatives. The Constitutions and the Interim Orders also appeared to place many important powers in the hands of the Governor, and it was not clear to the representatives that the executive and legislative powers had really been attributed to the ministers and the parliaments. The change in the position of the Governor after 1950/51 had in reality been quite drastic. It was described by one observer as: ‘from tsar to servant’ (*‘van tsaar tot dienaar’*),⁷⁰ but this revolution had been expressed in words that were only comprehensible to those well versed in Dutch constitutional law.

The Plenary of the GA decided by 33 votes to 13 with 8 abstentions that the Netherlands should continue to report (Resolution 747 (VIII) of 1953). The Netherlands stated that it would not carry out the Resolution.⁷¹ The next year, the Netherlands was accused in the GA of violating the Charter, but after the Netherlands had promised it would inform the UN next year on the Kingdom Charter which had been drafted, no further actions were taken.⁷²

6.3.4 The Netherlands Presentation of the New Constitutional Order

In 1955, the Netherlands informed the UN that the Kingdom Charter had officially come into force. In compliance with Resolutions 222 (III) and 747 (VIII), the Netherlands transmitted an English and a Spanish translation of the Kingdom Charter, and an Explanatory Memorandum, also in English and in

⁷⁰ Reinders 1993, p. 11.

⁷¹ GAOR (VIII) 459th Plenary Meeting, p. 319. Eight Latin American states that disapproved of the cessation of transmission of information with respect to the Netherlands Antilles and Surinam only a few minutes later approved the US decision to stop transmitting information on Puerto Rico. These states explained their vote by saying that Puerto Rico had achieved a larger measure of self-government than the Dutch territories under the Interim Orders. It was stated that Puerto Rico had drafted its own Constitution, the people of Puerto Rico had approved its new status in a plebiscite, and its governor was elected through elections in Puerto Rico. The representative of India opposed this position because Puerto Rico was not as autonomous in economic affairs as the Netherlands Antilles and Surinam, and there had been true opposition among the people of Puerto Rico against the new status, which had been absent in the Dutch territories.

⁷² During the ninth session of the GA, many non-Administering states called on the Netherlands to resume transmitting reports. The representative of the Soviet Union accused the Netherlands of violating the UN Charter. The other non-Administering states were willing (for the time being) to refrain from further actions, as the Netherlands representative had informed the Fourth Committee that agreement had been reached on a Kingdom Charter, which had been approved during 1954 by the parliaments of the Netherlands, Surinam and the Netherlands Antilles. The Netherlands representative promised to report to the Secretary-General within six months after the Kingdom Charter had come into force. See BuZa 1956a, p. 7-12.

Spanish.⁷³ In the letter accompanying these documents, the permanent representative of the Netherlands (*i.e.* the Kingdom) stated that 'the Netherlands Government regard their responsibilities according to Chapter XI of the Charter with regard to [Surinam and the Netherlands Antilles] as terminated'. In other words, Surinam and the Netherlands Antilles had achieved a full measure of self-government, in the view of the Netherlands, even though the autonomy of Surinam and the Netherlands Antilles under the Kingdom Charter was hardly larger than under the Interim Orders. In case the UN should still think that Chapter XI applied, the Netherlands also stated that the constitutional considerations which had prevented the transmission of information since 1951 had 'become even stronger under the new Charter'.

The Netherlands expected the Caribbean Countries to join in the defence the Kingdom Charter at the UN, and some political pressure was exerted to obtain their support.⁷⁴ Shortly before the UN was to discuss the case, a conflict between the governing council and the Governor of the Netherlands Antilles led the governing council to announce that the Netherlands delegation would not include an Antillean member, and that the Antilles would only send a representative to New York to discuss the problem with the Latin American states.⁷⁵ The Netherlands expressed its concern, and the Governor and the governing council soon settled their differences. The Netherlands Antilles issued a declaration to the UN that:

[the Netherlands Antilles] do not feel like a colony or a dependent territory anymore, they feel like a country, small but proud of its rights and its quality to anyone. The Netherlands Antilles are satisfied with this unique relationship and the Netherlands Antilles in this phase of their political development consider themselves selfgoverning.⁷⁶

The delegation of the Netherlands to the Committee on Information and the GA included representatives of the Netherlands Antilles and Surinam. In the Committee on Information, they were members of the delegation, in the GA they were 'special advisers' to the representatives. This posed an interesting problem from the perspective of international law and the constitutional law of the Kingdom. Did the members of the delegation speak on behalf of their countries or the Kingdom? The Netherlands representative stated that all

73 UN Doc. A/AC.35/L.206. Reproduced in BuZa 1956a.

74 The permanent representative of the Netherlands at the UN, Mr. Schürmann, went to Willemstad to convince the Netherlands Antilles, *see* Te Beest 1988, p. 53 and Oostindie & Klinkers 2001a, p. 130-1. The Netherlands pressure created some suspicion in the Netherlands Antilles as it was feared the Netherlands wished to force the Netherlands Antilles to declare at the UN that all of its constitutional wishes had been fulfilled by the Charter. The Netherlands might later use such a declaration in case the Netherlands Antilles would wish to change the Charter. *See* Oostindie & Klinkers 2001a, p. 304, note 27.

75 Te Beest 1988, p. 53.

76 Cited in Oostindie & Klinkers 2001a, p. 130.

members of the delegation represented the Kingdom. This was probably correct, for the Kingdom constitutes the state in international law, and the Kingdom is a member of the UN.⁷⁷ In this sense, all of the statements by all of the members of the delegation must be ascribed to the Kingdom, and the Kingdom must also be considered to be bound by statements of the representatives of Surinam and the Netherlands Antilles, inasmuch as statements at the UN are binding under international law. Apart from the fact that the special advisers sometimes appeared to think that they did speak on behalf of their country,⁷⁸ there was the problem that the delegation did not really speak with one voice. The members of the delegation differed in their interpretation of the new constitutional order of the Kingdom, and the role of the UN, although they did not emphasise these differences.⁷⁹ Nonetheless, it must have been notable to the other delegations at the UN that the Netherlands did not present a completely unified front.

The Netherlands somewhat misrepresented the new constitutional order at the UN. It exaggerated the legal autonomy of the overseas countries and the role of the those Countries in the legislation of the Kingdom. The Netherlands representative for instance claimed that during the 'continued deliberations' after a Minister Plenipotentiary has indicated that he has serious objections to a preliminary opinion of the Council of Ministers of the Kingdom (*see* Article 12 of the Charter), the Netherlands and the Caribbean Countries would be represented by an equal number of ministers, so as 'to prevent the possibility of the Ministers Plenipotentiary being outvoted or overruled'.⁸⁰ Mr. Ferrier, prime minister of Surinam, claimed in the Fourth Committee that the Ministers Plenipotentiary 'could block any proposed legislation of a general and binding nature if they considered it detrimental to the country'.⁸¹ Neither speaker mentioned the crucial fact that the prime minister of the Netherlands

77 The representatives of India and Ecuador thought differently (*see below*). India considered the delegates of Surinam and the Netherlands 'special advisers of the Netherlands delegation'.

78 Mitrasing 1959, p. 281 et seq. refers to Ferrier and Van Ommeren as representatives of Surinam.

79 *See for instance* the different views Schürmann (the representative of the Netherlands) and the special advisers on the right to self-determination and the right of secession. Schürmann uttered some misgivings to the Netherlands Government about certain remarks by prime minister Jonckheer of the Netherlands Antilles in the Fourth Committee. Jonckheer, on the other hand, is quoted to have said in 1957, during a conflict with The Hague on some other issues, that he would regard his defence of the Kingdom at the UN 'as a show' and that he would 'feel personally betrayed' if The Hague were now to decide against him. *See* Oostindie & Klinkers 2001, p. 131 and p. 305, note 29.

80 GAOR (X), Fourth Committee, 520th Meeting, p. 282-3.

81 GAOR (X), Fourth Committee, 526th Meeting, p. 319.

also takes part in the continued deliberations, so that the Netherlands can in fact always 'outvote or overrule' the Caribbean Countries.⁸²

The Netherlands also attempted to influence the opinion of the UN by translating the text of the Charter in a way that emphasised that the new constitutional order was based on mutual consent. The important phrase '*op voet van gelijkwaardigheid*' in the Preamble was translated as 'on the basis of equality' (in Spanish: '*en pie de igualdad*').⁸³ This was not correct, as '*gelijkwaardigheid*' translates as 'equivalence' ('*equivalencia*' in Spanish), whereas 'equality' or '*igualdad*' translates as '*gelijkheid*' in Dutch.⁸⁴ It is true that these terms are occasionally used interchangeably (for instance in mathematics), but in relation to the Kingdom order a conscious choice was made to use the term equivalence instead of equality.⁸⁵

The Explanatory Memorandum and the representatives of the Netherlands in the UN debates nonetheless repeatedly used the term 'equality', or even 'absolute equality',⁸⁶ which probably explains, at least partly, why so many states' representatives found it necessary to point out that the countries were *not* equal under the Kingdom Charter. Many representatives detected evidence of inequality between the three countries in matters of legislation and administration. It was wondered how the countries could conduct their common interests 'on the basis of equality' in view of the great disparity in the size of the populations of the three countries. Egypt stated there existed no equality between the countries because of the preponderance of the Netherlands in the procedure for Kingdom legislation, and because of the restrictions on the legislative powers of the overseas countries, in particular under Article 44 of the Charter. Many other states agreed the countries were unequal in a legal sense.⁸⁷

On the other hand, the states supporting the Dutch position often defended the Kingdom Charter by referring to the 'equality' it created between the

82 Except when Article 26 of the Kingdom Charter applies. In reply to a question by the representative of Venezuela, prime minister Jonckheer of the Netherlands Antilles admitted that the Netherlands always commanded a majority in these deliberations, as it would 'clearly be unjust' if Surinam and the Netherlands Antilles could impose their will on the Netherlands. But, Jonckheer added, the prime minister of the Netherlands 'by his very position, was able to judge a case impartially'.

83 '*Igualdad*' is usually translated as 'equality'.

84 In a similar sense, see Bos 1976, p. 134, and Munneke 1993, p. 62. See also Van Rijn 1999, p. 73. Logemann 1955, p. 51 translates '*gelijkwaardigheid*' as 'equality of status'. The English translation currently provided on the website of the Ministry of the Interior and Kingdom relations still uses the phrase 'on a basis of equality', as does the translation in Besselink 2004.

85 See Chapter 4, in the paragraph on equivalence and voluntariness.

86 Statement by Mr. Jonckheer, prime minister of the Netherlands Antilles, GAOR (X), Fourth Committee, 520th Meeting, p. 285.

87 Iraq, Lebanon, India, Poland, Soviet Union, Ecuador, Venezuela, Yemen, Liberia, Indonesia, and Burma.

countries. Israel, for instance, stated that 'by including the words "on a basis of equality" in the preamble to the Kingdom Charter, the Netherlands had declared an end of the colonial system and had subscribed to the general principle of equality among nations'.⁸⁸

6.3.5 Debate on the Kingdom Charter

In the Committee on Information from Non-Self-Governing Territories of 1955, the Minister Plenipotentiary of Surinam (Mr. Pos) and the Lieutenant Governor of Curaçao (Mr. Gorsira), expounded on the new constitutional structure of the Kingdom and as a gesture of goodwill they submitted 'General Reviews' of the situation in their countries with respect to social, economic and educational affairs. The Netherlands had requested the governments of the Netherlands Antilles and Surinam to prepare these general reviews for the UN,⁸⁹ thereby in fact demonstrating how easy it might be for the Kingdom to fulfil the obligations under Article 73 *e*, but no state representative commented on this fact.

The representatives of Brazil, Burma, China, Guatemala and India posed a large number of rather critical questions on the extent of the autonomous powers of Surinam and the Netherlands Antilles and the procedure for creating Kingdom legislation. These were answered by the representatives of Surinam and the Netherlands Antilles.⁹⁰ To the question whether the inhabitants of Surinam and the Netherlands Antilles had been consulted with respect to their new constitutional status, it was answered that this had not been deemed necessary, 'since *all* political parties had supported the constitutional changes'.⁹¹ The questions of Guatemala followed the scheme of the third part of the list of factors of GA Resolution 742 (VIII),⁹² which dealt with the integration of a NSGT with the mother country. Guatemala therefore wanted information on the ethnical make-up of the population of Surinam and the Netherlands Antilles, the political development of the territories, the voting rights of illiterate persons, and a number of other subjects. The Guatemalan representative was also interested to know whether the opinion of the populations of the territories had been freely expressed by informed and democratic processes. The Netherlands delegation answered that:

88 GAOR (X), Fourth Committee, 523rd Meeting, p. 302. *See also* the statement by Mexico, 521st Meeting, p. 291.

89 Te Beest 1988, p. 53, with reference to a letter by the Dutch minister for Overseas Affairs.

90 These questions and answers are summarized in BuZa 1956a, p. 103 et seq.

91 Report of the Committee on Information from Non-Self-Governing Territories, GAOR (X) Supplement No. 16, p. 7-10. UN Doc. A/2908.

92 This Resolution was a precursor to Resolution 1541 of 1960.

The freely elected Parliaments in Surinam and the Netherlands Antilles had unanimously accepted the Charter of the Kingdom of the Netherlands. Negotiations with respect to the Charter had been under way for a number of years, and the questions at issue had been freely discussed in the local press. As a consequence, the population of Surinam and the Netherlands Antilles had been kept fully informed with respect to the constitutional changes which had subsequently been enacted.⁹³

When asked whether the territories had the right to modify their present status, Mr. Pos replied that the Ministers Plenipotentiary of Surinam and the Netherlands Antilles had the right to introduce a bill to amend the Charter, which would have to be approved by the parliaments of the Netherlands, Surinam and the Netherlands Antilles. Mr. Pos furthermore assured the Committee that it would be 'contrary to the established policy of the Netherlands to prevent a partner from leaving the Kingdom if that partner desired to do so'.⁹⁴ This statement probably left the Members wondering how and when this Dutch policy had been 'established', but it was accepted as a promise with regard to the future policies of the Netherlands, and as such it played an important role in the debate in the Fourth Committee.

The Netherlands were convinced that the attitude of the Latin American states would be crucial. The other non-Administering members of the Committee would follow them, as the issue was considered to be of most importance for Latin America. The diplomatic offensive that the Netherlands had deployed during the adjournment of the Committee turned out to have been unsuccessful because none of the Latin American members were now prepared to submit the draft resolution approving the Dutch cessation of transmission of information that the Netherlands had circulated among the members.⁹⁵

Finally, Brazil was found willing to defend the Dutch decision, but in a more marginal way than the Netherlands had hoped. The Netherlands draft resolution had declared that Article 73 no longer applied to the Netherlands Antilles and Surinam. The resolutions on Puerto Rico and Greenland had also declared this, but Brazil estimated that a majority of the Latin American states would not be willing to draw a similar conclusion with regard to the Netherlands Antilles and Surinam. Together with the US, it submitted a draft resolution, which most important paragraph stated that the Committee was of the opinion that:

93 Report of the Committee on Information from Non-Self-Governing Territories, Addendum, GAOR (X) Supplement No. 16A, p. 1. (UN Doc. A/2908/Add.1.) The report does not indicate which member of the Netherlands delegation answered these questions.

94 Report of the Committee on Information from Non-Self-Governing Territories, Addendum, GAOR (X) Supplement No. 16A, p. 1. UN Doc. A/2908/Add.1.

95 Te Beest 1988, p. 57-9 describes the diplomatic efforts by the Netherlands.

(...) the transmission of information under Article 73 *e* of the Charter in respect of Surinam and the Netherlands Antilles is no longer necessary or appropriate.⁹⁶

The draft resolution did not declare that Article 73 in its entirety no longer applied to Surinam and the Netherlands Antilles, nor that those countries had obtained a full measure of self-government, or that they had exercised their right to self-determination, all of which had been declared in the Resolution on Puerto Rico.

The representatives of Brazil did state in the Committee that it considered Surinam and the Netherlands Antilles to be 'self-governing countries'. According to *Te Beest* this statement only referred to self-government in the affairs governed by Article 73 *e*, and not to 'a full measure of self-government'.⁹⁷ This might be true. The well-nigh impossible situation in which some non-Western states must have found themselves led to some creative use of language.

The Netherlands delegation, however, interpreted the statement by Brazil to mean that Brazil considered that Chapter XI no longer applied to Surinam and the Netherlands Antilles, and therefore regretted that the draft resolution did not make this explicit. It stated that:

The Netherlands delegation, in order to avoid unnecessary controversy, was prepared to accept that omission because the conclusion reached in the draft resolution that transmission of information was no longer necessary or appropriate implied that those countries were no longer non-self-governing.

This implication was of course not all that obvious, as the Dutch case in 1953 had been based almost entirely on the constitutional considerations clause of Article 73 *e*, which makes it possible that information is no longer transmitted, even though a full measure of self-government has not been achieved.

The representative of Peru voiced the opinion of many Latin American states and other non-administering states when he explained why his delegation would abstain from voting on the draft resolution. He conceded that the two territories 'had advanced considerably towards full self-government', and he expressed the hope that they would in the future attain full self-government 'through the exercise of the right of self-determination'. He regretted however that the draft resolution implied that the cessation of information was a consequence of the achievement of full self-government. Even though the territories enjoyed autonomy in the specific fields to which Article 73 *e* of the Charter referred, it was clear that Surinam and the Netherlands Antilles 'remained (...) in a state of dependency in important respects within the

⁹⁶ UN Doc A/AC.35/L.216. See Report of the Committee on Information from Non-Self-Governing Territories, Addendum, GAOR (X) Supplement No. 16A, p. 3. (UN Doc. A/2908/Add.1.)

⁹⁷ *Te Beest* 1988, p. 59.

juridical system and under the authority of the State which had been administering them'. Peru accepted that the Netherlands might be unable to transmit the reports under Article 73 *e*, but Chapter XI contained other obligations which would continue to exist until the Territory had attained a full measure of self-government, at which point the entire Chapter became inapplicable.⁹⁸ The Brazilian-American draft resolution was adopted by the Committee on Information by seven to one votes, with five abstentions.

The Netherlands sent a large delegation to the subsequent debate in the Fourth Committee of the GA. It consisted of a representative of the Netherlands (the country or the Kingdom, this was not made clear), and as 'special advisers' the prime ministers of Surinam and the Netherlands Antilles and the presidents of the *Staten* of the Caribbean countries. The presence of these four representatives of the Netherlands Antilles and Surinam, which eloquently defended the new constitutional order of the Kingdom, appears to have made a considerable impact on the Fourth Committee. Many states, especially those which were not enthusiastic about the Dutch decision to stop transmitting information, commended the Netherlands on the composition of its delegation.

As in the Committee on Information, the debate in the Fourth Committee mainly consisted of a large number of questions posed by non-Administering states.⁹⁹ This was an indication of a greater willingness on the part of states to judge the issue on its merits. Especially the Latin American states seemed determined to obtain an accurate impression of the measure of autonomy obtained by Surinam and the Netherlands Antilles, although Brazil, Mexico and Cuba stated at the start of the debate that they were satisfied with the results laid down in the Kingdom Charter and were prepared to release the Netherlands of its duties under Article 73 *e* without further discussion. This was a clear sign of the changed situation in the GA, as these three states had explicitly declared in 1953 that the Netherlands Antilles and Surinam had not achieved a full measure of self-government. A cynical observer might have concluded afterwards that the large number of questions by non-Administering states was only intended to justify the fact that most of these states abstained or voted in support of the Netherlands position, which needed to be defended to the anti-colonial movement in the UN and elsewhere. The fact remains that the debates revealed how states looked at the new constitutional order of the Kingdom and what they considered to be the obligations of the Kingdom under the UN Charter and other international law.

98 Report of the Committee on Information from Non-Self-Governing Territories, Addendum, GAOR (X) Supplement No. 16A, p. 3. (UN Doc. A/2908/Add.1.)

99 These debates took 8 meetings on 7 days, see GAOR (X), Fourth Committee, 520th-527th Meeting.

Confusion Created by the Charter

Many states complained that the Kingdom Charter was hard to understand. The representative of Haiti complained that 'it was easy to lose one's way in the tangle of those rather contradictory provisions' (concerning an amendment to the Charter that conflicted with the Constitution of the Netherlands).¹⁰⁰ One of the reasons for this was that some of the elements of the new order were not regulated by the Charter itself, but by other legislation of the Kingdom and the countries. A number of representatives therefore asked for the text of the Kingdom act for the Governor ('*Reglement voor de gouverneur*'), the regulations of the countries with respect to the powers of the Governor, and the paragraphs of the Constitution of the Netherlands that were relevant to the Kingdom, 'to dispel certain doubts which still existed'.¹⁰¹ The Netherlands representative did not consider it necessary to supply these documents as 'all provisions directly affecting relations between the countries were contained in the Charter'.¹⁰² A number of representative protested that the Charter clearly delegated legislative powers to the Constitution of the Netherlands (see Article 5, para 1 of the Charter). Schürmann could not deny that the Netherlands Constitution to a large extent determined the composition of the Kingdom organs, but still did not think it necessary to provide the UN with the text of the relevant Articles.

The US agreed that the 'the ingenious arrangement' between the Netherlands, Surinam and the Netherlands led to many misunderstandings and disagreements, for instance on the difference between the *Country* and the *Kingdom* of the Netherlands.¹⁰³ Pakistan asked whether it had been the country that had transmitted information on the Netherlands Antilles and Surinam under Article 73 *e*.¹⁰⁴ Mr. Schürmann replied that the difference between the Country and the Kingdom only existed since 1954, but that it had been the *Kingdom* government that had transmitted the text of the Charter and the Memorandum to the Secretary-General. The representative of Indonesia then pointed out that this communication had been received from the Netherlands government, which to her apparently meant the country of the Netherlands. Pakistan suggested to strike the word 'Kingdom' from the phrase 'the communication (...) by which the Government of the Kingdom of the Netherlands transmitted to the Secretary-General the constitutional provisions (etc.)' in the preamble of the Brazil-US draft resolution.¹⁰⁵ India, Ecuador, Liberia, Lebanon

100 522nd Meeting, p. 297.

101 Venezuela, Liberia, Thailand, Iraq, Peru, Guatemala and Ecuador.

102 Statements by Schürmann, GAOR (X), Fourth Committee, 520th and 521st Meeting, p. 286 and 292-3.

103 See for instance the statement by Ecuador, 524th Meeting, p. 311.

104 GAOR (X), Fourth Committee, 526th Meeting, p. 325.

105 GAOR (X), Fourth Committee, 527th Meeting, p. 326.

and Syria spoke in support of this suggestion,¹⁰⁶ which was subsequently adopted by the sponsors of the draft resolution and thus found its way into the final text of the Resolution.

It was thereby prevented that the GA might seem to express its approval of the new structure of the Kingdom, or that the GA might seem to agree to the contention that the administration of the Netherlands Antilles and Surinam would be subsumed under the domestic jurisdiction of the Netherlands, and that Article 2, para. 7 of the UN Charter would prevent the GA from discussing the situation in the future. This discussion, and others like it, also showed that the representatives of non-Western states were not readily inclined to accept that the government institutions of the Netherlands could act in two different capacities, or that the Kingdom was not really the Netherlands. Many states considered the Kingdom a legal fiction which bore no resemblance to the real division of power between the Netherlands and the Caribbean countries.

Powers of the Kingdom

The representatives of Iraq and Indonesia stated that Article 44 of the Kingdom Charter gave the Netherlands veto power over matters which fell outside Kingdom affairs, and which should belong to the domestic affairs of Surinam and the Netherlands Antilles.¹⁰⁷ Iraq considered the legislative and executive bodies of the Netherlands were in fact, though not in name, the governing organs of the Kingdom as well, and hoped the Caribbean countries would eventually be granted a more effective representation in the parliament of the Netherlands and in the conduct of Kingdom affairs. A number of representatives also objected to Articles 50 and 51 of the Charter, as it allowed the Kingdom Government to interfere with the internal affairs of Surinam and the Netherlands Antilles.¹⁰⁸ Questions were raised about the powers of the Governors, and whether the legislation regulating the position of the Governor had been promulgated already. Egypt stated that 'political control was reserved to the central government of the Kingdom', by which it meant the government of the country of the Netherlands.

¹⁰⁶ GAOR (X), Fourth Committee, 527th Meeting, p. 327-8.

¹⁰⁷ GAOR (X), Fourth Committee, 521st Meeting, p. 289, and 526th Meeting, p. 323. Article 44, para. 1 of the Kingdom Charter provides that changes to the constitutions of the Caribbean countries ('*Staatsregelingen*') which relate to fundamental human rights and freedoms, the powers of the Governor, the powers of the Staten, or the judiciary, should be approved by the government of the Kingdom.

¹⁰⁸ Articles 50 and 51 give the Kingdom government the power to annul any legislative or executive decision of the Caribbean countries that is in violation of the Kingdom Charter or other Kingdom legislation, an international agreement, or with other interests that are entrusted to or guaranteed by the Kingdom. If an organ of a Caribbean country does not live up to its obligations under the Kingdom legislation or an international agreement, the Kingdom government can decide how these obligations will be met.

Why No Independence?

Many states uttered their surprise or even disbelief at the contention that the Netherlands Antilles and Surinam did not want to become independent. Some simply stated that the Netherlands Antilles and Surinam did strive to become independent.¹⁰⁹ The Philippines wondered why there had been any need for the Kingdom Charter, seeing that the countries could conduct their internal affairs and make their own constitution, which were attributes of a sovereign state. Why had the countries not become fully independent?¹¹⁰ The Soviet Union stated that 'it was scarcely credible (...) that the peoples of the two Territories who had struggled for centuries for independence really did not wish to rid themselves of colonialism and attain independence' and proposed to send a visiting mission in accordance with GA Res. 850 (IX) of 1954.¹¹¹

Mr. Yrausquin, president of the *Staten* of the Netherlands Antilles, assured the Fourth Committee that his country would have no difficulty in realising a change in its existing status, in view of the principles laid down, and the understanding shown by the other parts of the Kingdom.¹¹² The prime minister of the Netherlands Antilles, Mr. Jonckheer, seemed to think that his country had already acquired its independence,¹¹³ but that it would not hesitate to apply to the UN should its relations with the Netherlands develop in a way that was not in conformity with the will of the people. Jonckheer reminded the Fourth Committee of the telegram he and other Antilleans had sent in 1948 to ask the UN and the Pan-American Union (now called the OAS) to support Curaçao in its struggle to obtain democratic rights and to rid itself of the colonial yoke.¹¹⁴ The Netherlands representative reported back to the Netherlands government that he feared Jonckheer had recognized the competence of the UN to continue its involvement with the Kingdom relations by these remarks.¹¹⁵

Mr. Van Ommeren, president of the *Staten* of Surinam, also spoke of 'the acquired independence' of the countries, and of their feeling of complete autonomy, even though 'no formal provision with regard to the subject of

109 For instance Czechoslovakia.

110 521st Meeting, p. 289.

111 524th Meeting, p. 308.

112 520th Meeting, p. 286.

113 Statement by Jonckheer, 520th Meeting, p. 286 (full text reproduced in BuZa 1956a, p. 133): '*Nos sentimos y somos independientes*', which was translated in the GAOR as: 'The country had acquired its independence', and again during the 522nd Meeting ('two independent countries managing their own affairs').

114 *Keesings Historisch Archief*, No. 876, 7535. The GAOR contains no reference to this telegram, but *The Washington Post* reported about it in its edition of 5 March 1948 under the heading 'U.N. Is Asked to Intervene For Independence of Curaçao'. The telegram was at the time widely condemned in Curaçao, see Kasteel 1956, p. 179.

115 Oostindie & Klinkers 2001a, p. 131.

secession has been formulated in the Statute [*sic*].¹¹⁶ Mr. Ferrier, prime minister of Surinam, was the only representative of the overseas countries who did not claim the countries were or felt independent. He admitted that Surinam had not achieved complete autonomy, but that it had freely done so and for good reasons.¹¹⁷ The Netherlands representative did not go into this question, but the Explanatory Memorandum stated that none of the countries could unilaterally change the existing constitutional order.

Opinion of the People

Many states asked whether the opinion of the Antilleans and Surinamese had been requested. Mr. Ferrier answered that 'the peoples concerned had accepted the Charter for the Kingdom'. The discussions on the proposed Charter had been followed by the press in Surinam, so there had been 'no point' in consulting the people directly.¹¹⁸

The representative of Liberia did not consider this consultation very democratic,¹¹⁹ and stated that a referendum was essential.¹²⁰ A few other states agreed.¹²¹ Many other states were satisfied, however, that the populations of the Netherlands Antilles and Surinam had expressed their opinion, albeit indirectly, on the Charter. Thailand for instance considered that there had been 'indirect plebiscites' because the authorities had clearly stated the issue of approval of the Charter during the elections.¹²² The fact that no resistance was perceived to have existed against the new constitutional order in the Caribbean countries appeared to be an important factor for many representatives.¹²³

116 Statement by Van Ommeren, 520th Meeting, p. 284. Full text reproduced in BuZa 1956a, p. 127.

117 520th Meeting, p. 284.

118 522nd Meeting, p. 295.

119 522nd Meeting, p. 296.

120 525th Meeting, p. 317.

121 Afghanistan, Guatemala and Burma.

122 The historical sources actually do not reveal that the negotiations on the Kingdom Charter had been an important issue in the parliamentary elections in the Netherlands Antilles (*see for instance* Reinders 1993, p. 23).

123 The only act of resistance of which the representatives may perhaps have been aware was by a consortium of Surinamese organisations in the Netherlands, which sent a letter to the Secretary-General of the UN in November of 1955 in which they stated that Surinam should continue to be treated as a NSGT. It is not clear whether the Fourth Committee was aware of the letter. The GAOR does not contain a reference to it. In the press in Surinam, the telegram was denounced as 'treacherous' and the senders as 'paria's' who were probably influenced by Communists. *See* Mitrasing 1959, p. 281-2.

Right of Secession?

The Minister Plenipotentiary of Surinam asked the Netherlands government before the start of the debate in the Committee on Information to issue a declaration similar to US President Eisenhower's declaration of 1953, in which he had promised that he would support a Puerto Rican request for independence. The Netherlands refused, because the Netherlands parliament had not been willing to recognise the right of self-determination (including the right of secession) of Surinam and the Netherlands Antilles in the Charter. It would not be acceptable if the government of the Netherlands would now recognise it in an international forum so that the Kingdom would be bound by it.¹²⁴

The states which supported the Netherlands referred to a speech made by the Queen of the Netherlands at the promulgation of the Kingdom Charter, in which she stated that it was 'impossible, that an agreement such as this, would not be based on *complete voluntariness*'.¹²⁵ The interpretation of this speech changed during the debates. At first it was stated by the supporters of the Netherlands that the Netherlands would properly consider any reasonable request by the Netherlands Antilles or Surinam, and that states should simply trust the Netherlands.¹²⁶ Later, the speech was stated to have created a legal right of secession for the Caribbean countries.¹²⁷ Many other states were not satisfied that the Queen's speech was sufficient guarantee for the countries' right of secession.¹²⁸

Right to Self-Determination

The representatives of the Netherlands Antilles claimed that the 'peoples' of the Netherlands Antilles, Surinam and the Netherlands had exercised their right to self-determination in accepting the Charter for the Kingdom and that the Charter recognised the right to self-determination of the countries.¹²⁹ The prime minister of Surinam stated that the Charter was directly based on the principle of self-determination.¹³⁰ The Netherlands representative did not go into this subject, nor did the Explanatory Memorandum.

¹²⁴ Te Beest 1988, p. 53-4.

¹²⁵ Speech of 15 December 1954, reproduced in *Schakels*, No. 54 (January 1955), p. 3. Mr. Pos, Minister Plenipotentiary of Surinam, first directed the attention of the members of the Committee on Information to this speech. In Dutch, this text read: '*onbestaanbaar, dat een overeenkomst als deze, anders dan op volledige vrijwilligheid gegrond zou zijn*'.

¹²⁶ See for instance the statements by the US (521st Meeting, p. 290) and Mexico (521st Meeting, p. 291).

¹²⁷ See for instance the statements by Lebanon (523rd Meeting, p. 304) and Liberia (525th Meeting, p. 317).

¹²⁸ Egypt, Poland, Soviet Union, Czechoslovakia, Liberia and Afghanistan.

¹²⁹ Statements by Jonckheer and Yrausquin, GAOR (X), Fourth Committee, 520th Meeting, p. 284 and 286.

¹³⁰ GAOR (X), Fourth Committee, 520th Meeting, p. 284.

Some states agreed that the Netherlands Antilles and Surinam had exercised their right to self-determination,¹³¹ or that the countries had been granted the possibility to exercise that right in the future.¹³² Others thought that this right had not yet been exercised because the populations had not been granted the freedom to choose another political status than that laid down in the Kingdom Charter, and feared that the Charter might make it impossible in the future for the populations to exercise that right.¹³³ Most representatives, however, did not explicitly refer to the right to self-determination.

Characterization of the New Legal Order of the Charter

In fact, most states used the term 'association' to refer to the new Kingdom relations.¹³⁴ Unfortunately, the meaning of the term 'association' was in a state of flux in 1955. It did not necessarily refer to what is now known as associated statehood or free association. The third part of Resolution 742 (VIII) of 1953 used the term 'free association' to refer to what would be called 'integration' in Resolution 1541. Mexico and other states referred to this third part of Resolution 742, and perhaps thought the Kingdom should be classified as a form of integration, in today's language.¹³⁵ On the other hand, the debate focussed to a large extent on the right of secession of the Caribbean Countries and on the question whether the Kingdom organs could exert influence on the internal affairs of the Countries. This suggests that the representatives judged the Kingdom as a form of free association.

A number of states claimed that Surinam and the Netherlands Antilles were still NSGTs. India stated that the position of the Netherlands Antilles and Surinam did not fulfil the criteria for full self-government, and that their position was not one of partnership but of dependence. In connection with this, India considered that the member state of the UN was not the new Kingdom, but 'the State of the Netherlands, a European country'. India did not accept that the Kingdom Charter had created a superstructure which exercised the sovereign powers of a state.¹³⁶ Ecuador agreed that the Kingdom was not the member state of the UN.¹³⁷ It explained that 'the tripartite association [of the Kingdom] was between a sovereign State on the one hand and two

131 Belgium and Colombia.

132 Dominican Republic.

133 India, Ecuador and Greece.

134 The US, for instance, considered that the Kingdom had become a 'voluntary association of peoples' (521st Meeting, p. 290). Mexico referred to 'the association between the Netherlands, Surinam and the Netherlands Antilles' (521st Meeting, p. 291).

135 Egypt and Venezuela also referred to the third list of factors (and concluded that the Kingdom relations were not yet up to par).

136 527th Meeting, p. 327. The Indian representative also maintained that Queen Juliana was only Queen of the Netherlands, not of Surinam or the Netherlands Antilles (524th Meeting, p. 309).

137 527th Meeting, p. 328.

“countries”, which were not states, on the other’.¹³⁸ Liberia and Syria also appeared to agree with this interpretation of the Kingdom structure.¹³⁹ The Soviet Union and Czechoslovakia stated that the Netherlands Antilles and Surinam were still colonies,¹⁴⁰ but no other states dared draw this conclusion in such unequivocal terms.¹⁴¹

A number of other representatives indicated that they thought a full measure of self-government could only be achieved when the ‘Territories’ acquired sovereignty or some other form of international personality, after which they might perhaps choose to delegate part of their sovereign powers to another state, or even to integrate with a state on an equal basis with other parts of that state (*i.e.* as a province, state, department or other form of administrative subdivision). The main point of these representatives was that the peoples of Surinam and the Netherlands Antilles had not acquired sovereignty under the Kingdom Charter, and were therefore not yet fully decolonized.¹⁴² The thesis that the Netherlands had defended since 1951 that sovereignty had ‘spread out’ over the Netherlands Antilles, Surinam and the Netherlands remained controversial.

The discussion on who exactly had provided the information on the Kingdom Charter to the UN (*see above*) revealed that many of the anti-colonial states thought the Kingdom was little more than a paper construction to satisfy the UN, while the real form of government of the Netherlands was that of a state administering two NSGTs.

Lebanon appeared to think that the Kingdom was intended as a federal state when he commented that in most states with ‘a pluralistic structure’, the constitutionality of statutes was decided by the supreme judicial organ, whereas in the Kingdom that role was exercised by the King (based on Article 50).¹⁴³ Most supporters of the Netherlands did not try to pin a name on the structure of the Kingdom, but merely commended the partners for finding a unique solution to their problems.

A Full Measure of Self-Government?

All states agreed that the Netherlands Antilles and Surinam had achieved *some* measure of self-government, but only a few stated they had achieved a *full* measure, and of these states, at least some used this phrase (confusingly) to

138 524th Meeting, p. 310. The Caribbean countries were not states, according to Ecuador, because they did not possess the right to self-determination.

139 527th Meeting, p. 328.

140 525th Meeting, p. 316.

141 Egypt, Venezuela and Ecuador also applied the third list of factors and concluded that the factors had not yet been fulfilled.

142 Uruguay, Argentina and Peru.

143 522nd Meeting, p. 297.

refer only to the subjects of Article 73 *e*.¹⁴⁴ Of the non-Administering states, some were unwilling to indicate exactly whether they thought the self-government of the Netherlands Antilles and Surinam was sufficient to warrant the title 'a full measure of self-government'. A considerable number of representatives stated that this was not the case,¹⁴⁵ and others, while not explicitly reaching this conclusion, left little doubt that they considered the autonomy of Surinam and the Netherlands insufficient.¹⁴⁶

Application of the Other Paragraphs of Article 73

The representative of Yugoslavia asked Brazil and the US whether the adoption of their draft declaration would mean that the other paragraphs of Article 73 would no longer apply to the Netherlands as well, in which case Yugoslavia would vote against it. The US and Brazil answered that the resolution deliberately did not address the question whether Chapter XI still applied to Surinam and the Netherlands Antilles. The US representative stated that 'the proposal left each representative free to vote on the draft resolution without prejudice to his interpretation of the Chapter as a whole'.¹⁴⁷

This statement offered many non-Administering states a way out of their predicament. They did not wish to vote against a US proposal,¹⁴⁸ but they also did not wish to declare that the Netherlands Antilles and Surinam were self-governing. Many representatives stated in the Fourth Committee that they considered that Paragraphs *a* to *d* of Article 73 would remain to apply to Surinam and the Netherlands Antilles, and that the GA could resume the discussion on these territories at any given time.¹⁴⁹

A number of representatives were not satisfied with the assurances of the US and Brazil, nor with the assurances of Jonckheer that the Netherlands Antilles and Surinam would find their way to the UN should the Netherlands

144 For instance China.

145 Iraq, Poland, Soviet Union, India, Venezuela, Ecuador, Guatemala, Uruguay, Yemen, Czechoslovakia, Liberia, Indonesia, Hungary, Byelorussia, Ukraine, Poland, and Romania. According to Ecuador the administrative autonomy of the countries was less than that enjoyed by municipal governments in many Latin American states (524th Meeting, p. 311).

146 Egypt, Greece, Argentina, Peru, Iran, Afghanistan and Yugoslavia.

147 GAOR (X), Fourth Committee, 524th Meeting, p. 307. The US delegate later stated that: 'He hoped that the differences of opinion among members of the Committee about the interpretation of Chapter XI of the Charter would not prevent the Committee from declaring itself unequivocally on the more limited question before it.' (GAOR (X), Fourth Committee, 525th Meeting, p. 317-18).

148 In 1955, the era of US dominance of the UN had not yet ended (*see* Luard 1982), although the era of decolonization was about to start (*see* Luard 1989).

149 Cf. for instance the statements by the delegates of India (GAOR (X), Fourth Committee, 524th Meeting, p. 308), Ecuador (GAOR (X), Fourth Committee, 524th Meeting, p. 311), Peru (GAOR (X), Fourth Committee, 525th Meeting, p. 316-17) and Yugoslavia (GAOR (X), Fourth Committee, 526th Meeting, p. 324).

oppose the will of the peoples of those countries. Ecuador stated the problem clearly:

(...) if it was agreed that all the other obligations [of Article 73] ceased with the obligation to transmit information, the relationship between the Netherlands and the United Nations in respect of its administration of Surinam and the Netherlands Antilles would also cease. The Netherlands, the Netherlands Antilles and Surinam would form a sovereign unit, and obviously any interference in that unit would come under the restrictions laid down in Article 2, paragraph 7, of the Charter of the United Nations. Thus, the doors of the United Nations would be closed to Surinam and the Netherlands Antilles.¹⁵⁰

The Netherlands delegation became aware that India contemplated an amendment that requested the Netherlands to inform the UN of any changes to the Kingdom Charter in the future. The Netherlands undertook 'serious attempts' to convince India not to submit the amendment which was, according to the Netherlands delegation, 'utterly unacceptable' to the Administering States.¹⁵¹ The attempts were apparently successful as India submitted an amendment which merely stated that the present GA Resolution would not prejudice 'the position of the United Nations as affirmed by GA resolution 742 (VIII), and such provisions of the Charter as may be relevant'.¹⁵² In the Fourth Committee, India however explained this amendment by stating that it intended to declare that the decision of the GA only related to Article 73 *e* and that paragraphs *a* to *d* 'remained in force and could be invoked by the GA at any time'.¹⁵³ The amendment aimed to make it possible for some states to at least abstain from the vote on the draft resolution.¹⁵⁴ The Netherlands (Schürmann) stated that it did not agree with the explanations of India, but that it did not seriously object to the wording of the amendment, and that it would therefore abstain from the vote on it. The Indian amendment was adopted by 27 votes to 7 with 18 abstentions.¹⁵⁵

Resolution 945 Adopted

Nine states considered the draft resolution simply unacceptable and announced they would vote against it because the Netherlands Antilles and Surinam were still non-self-governing and the Netherlands should transmit information on

150 524th Meeting, p. 311.

151 BuZa 1956a, p. 28-9.

152 UN Doc. A/C.4/L.423.

153 According to Pakaukau 2004, p. 316, this amendment 'prevented the Dutch from finalizing their 1954 incorporation of Surinam and vested the colonial people with a permanent right to alter their relationship to the Netherlands.'

154 524th Meeting, p. 309.

155 527th Meeting, p. 328.

them.¹⁵⁶ Their arguments were that the autonomy of Surinam and the Netherlands Antilles was restricted by the authorities of the Kingdom organs, which were exercised by the Netherlands and the Governor, who was appointed by the Netherlands. The socialist states maintained that Surinam and the Netherlands Antilles could not secede from the Kingdom and that the population had not been given the opportunity to express its opinion on the Charter.¹⁵⁷

An amendment by Uruguay that reaffirmed 'the competence of the GA to decide whether a Non-Self-Governing Territory has attained the full measure of self-government referred to in Chapter XI of the Charter' was adopted by 29 votes to 13, with 12 abstentions.¹⁵⁸ The representative of Uruguay had explained that he submitted this amendment because the Netherlands Antilles and Surinam were still not fully self-governing. The amendment was intended to offer the peoples of the Netherlands Antilles and Surinam 'a safeguard, an opportunity of coming at a later date to knock at the door of the United Nations, should the need arise'.¹⁵⁹ This could be interpreted as evidence that the majority of the Fourth Committee considered the decolonization of the Netherlands Antilles and Surinam as incomplete, and that the UN remained authorized to discuss the situation under Chapter XI of the UN Charter.¹⁶⁰

The amendment forced the representatives of Belgium to vote against the Brazil-US draft resolution as a whole, and the representatives of Australia and the United Kingdom to abstain. The Brazil-US draft resolution was adopted by 18 votes to 10, with 27 abstentions.

During the 557th Plenary meeting of the GA on 15 December 1955, the draft resolution was adopted as Resolution 945 (X) by 21 to 10 votes, with 33 abstentions.¹⁶¹

156 Afghanistan, Hungary, Liberia, Poland, Romania, Czechoslovakia and the three Soviet Republics.

157 The Soviet Union painted a picture of the new Kingdom order, which left no room for any autonomous decisions by the parliaments of the Netherlands Antilles and Surinam, which was nonetheless almost entirely based on the text of the Charter. The only assertion that was not supported by any Article of the Kingdom Charter was that the Governors could reverse court decision. The Governors are in no way authorized to do this. The only essential element of the new order that the Soviet Union neglected to mention was the responsibility of the Country ministers to the *Staten* for the decisions of the Governor as head of the Country government. The Soviet presentation nonetheless made clear that the reserved powers of the Kingdom were indeed impressive, at least on paper.

158 UN Doc. A/C.4/L.422, GAOR (X), Annexes, Agenda item 32, p. 11.

159 525th Meeting, p. 315.

160 Only Liberia stated in so many words that the Netherlands Antilles and Surinam were still NSGTs (525th Meeting, p. 317). The states which considered that a full measure of self-government had not yet been achieved (*see above*) of course thereby implied that Surinam and the Netherlands Antilles were still NSGTs.

161 In favour voted: Brazil, Canada, China, Colombia, Cuba, Denmark, Dominican Republic, France, Iceland, Israel, Luxembourg, Mexico, Netherlands, Nicaragua, Norway, Pakistan, Philippines, Sweden, Thailand, Turkey, and the US.

6.3.6 What does Resolution 945 Mean for the Status of the Netherlands Antilles and Aruba?

Resolution 945 is an anomaly in the decolonization practice of the GA, since it released an Administering State from its obligation under Article 73 *e* without declaring that the territories in question had become fully self-governing. This conflicts with the annually repeated rule that:

(...) in the absence of a decision by the General Assembly itself that a Non-Self-Governing Territory has attained a full measure of self-government in terms of Chapter XI of the Charter, the administering Power concerned should continue to transmit information under Article 73 *e* of the Charter with respect to that Territory.¹⁶²

As far as I can see, there is only one way to resolve this conflict, and that is by interpreting Resolution 945 to mean that the Netherlands was released from its reporting obligation because of the 'constitutional considerations' mentioned in Article 73 *e*. The Netherlands claimed that it could no longer collect the information required, and transmitting it would suggest a responsibility for subjects that fell within the autonomy of the Caribbean Countries. The Caribbean Countries themselves agreed, and the Netherlands presented this argument as the most important reason why it had stopped reporting, and many states accepted this.¹⁶³

This interpretation is consistent with the fact that while voting on Resolution 945, the representatives were under the assumption that 945 would not prejudice the question whether Chapter XI of the UN Charter and Resolution 742 still applied to the Netherlands Antilles and Surinam and whether those Countries had achieved a full measure of self-government. A number of amendments to the draft resolution intended to make this clear.

It is not certain whether the Principles of Resolution 1541 meant to leave open the possibility that the information transmitted under Article 73 *e* would be reduced to zero. The UK thought that it did, but other states denied this (*see* Chapter 2). No reference was made to Resolution 945 during the debate

Opposed were: Afghanistan, Belgium, Byelorussia, Czechoslovakia, Hungary, Liberia, Poland, Romania, Ukraine, and the Soviet Union.

Abstaining: Argentina, Australia, Bolivia, Burma, Ceylon, Chile, Costa Rica, Ecuador, Egypt, El Salvador, Ethiopia, Greece, Guatemala, Haiti, Honduras, India, Indonesia, Iran, Iraq, Jordan, Lebanon, New Zealand, Panama, Paraguay, Peru, Saudi Arabia, Spain, Syria, United Kingdom, Uruguay, Venezuela, Yemen, and Yugoslavia.

¹⁶² This sentence was first included in GA Resolution 2870 (XXVI) of 20 December 1971, and from 1986 it is adopted unanimously during each session of the GA.

¹⁶³ An advice to the prime minister of the Netherlands Antilles (published informally around 6 September 2005) claimed that the Netherlands had ceased transmitting information based on the 'constitutional considerations' mentioned in Article 73 *e*. According to the advice, Chapter XI of the Charter and Resolution 1514 simply continued to apply.

preceding Resolution 1541, and it must be assumed that it was not the intention of the GA to retract or reinterpret 945 through the adoption of 1541.

According to a contemporary observer, *Engers*, Resolution 945 meant no more than that the Dutch territories had achieved self-government in the three areas mentioned in article 73 *e* of the UN Charter. The status of Surinam and the Netherlands Antilles remained unchanged (at least *in politicis*) and the GA probably continued to consider itself authorized to take up the issue at a later date if the Kingdom relations would develop in a negative way.¹⁶⁴ According to *Engers*, the Resolution recognized the existence of an intermediary status between self-government and colonial status, because it did not link the cessation of the transmission of information to the achievement of full self-government.¹⁶⁵

This may indeed have been the intention of the GA. There have been other examples of unclear or intermediate status where the GA accepted that the Administering State no longer reported, even though the GA did not explicitly declare that a full measure of self-government had been achieved. And even in the case of the Cook Islands, where the GA *did* declare that full self-government had been achieved, it also declared that it remained competent to discuss the situation under Resolution 1514 if the need arose. These cases show that the GA has not always distinguished very sharply between NSGTs and self-governing territories, and it can be concluded that the Netherlands Antilles and Aruba take up a place somewhere in between these two categories.¹⁶⁶

164 Engers 1956, p. 187. *In a similar sense*, see Kapteyn 1982, p. 20, and Hoeneveld 2005, p. 54.

165 Engers 1956, p. 193. *See in a similar sense* Oppenheim/Jennings & Watts 1992, p. 280.

166 Most of the UN organs appear to think that the Netherlands Antilles and Aruba are no longer NSGTs, although doubts are occasionally visible, also for instance among the treaty bodies that supervise the various UN human rights treaties. *See for instance* the confusion that arose among the members of the CERD on the question whether the Netherlands Antilles and Aruba were NSGTs, when the Committee wished to include a specific observation regarding the Netherlands Antilles and Aruba in its concluding observations on the Netherlands (CERD/C/SR.1272). After Committee member Van Boven had studied the matter, he recommended that all states should be requested to submit information on their NSGTs, and 'given the doubts over the status of Puerto Rico, New Caledonia, Aruba and East Timor, for example, the Committee should not seek to identify the States concerned specifically' (CERD/C/SR.1286, para. 38). The Committee decided to direct this request to the states parties which are administering NSGTs 'or otherwise exercising jurisdiction over Territories' (A/54/18, para. 553 et seq.). Similar doubts were also expressed by members of the HRC during the discussion of the initial report of the Kingdom on the ICCPR (UN Doc. CCPR/C/SR.321 and 322). During the discussion of the Second Periodic Report (1988), it was asked how Aruba could be considered self-governing if good governance was a Kingdom affair, and in relation to this, some members also wondered what the role of the Kingdom was in the safeguarding of human rights and fundamental freedoms (CCPR/C/SR.861, para. 44 and 52).

6.3.7 Could the UN Recommence Its Involvement with the Netherlands Antilles and Aruba?

The reason why the GA accepted the Dutch decision to stop reporting was that the Netherlands Antilles and Surinam appeared happy with the amount of autonomy they had been granted, and that the Netherlands seemed to have promised that it would respect the right to self-determination of the Caribbean populations in the future. It might therefore be assumed that if one of the Caribbean Countries was prevented from achieving independence, or if it otherwise became apparent that the population of a Caribbean Country was no longer happy with its status in the Kingdom, the UN could decide to resume its discussion of the situation under Chapter XI of the Charter (or under Resolution 1514). The debate preceding Resolution 945 made clear that a majority in the GA considered the decolonization of the Dutch Caribbean incomplete.

Apart from the absence of a clear recognition of the continuing right to self-determination, the questions and criticism of the representatives indicated that a number of aspects of the Kingdom Charter were inconsistent with full self-government, namely: the appointment of the Governor and his seemingly wide authorities; Articles 44, 50 and 51; and the dominant position of the Netherlands in the organs of the Kingdom, which have the authority to legislate for the Caribbean Countries without their consent.

It was also wondered whether the political status of Surinam and the Netherlands Antilles was really what the populations wanted, but this was insufficient reason to continue the reporting obligation, most states considered. This was somewhat surprising, as the GA had decided only a year earlier that decisions to stop transmitting information under Article 73 *e* should be examined 'with particular emphasis on the manner in which the right of self-determination has been attained and freely exercised'.¹⁶⁷ In that same resolution the GA had also decided that (if the GA deemed it desirable) a UN mission should visit the territory 'in order to evaluate as fully as possible the opinion of the population as to the status or change in status which they desire'. Only the Soviet Union wondered despairingly why the Fourth Committee would not even consider sending a visiting mission to the Netherlands Antilles and Surinam. In 1967, when the West Indies Associated States of the UK were discussed, the GA decided the UK should continue reporting until the UN had been able to determine – through a visiting mission, or UN supervised plebiscites – that the population really supported the new status. Other cases also showed that after 1960, the GA became more strict in demanding clear evidence of popular support for forms of self-government that fall short of independence.

167 GA Res. 850 (IX) of 22 November 1954.

For this reason, it has often been assumed that Resolution 945 would not have been adopted after 1960.¹⁶⁸ Even shortly after 1955, it was already doubted whether the GA would stick to its decision.¹⁶⁹ *Clark* wrote in 1980 that 'the continuing validity of the Netherlands decision is dubious in the light of the changed political forces in the GA'.¹⁷⁰ *Barbier* calls it 'remarquable' that the Dutch territories were not inserted in the Committee's list of 1963.¹⁷¹ There are quite a number of other authors who similarly think Chapter XI of the UN Charter does (or should) still apply to the Kingdom, or that the GA might not confirm its decision of 1955 if it had been asked to do so after 1960.¹⁷² *Oppenheim* simply puts the Caribbean Countries in a special class of territories whose international status is somewhere in between NSGT and independence, such as Puerto Rico and the British WIAS.¹⁷³ *Blaustein* also has difficulty categorizing them.¹⁷⁴

The UNITAR study of 1971, on the other hand, considers that the decision of 1955 would have been upheld after 1960 as well, as long the GA would have been satisfied that the Kingdom Charter really represented the clearly expressed wish of the population.¹⁷⁵ This may well be true, because the GA has never gone against the clearly expressed will of the people in these cases.

168 In this sense, see De Smith 1974, p. 71, Hannum 1996, p. 347 et seq. and Igarashi 2002, p. 62. Kapteyn 1982, p. 21 'seriously doubts' whether the GA would have approved of the Dutch cessation of transmission of information if it had taken place after 1960.

169 Engers 1956, p. 187 and Van Panhuys 1958, p. 30.

170 Clark 1980, p. 49.

171 Barbier 1974, p. 163. According to *Barbier*, the reason why the Netherlands Antilles and Surinam (and a number of territories of France, the UK and Denmark) were not on the list, was the method used by the Working Group charged with drawing up the list. It created four categories of colonial territories: Trust Territories, other NSGTs on which the administering powers transmitted information, the territories declared non-self-governing by the GA, and South West Africa (Namibia). The Netherlands Antilles and Surinam did not appear to fall into any of these categories, but this did not necessarily mean that the Committee considered the Declaration did not apply to them.

172 See Rigo Sureda 1971, p. 261, De Smith 1974, p. 71, Hannum 1996, p. 333 and 347 et seq., and Igarashi 2002, p. 34-44 and p. 62.

173 Oppenheim/Jennings & Watts 1992, p. 280.

174 In *Blaustein's* collection of *Constitutions of Dependencies and Territories*, the Netherlands Antilles and Aruba are placed in the category of dependencies which 'have complete internal self-government and operate without interference from the colonial power'. Other territories on the 2002 edition of this list are New Caledonia, Puerto Rico, the Cook Islands, and the US Virgin Islands. *Blaustein's* categorization is somewhat hard to understand in light of the fact that two or three of these territories are treated as NSGTs by the UN (Puerto Rico is a special case, see Chapter 3). Furthermore, calling the metropolitan state 'colonial power' obviously means that these territories should be considered colonies (see *Blaustein/Raworth* 2002, p. 2). *Blaustein's* section on the 'Netherlands Dependencies' states: 'Both are self-governing territories in close association with the Netherlands. Exceptionally in the case of dependencies, these territories are accorded special rights under the Dutch National Constitution. However, they are not an integral part of the Netherlands and thus cannot be considered national territories' (*Blaustein/Raworth* 2001, p. 1).

175 Rapaport, Muteba & Therattil 1971, p. 26.

But the GA would probably not have approved the situation without a referendum or a visiting mission.

Could the GA retract its decision of 1955? The case of Puerto Rico indicates that the GA will probably not consider Resolution 945 as prohibiting it from discussing the Netherlands Antilles and Aruba as a case of incomplete decolonization, should the need arise. With regard to Puerto Rico, the GA had declared that the territory had become fully self-governing and that it had exercised its right to self-determination, but the US still needed to wage a fierce diplomatic battle to prevent the GA from discussing Puerto Rico in the context of decolonization, and it could not prevent the Decolonization Committee from discussing Puerto Rico. The Netherlands will obviously not be able to exercise the kind of political pressure that the US exercised, and its legal position is also much weaker. The case of New Caledonia furthermore showed that the GA considered itself authorised to revive its involvement with a territory that had not been on the list of NSGTs for 40 years.

But these cases also show that before the GA might take such a step with regard to the Netherlands Antilles or Aruba, it will have to be clear that at a substantial part of the local populations actively opposes the status quo, and a number of UN members will have to have a good reason for attacking the Netherlands. Puerto Rico was a popular subject for the enemies of the US during the Cold War, and the case of New Caledonia was partly created to punish France for its nuclear tests in the Pacific.

If the GA, for whatever reason, decides to review the status of the Netherlands Antilles or Aruba, it would probably use the criteria for free association of Resolution 1541, since the debates of 1955 showed that most representatives tended towards considering the Kingdom as a form of association. As I explained in the previous paragraphs, the Kingdom order does indeed bear more resemblance to free association than integration, although it fulfils the criteria for neither form of self-government.

This would mean that criticism could be expected with regard to the constitutionally guaranteed influence the Netherlands still has in the Netherlands Antilles and Aruba. But the most important question would undoubtedly be whether the population is happy with the current political status of their islands, and whether they have the possibility of exercising a form of 'continuing self-determination'. If the answer to both these questions would be 'yes', then the practice of the UN suggests that the discrepancies between the Kingdom Charter and Principle VII of Resolution 1541 will be glossed over. This would be justified in view of the principle that the right to self-determination should take precedence in any process of decolonization, as I explained in Chapter 2.

The current discussions on a constitutional reform of the Netherlands Antilles raise on other question, since the option is being discussed that one or more of the islands of the Netherlands Antilles might in the future obtain a status in which some or all of the responsibilities that are currently held by

the Netherlands Antilles would revert to the Netherlands, because some of the islands consider themselves too small to handle all of the responsibilities of a Country on their own. The 'constitutional considerations' clause of Article 73 *e* would probably no longer apply in such a situation, and it could be argued that the Kingdom should decide to resume its reporting obligation.¹⁷⁶ There is one precedent for such a decision. When the UK retracted the autonomy of Malta in 1959, it also recommenced transmitting reports to the UN under Article 73 *e*.¹⁷⁷ Since the UK's decision to stop transmitting information on Malta in 1949 was based on similar arguments as the Dutch decision of 1951, this precedent seems particularly relevant. To avoid this situation, it could of course also be decided to create a relation with these islands that would comply with the criteria for integration of Resolution 1541. In that case, the Kingdom government could transmit a copy of the new arrangement to the UN, in conformity with GA Resolution 222 (III), and consider the decolonization of these islands complete, at least with respect to international law.

6.3.8 Conclusion

The status of the Netherlands Antilles and Surinam remained unclear after the GA Resolution of 1955. There existed fundamental disagreement among states on the application of Chapter XI of the UN Charter to Surinam and the Netherlands Antilles. A majority of states seemed to think that the Dutch territories had not really acquired a full measure of self-government.

Opinions on the form of government of the Kingdom differed widely, from a colonial power administering two colonies, to a type of confederation, association, integration, or a construction *sui generis*. Many representatives did not even attempt to characterise the structure of the Kingdom, and there appeared to be a consensus that it was hard to fathom.

The representatives were reluctant to decide whether the Netherlands Antilles and Surinam had exercised their right to self-determination. It appears most states were satisfied that the populations did not openly disapprove of the new status, and that the representatives of the Countries were very happy with it. It was also accepted that the Netherlands would probably not block a wish for independence, if it was expressed by the population of one of the Caribbean Countries. It was also clear that the Countries had obtained self-government in the areas on which the Administering state should report

176 The Antillean islands of Bonaire, St. Eustatius and Saba recently declared that they thought the Kingdom should resume reporting on them once the Netherlands Antilles had been abolished and the three islands would have 'direct ties' with the Netherlands (see the closing statement of the summit meeting of the islands on constitutional structures in Philipsburg, St. Maarten of 13 and 14 March 2006, reproduced on <http://curacao-gov.an>).

177 See GAOR (XIV), Fourth Committee, 981st Meeting, para. 43, or the *Repertory of Practice of the UN Organs*, Suppl. No. 2 (1955-59), Vol. 3, para. 105-6.

(economic, social and educational conditions). These three factors were sufficient to warrant the decision that the Netherlands no longer needed to report on the Countries, but the GA refused to declare that the Netherlands Antilles and Surinam had achieved a full measure of self-government, and the Resolution also did not state that the right to self-determination had been exercised, nor that Chapter XI no longer applied.

This decision seems to conflict with the rule that Administering states should continue to report until the GA has declared that a full measure of self-government has been achieved, unless it is interpreted to mean that the obligation to report was suspended because the autonomy of the Countries makes it impossible for the Kingdom government to collect and transmit the information referred to in Article 73 *e*. The UN Charter and Resolution 1541 seem to create this possibility, and it is not inconsistent with the debate in the GA and the arguments presented by the Netherlands in defence of its decision. It would mean that Chapter XI probably continues to apply, and the Netherlands Antilles and Aruba would have an intermediate status between self-governing and Non-Self-Governing Territories.

The GA has failed to issue a clear statement on the status of the Netherlands Antilles and Aruba, but it probably remains authorised to do so in the future. The cases of Puerto Rico and New Caledonia have shown that, given the right circumstances, the UN is prepared to re-inscribe (former) NSGTs on the list. The GA would probably judge the status of the Netherlands Antilles and Aruba by the criteria for free association. As was concluded in the previous Paragraph, the Kingdom does not entirely comply with these criteria. This does not automatically mean, however, that the Countries are 'arbitrarily subordinated' in the sense of Resolution 1541 or that their decolonization is incomplete, as I will discuss in the next Paragraphs.

6.4 'ARBITRARY SUBORDINATION'?

The term 'arbitrary subordination', while central to the question whether a full measure of self-government has been achieved, has been left very vague by the GA. Most of the arguments used in the GA in comparable cases do not really apply to the Kingdom.¹⁷⁸ The relations within the Kingdom are clearly

178 A few arguments could be applied analogously. Iraq, for instance, noted with regard to the Portuguese territories: 'The existence of economic subordination was proved by the fact that (...) the Constitution forbade the overseas provinces to negotiate loans in foreign countries' (GAOR (XV) 4th Comm., 1036th Meeting, para. 16). The Kingdom Charter contains a similar provision (Article 29), which requires the Countries to secure the approval of the Kingdom government before negotiating foreign loans. But the Kingdom government is only allowed to withhold its approval if the interests of the Kingdom are at stake (Borman 2005, p. 190). The government has so far interpreted its authority very restrictively, and only looks at whether the foreign relations of the Kingdom as a whole might be negatively

not comparable to Portuguese rule in Angola, for instance, but they are not all that different from the relation between some of the current NSGTs, for instance Bermuda, with their mother country. It is therefore very difficult, or perhaps even impossible, to decide whether the Caribbean Countries are 'arbitrarily subordinated' purely on the basis of their constitutional position within the Kingdom.

But as was argued in Chapter 2, a correct reading of the right to decolonization should give precedence to the right to self-determination, in the sense of the freedom of choice of the population. This means that the opinion of the population concerned should be the decisive factor when determining whether a situation of 'arbitrary subordination' exists. As the GA has repeatedly recognized, 'all available options for self-determination are valid as long as they are in accordance with the freely expressed wishes of the peoples concerned'.¹⁷⁹

This might mean that an overseas people is kept in a situation of 'arbitrary subordination' when the metropolis does not give it the freedom to determine its own political status. Any status that has been freely chosen by the population, with full awareness of the possible consequences of that choice, can hardly be considered 'arbitrary subordination', especially if the people retains the freedom to choose another status at a later date.¹⁸⁰

It is therefore important to take a closer look at the way in which the present status of the Caribbean Countries has been determined, and whether the population has freely chosen that status.

6.4.1 Have the Netherlands Antilles and Aruba Freely Chosen their Status?

The process leading up to the promulgation of the Kingdom Charter has been described by many authors, most fully by *Klinkers*.¹⁸¹ As was described in Chapter 4, the Netherlands opposed an explicit recognition of the right to self-determination of the Netherlands Antilles and Surinam in the Charter. Despite this, the process could be characterized as a form of self-determination if the populations of the Caribbean territories freely and voluntarily chose to accept the new legal order in the awareness of the consequences, and while there were other options.

affected. The fact that the metropolis is able to promulgate legislation that applies in the overseas territories without their consent was recently proposed at a Regional Seminar of the Decolonization Committee as a litmus test for the absence of self-government (UN Doc. A/59/23 (2004), p. 41). The Kingdom has this power, but only with regard to a few subjects.

179 GA Res. 59/134 (2004).

180 See Chapter 2, in the paragraph on the freedom of choice.

181 Klinkers 1999. This study formed the basis for Oostindie & Klinkers 2001a.

The first draft for the Kingdom Charter was written by the Dutch government, but it was modified on a number of points in the process of negotiations with representatives of Surinam and the Netherlands Antilles.¹⁸² The final text was approved by the parliaments of the Countries, which had been elected on the basis of general suffrage. But as an exercise of the right to self-determination, the process was flawed in some crucial aspects.

Options such as independence or integration with the Netherlands were clearly not on the table, for various reasons. It is impossible to say how the population of the islands would have reacted had they been offered a choice between these or other options, but it is clear that there was not much freedom of choice.

The newspapers in the Netherlands Antilles reported on the negotiations and the ratification process, but it did not form an important issue in any elections in the Netherlands Antilles.

While the Charter was seen as a positive development in the Netherlands Antilles, it was not exactly what the Antillean government had desired,¹⁸³ nor was it the result of a free choice by the population. The debate in the UN in 1955 showed that many representatives did not consider the adoption of the Charter as an expression of the right to self-determination. An analogous application of the standards that the Dutch ministry of Foreign Affairs used in the case of Puerto Rico, should also lead to the conclusion that the procedure for the adoption of the Kingdom Charter did not truly represent an exercise of the right to self-determination.¹⁸⁴

The Dutch government in a position paper of 1990 nonetheless stated that the promulgation of the new legal order of the Kingdom in 1954 represented a form of self-determination.¹⁸⁵ This opinion is still occasionally voiced in the Netherlands.¹⁸⁶ The process of 1954 did resemble an exercise of the right

182 The Constitution of 1948 declared that the relations with Surinam and the Netherlands Antilles would be reformed on the basis of consultations with representatives of the population of those territories (article 208, renumbered as 215 in the Constitution of 1953).

183 The Dutch pressure on the Antilles and Surinam to join in the defence of the Charter at the UN, created a fear that the Netherlands would force the Netherlands Antilles to declare at the UN that all of its constitutional wishes had been fulfilled by the Charter. The Netherlands might later use such a declaration in case the Netherlands Antilles would wish to change the Charter. See Oostindie & Klinkers 2001a, p. 304, note 27.

184 The Dutch ministry of Foreign Affairs in its report of the Eighth Session of the GA criticized the procedure by which Puerto Rico had obtained its new status in 1953. The plebiscites of 1952 could not be considered a real exercise of the right to self-determination, the report claimed, since the population of the territory did not have the possibility to choose for independence or integration in those plebiscites. In the view of the ministry, the Puerto Rican general elections of 1948, at which status was an issue, and during which the political party that promoted Commonwealth received 61% of the votes, could not be put on a par with a plebiscite, as the outcome of these elections were undoubtedly influenced by other issues as well. See Buza 1954b, p. 140.

185 *Kamerstukken II* 1989/90, 21 300 IV, nr. 9, 'Schets voor een gemenebestconstitutie', p. 6.

186 See for instance Hoogers 2005, p. 70.

to self-determination because it led to the creation of a new relation with the Netherlands which also had the approval of the governments and the parliaments of the Netherlands Antilles and Surinam. But the population was not given the opportunity to make a free choice and it can therefore not really be established whether the Kingdom Charter enjoyed the support of the population of the Netherlands Antilles in 1954.

Aruba's Status Aparte

In 1986, when Aruba achieved its separate status under the condition that it would become independent in 1996, no referendum was held, nor when it was afterwards decided that Aruba would not become independent. In 1977, a referendum had been organized on the island, but this suffered from too many defects to represent an accurate gauging of popular opinion.¹⁸⁷

While it was abundantly clear that most Arubans did not want independence, and did not want to be a part of the Netherlands Antilles either, it was (and is) far from clear what kind of relation with the Netherlands exactly had the preference of the population.¹⁸⁸ It is true that Aruba had experienced democratic self-government (as part of the Antilles) for over thirty years when it achieved its *status aparte*. But the negotiations between the Netherlands and Aruba on the continuation of the *status aparte* after 1996 were conducted on government level and the general public was not directly involved. It also remained unclear which options were actually available to the island, apart from independence. While it may be accepted that Aruba's decision to stay

187 The referendum offered the population of Aruba a choice between independence as part of a federation of the Netherlands Antilles, or independence for Aruba on its own. Opposition party AVP boycotted the referendum because it considered that the option of a separate status within the Kingdom should also be offered. Another opposition party, PPA, called on its supporters not to vote. The turn-out was 70%, which was only slightly lower than for the local elections of that same year, but 14% of the votes was invalid. 82% of the votes cast was in favour of independence separate from the Netherlands Antilles. Only 4% of the votes was in favour of becoming independent as part of the Netherlands Antilles (see Van Benthem van den Bergh et al. 1978, p. 129 for the exact figures). The referendum has been widely criticized because it offered too little freedom of choice, the information provided on the options was vague and confusing, and because there were a number of flaws in the voting procedure (see Van Benthem van den Bergh et al. 1978, p. 28, Van Aller 1994, p. 381, and Van Rijn 1999, p. 55-6). It is generally considered unlikely that a majority of the Aruban population was really in favour of independence in 1977. No research or opinion polls have ever shown a substantial portion of Arubans to be in favour of independence (see Oostindie & Verton 1998, p. 25 et seq). The vote was therefore interpreted to mean that a majority of Arubans wanted to be separated from Curaçao, but not from the Kingdom (Van Rijn 1999, p. 56, Oostindie & Verton 1998, p. 26, and Oostindie & Klinkers 2001c, p. 83).

188 According to Verton 1990, p. 203, an opinion poll during the elections of 1985 on Aruba showed that 'a majority of those canvassed had voted affirmatively for separate status for Aruba within the Kingdom. This is not entirely in line with the numbers Verton provides on p. 216: 37% of the voters supported 'the relations as they are', while 50% desired a closer relation with Holland as an overseas province, and 11% would chose independence.

a part of the Kingdom, but not a part of the Netherlands Antilles, did not appear to against the wishes of the population, it would go too far to say that the status of Aruba under the Kingdom Charter was created on the basis of a free and informed choice by the Aruban people.

Dissatisfaction with the Charter

Fifty years of Kingdom Charter have witnessed much dissatisfaction with the legal order it has created, for very different reasons, and from many different corners. Nonetheless, there has never appeared to be majority among the population of the Netherlands Antilles (as a whole) or Aruba in support of moving towards a fundamentally different relation with the Netherlands, by which I mean independence or complete integration with the Netherlands. The few political parties on the islands which campaigned for such a fundamentally different status never received much support during elections. Many parties are officially in favour of independence, but only at some very distant future date. It should be noted, however, that the party system on the islands does not so much revolve around issues, but around personalities and client relations.

Opinion polls and research such as *Ki sortto di Reino?* ('What Kind of Kingdom?') indicate that most islanders would like to see some changes to the relations with the Netherlands that are not supported by most of the political parties represented in the Caribbean parliaments.¹⁸⁹ This is of course not uncommon in a system of representative democracy, but in the context of self-determination, it means that regard should be had to the risk that a parliament may not always adequately represent the will of the 'peoples' when it comes to changes to the territory's political status,¹⁹⁰ which was clearly shown by the referenda of 1993 and 1994.

The Referenda

The referenda that have been held on the Netherlands Antilles since 1993 were organized to decide whether the Country should stay together, or whether each island should seek direct relations with the Netherlands, or become independent. They mainly concerned the relations of the islands to each other. Consequently, the outcome of these referenda only had limited value for determining the desired relation with the Netherlands. The only thing that really became clear in 1993 and 1994 was that the populations of the islands

189 *Ki sortto di Reino* revealed that there existed substantial majorities on the islands for closer relations with the Netherlands and more involvement by the Netherlands government, whereas political parties on the islands are generally opposed to that (Oostindie & Verton 1998).

190 See also Chapter 3 in the paragraph on popular consent.

wanted to stick together, and that none of the islands wanted to become independent, at least not on its own, and not in the near future.

In the referenda of 2000, 2004 and 2005, the choice was again mainly between staying together as a Country, or breaking up the Netherlands Antilles. This time, a majority of the population on most islands chose to break up the Country. But again, it remained rather unclear what relation the islanders desired with the Netherlands. On Bonaire and Saba, a majority chose for 'direct relations' with the Netherlands, although it was not clear what form these relations should take. On Curaçao and St. Maarten a majority chose for *status aparte*, which probably meant that the islanders desired a status comparable to that of Aruba. St. Eustatius chose to keep the Netherlands Antilles together, creating a paradox that was built into the recognition of the right to self-determination of the individual islands in 1981.

The outcome of these referenda can be interpreted as a vote against full independence, since this option was on the ballot on all islands, and it received very few votes. But at the same time, the option of 'status quo' also attracted very few votes on most islands. These referenda can therefore hardly be taken as a free and voluntary acceptance of the legal order of the Kingdom. I will discuss them further in the context of the right to self-determination of the individual islands (*see* Chapter 8).

The Right to Self-Determination Exhausted?

It is occasionally defended that the peoples of the Netherlands Antilles and Aruba have already exercised their right to self-determination in 1954, and this proposition sometimes leads to the conclusion that the islands no longer have a right to self-determination, at least not in the sense of a right to decolonization under international law.¹⁹¹ This conclusion is not valid, not only because the Charter was not intended to have this effect in 1954,¹⁹² but also because it starts from an implicit argument – namely that the right to self-determination cannot be exercised more than once – which is false. An exercise of the right to self-determination can only be considered final (in the context of decolonization) if it leads to independence, or perhaps when it leads to a

191 This proposition was defended most recently in an editorial of *De Volkskrant* on 11 April 2005, as a reaction to the claim by the Referendum Committee of Curaçao that the outcome of the referendum would be binding on the Netherlands. *See also* Hoogers 2005.

192 Dutch minister Kernkamp, in a letter to the Governing Council of Surinam, explained in 1952 that Surinam would not 'use up' its right to self-determination if the Charter referred to this right (Van Helsdingen 1957, p. 198). A majority of the members of the *Staten-Generaal* appeared to share this view. Senator Algra (ARP), for instance, stated that he did not think the right to self-determination would be extinguished by the Kingdom Charter. He pointed out that territories such as Surinam could not be compared with regions such as Friesland. Only two right-wing members of the Lower House considered that the right to self-determination would be extinguished by the Charter. *See further* Chapter 4.

complete form of integration (*see* Chapter 3). Since the Kingdom relations currently most resemble a form of association, it should be assumed that the Caribbean populations have a continuing right to self-determination, as Resolution 1541 proclaims, and which was confirmed during the debates on the Cook Islands and the West Indies Associated States of the UK. The governments of the Countries and the Kingdom have consistently held that the populations of the Caribbean islands still have a right to self-determination, whether they have exercised it in 1954 or not.

6.4.2 Conclusion

The Kingdom Charter is not based on a free choice by the populations of the Caribbean Countries. It is clear that most islanders do not desire full independence in the near future, but what kind of relation they want with the Netherlands is not certain. Two series of referenda have been held on the question whether the Netherlands Antilles should stay together, but the populations have never been given the opportunity to make a free choice regarding their relations with the Netherlands.

6.5 CONCLUSION

The Kingdom order does not comply fully with any of the recognized forms of decolonization as defined by GA Resolution 1541. The Netherlands Antilles and Aruba are not integrated into the Netherlands, and the fact that they are an integral part of the Kingdom is not very meaningful for the application of Principles VIII and IX of Resolution 1541. The Kingdom relations are more similar to a form of free association, because the Countries are autonomous in most areas and the Charter mainly provides a structure for voluntary cooperation. A number of aspects of the Kingdom order do not, however, comply with the UN criteria for an acceptable form of free association. These mainly concern the powers of the Kingdom (*i.e.* the Netherlands) to intervene in the affairs of the Caribbean Countries without their consent.

That raises the question whether the Kingdom might be an *unacceptable* form of government under the law of decolonization, namely one based on 'arbitrary subordination', in which case the Netherlands Antilles and Aruba should perhaps be considered as Non-Self-Governing Territories under the UN Charter. The Kingdom Charter was discussed at length in the GA, but the representatives could not agree on the characterization of the Kingdom order, nor on the questions whether the Netherlands Antilles and Surinam remained NSGTs, whether they had exercised their right to self-determination, and whether the Caribbean Countries had achieved a full measure of self-government. A majority of states seemed to think that the answer to these last two

questions should be 'no'. A Resolution was adopted which should probably be interpreted to mean that Chapter XI of the UN Charter continued to apply to the Netherlands Antilles and Surinam, even though the Kingdom was released from its obligation under Article 73 *e*.

It could be argued that the right to self-determination, defined as the freedom of choice, leaves open the possibility that a dependent people freely chooses a status that is not fully self-governing according to the standards of Resolution 1541, and which creates a subordinate position for that people. The essential criterion for the acceptability of such a status should be whether the population has truly made that choice in freedom and with due knowledge of the ramifications of its choice. In that case, the remaining elements of subordination could not be considered 'arbitrary', but should perhaps be seen as an acceptable side effect of continuing a constitutional relation between a European state and a distant island territory that considers itself too small to become independent.

The populations of the Netherlands Antilles and Aruba have never directly expressed their support for the political status that the Kingdom Charter has created for their islands. Neither independence nor complete integration into the Netherlands appears to have the support of a majority of the population on any of the islands. It is unclear what status *would* have the support of a majority of the population.

In view of all this, it would be hard to deny that Chapter XI of the UN Charter still applies to the Kingdom of the Netherlands, as well as the law of decolonization and self-determination as codified in GA Resolutions 1514, 1541 and 2625. This means that the political decolonization of the Dutch Caribbean is not yet complete under the terms of international law, and that there still exists an international obligation for the Kingdom under Article 73 of the UN Charter to strive towards the completion of the process of decolonization. Only when it becomes clear (preferably through a referendum) that each island has obtained a status that enjoys the support of the populations could the Kingdom be considered a successful form of decolonization.