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

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7 | Implications of the Right to Decolonization and Self-Determination for the Kingdom of the Netherlands

It must be assumed that the law of decolonization applies to the Kingdom relations, even though the Netherlands Antilles and Aruba are not ‘colonies’ of the Netherlands, which is a somewhat paradoxical situation. It could be considered absurd to speak of ‘decolonization’ in a relation that cannot really be called colonial anymore for over 50 years now. But the process of constitutional decolonization that took place in the Kingdom between 1945 and 1954 was not perfect and took insufficient account of the right to self-determination.

One could argue that as long as the population do not protest and do not speak out for a different relation with the Netherlands, the Kingdom order does not really violate the law of decolonization and self-determination. The relations between the three Countries could be seen as an imperfect form of free association or some other form self-government that was perhaps not freely chosen by the population, but which also does not incite very strong protests. I would consider this a rather minimal and questionable interpretation of international law.

The obligations that the Netherlands undertook under the UN Charter should not be taken lightly. *Kapteyn* considers that if the Netherlands Antilles (and Aruba) do not yet have a full measure of self-government, the Netherlands is under an international obligation to create a situation in which the population can freely and voluntarily choose another status that *does* comply with the criteria for full self-government.¹ This seems to me to be a correct reading of Article 73 of the UN Charter in light of GA Resolution 945.²

The similarity in status between some of the NSGTs and the Caribbean Countries of the Kingdom furthermore indicates that it should not be surprising if the obligations for the Netherlands under international law are the same as for an Administering State under Chapter XI of the UN Charter. The colonial history of the Kingdom relations and the fact that the GA in 1955 refused to declare the Caribbean Countries decolonized, add strength to this reasoning. Also, the Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514) might well be considered to apply anyway, as long as the Netherlands Antilles and Aruba have not become

1 Kapteyn 1982, p. 22.

2 Sap 2005 also thinks that Article 73 of the UN Charter, and Resolutions 1514, 1541 and 2625 still apply. See similarly Hoeneveld 2005, p. 63 et seq.

independent.³ The most important legal instruments in this context are the UN Charter and Resolution 1541

7.1 IMPLICATIONS OF THE UN CHARTER AND RESOLUTION 1541

Chapter XI of the UN Charter first of all creates a general obligation to promote 'the well-being of the inhabitants'. A number of more concrete obligations can also be derived from the Charter, and from the Resolutions by which the GA has interpreted Chapter XI, the advisory opinions of the ICJ, and customary law. For the Kingdom, the following obligations would appear to be relevant.

1. *Promote self-government*

Article 73 *b* provides that the Administering States are obligated 'to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement'. The GA has interpreted 'self-government' to mean independence, free association, integration or any other option that is freely adopted by the population (*see* Chapters 2 and 3).

The Declaration on the Granting of the Independence to Colonial Countries and Peoples (Resolution 1514), states that 'immediate steps shall be taken' to transfer 'all powers' to the people of the territory. It could be argued that the Netherlands has already complied with this part of Resolution 1514 by actively striving for the independence of the Netherlands Antilles and Aruba during the 1970s and 1980s. A more demanding interpretation of the right to self-determination and decolonization, which is defended *above* in Chapter 2, would require the Kingdom to enable the islands to make a free choice on their political status. It was argued in Chapter 6 that the population of the Netherlands Antilles and Aruba have not really had this opportunity yet. Such an unconditional exercise of the freedom of choice does not entail that the Netherlands should accept the outcome as an overseas *diktat*, but merely that the Netherlands (and the other parts of the Kingdom) should try to realize it in good faith as far as possible. In Chapter 8, I will discuss this question further, since this issue currently plays a large role with regard to the right to self-determination of the individual island territories of the Netherlands Antilles.

It could also be derived from Chapter XI of the Charter and Resolution 1541 and 2625 that the Kingdom should strive towards transforming the

3 The legal ramifications of Resolution 1514 at present do not seem very relevant to the Kingdom. The Resolution recognizes a right of independence (which is not in dispute), a right for the GA to involve itself with the situation (which is dependent on political factors), and an obligation for states to refrain from actions which might jeopardize the territorial integrity of the Netherlands Antilles (*see* Chapter 8).

relations between the Netherlands and the islands into 'a full measure of self-government'.

If one of the Caribbean populations would express a preference for entering into a free association with the Netherlands or the Kingdom, it should be granted the right to determine its own constitution without outside interference, and any tasks that the Netherlands or the Kingdom would continue to perform for the island would have to be based on a voluntary act of delegation. It is not certain which tasks the Netherlands would have to accept, nor under which conditions. An arrangement of free association could of course only come about through negotiations in which the Netherlands would not have to accept any unreasonable demands.

A population that would choose for integration would have to accept that the Netherlands legislator would become sovereign on its territory. It should obtain equal status under Dutch law as the inhabitants of the metropolitan territory for the integration to comply with Resolution 1541. Whether the international law of decolonization and self-determination means that the Netherlands would have to accept a choice for integration is not certain, but it certainly would have to have very strong reasons for not cooperating with realizing the outcome of a free choice by an overseas population.⁴

So far, none of the Caribbean populations of the Kingdom have really chosen for either free association or integration. The new status of the islands, which is currently being negotiated, might result in 'any other political status freely chosen by the people'. The new Kingdom relations could be a realization of the right to self-determination of the islands' populations, if it is established with sufficient certainty that the new situation conforms to their wishes as well as possible.

2. *Political education*

Information should be provided so that the population is aware of the ramifications of the status options contained in Resolution 1541, and so that it might be able to make an informed choice between them and/or other status options. The GA each year:

(...) reiterates its long-standing call for the administering Powers, in cooperation with the territorial Governments, to promote political education in the Territories in order to foster an awareness among the people of their right to self-determination in conformity with the legitimate political status options, based on the principles clearly defined in General Assembly resolution 1541 (XV).⁵

4 See Chapter 3 on the characteristics of free association and integration, and Chapter 2 on the freedom of choice.

5 GA Res. 59/134 (2004).

The UN organs could of course play a useful role as an impartial source of information. The GA each year asks its department of public information to disseminate information concerning decolonization, and the UNDP and the Electoral Division of the Secretariat also play a role in providing information.⁶ In the Dutch Caribbean islands, information concerning the options open to them is not easily available (especially on the smaller islands), other than through the website of the UN and websites which support status change in other overseas territories such as Puerto Rico. The governments of the Caribbean Countries and of the island territories clearly have a task in this area. In the referendum campaigns of 2004 and 2005 there was some information provided to the public on some of the islands, in the form of brochures and town hall meetings, which probably created some awareness of the options and certainly sparked debate. This must be considered as a positive development. One important flaw in these information campaigns was caused by the attitude of the Netherlands government, which refused to state whether it would respect the outcome of the referenda, except on one occasion in 2000, when it announced beforehand that it would not realize the outcome of the referendum on St. Maarten if the population chose for *status aparte* (see Chapter 8).

3. *Ascertain the wishes of the population*

In the Plan of Action for the first and the second UN International Decade for the Eradication of All Forms of Colonialism, the GA formulated as one of the aims the 'holding of self-determination referendums preceded by adequate and unbiased campaigns of political education' in all of the territories.⁷ This aim has been achieved on the islands of the Netherlands Antilles to some extent, but as I explained in the previous Chapter, the referenda dealt mainly with the relations between the islands, and not so much with the relation with the Netherlands.

It would be an improvement on the current situation if the right to self-determination of the islands were codified in the Kingdom Charter. International law already demands that status changes require the explicit support of the population of the islands concerned, but it would be recommendable to make this more clear, and to determine how and when such approval should be obtained. The population should also have the right to initiate status changes.

6 The UN Secretariat's Electoral Division has already observed several of the referendums on the islands of the Netherlands Antilles, and is also employed by the Decolonization Committee to supervise self-determination referendums and elections in the NSGTs. The UNDP is sometimes used by the Decolonization Committee to assist NSGTs with constitutional reform, for instance in Tokelau.

7 UN Doc. A/46/634/Rev.1. In more recent Resolutions, the GA has added that the wishes of the people can also be ascertained in other ways. See for instance GA Res. 59/134 (2004).

Since the status issue will probably continue to occupy the minds of many people involved with the Kingdom relations, and seeing that the status debate has taken up much time and energy since the early 1970s, proceeding – and often receding – in a disorderly process, it should be considered an improvement if there existed a clear procedure with a beginning and an end, in which the population of the islands should have the final say.

4. Respect the wishes of the population

As the GA has unanimously confirmed on countless occasions, 'it is ultimately for the peoples of the Territories themselves to determine freely their future political status'.⁸ It is essential that the various governments of the Kingdom make clear that they will respect any choice that the island populations make and that they will do their utmost to realize that choice. Not only because they are obligated under international law to do so, but also to remove the existing scepticism, cynicism, lack of interest or other factors that might prevent the Caribbean populations from participating in the process of constitutional reform, which could of course seriously undercut the chance of success of the whole operation, and render the right to self-determination meaningless.

5. Cooperate with other administering powers and international organizations

This obligation was already proclaimed by Article 73 *d* of the UN Charter, and was initially realized by the creation of the Caribbean Commission of which the four Administering States of the Caribbean were members.⁹ After the demise of this organization in 1965, the Kingdom has hardly cooperated with other metropolitan states in the region, at least not with the goal of decolonization. Perhaps it should make more of an effort to realize joint efforts with France, the UK and the US, also because each of these states struggles with somewhat similar problems as the Kingdom in the Caribbean. It could be wondered, however, whether such cooperation could add to the already existing forms of international cooperation in the Caribbean, but this subject would require further study.

Does Article 73 *d* also mean that the UN should be involved? One of the recurring recommendations of the GA is that the Decolonization Committee should supervise the process of decolonization. In cases of the integration or association of a territory with its mother country, such supervision is even considered obligatory by some writers. It could be wondered, however, whether a body as the Decolonization Committee, which has – or at least used to have – a very political agenda and which did not always seem to take the interests of the population to heart, is really the ideal organ to supervise or assist in the decolonization of the Caribbean Countries. Decolonization is no

⁸ GA Res. 59/134 (2004).

⁹ Oostindie & Klinkers 2001b, p. 63 et seq.

longer an issue that threatens world peace,¹⁰ and it might be more effective (and less costly) to leave the assistance or supervision of the remaining decolonization processes to non-political bodies such as the Secretariat or specialized agencies.¹¹

The division of power between the Countries and Kingdom sometimes makes it difficult to determine at which level of government these obligations and recommendations should be realized. Because the Caribbean Countries and the islands of the Netherlands Antilles are autonomous in many of the subjects concerned, their governments and legislators are the first in line to realize most of the goals listed *above*. But the Kingdom should guarantee that they are indeed realized, on the basis of Article 43, para. 2 and Articles 50 and 51 of the Kingdom Charter. Whether the Kingdom or the Country of the Netherlands should be considered as the 'Administering State' under Chapter XI of the UN Charter is uncertain, but in any case, the Kingdom should make sure that its international obligations do not fall through the cracks of its own constitutional checks and balances. What this means exactly is hard to say in the abstract, but should be determined in each concrete case.

7.2 CONCLUSION

The international law of decolonization and self-determination creates a number of obligations for the Kingdom, which should mostly be realized by the Countries and the islands of the Netherlands Antilles themselves, while the Kingdom should make sure that they are indeed realized. The Kingdom and its constituent parts should strive towards the achievement of 'a full measure of self-government' by the Caribbean parts of the Kingdom, either in the form of independence, free association, integration, or some other form of government that is freely chosen by the population. The population should be provided with some form of political education, in order to prepare them for such an act of self-determination. After the wishes of the population have been properly ascertained, the Countries and the Kingdom should respect them, and if necessary cooperate with other states and international organizations to realize the desired political status of the islands. It is recommended that the Kingdom Charter should contain a procedure through which the population of the islands would be able to express their opinion on status

10 The cases of Gibraltar, the Falkland Islands and the Western Sahara are exceptions in that they are still able to create considerable political tensions between states.

11 The GA has recently requested a number of specialized agencies and other organizations to submit plans of action for the NSGTs, but most addressees did not respond. The Western states appear to be opposed to this GA initiative, and abstained from the vote on GA Res. 59/129 (2004).

changes. The GA is of the opinion that the UN has to supervise these types of processes, but it could be wondered whether the Decolonization Committee could really play a useful role. Perhaps other UN organs could assist the Kingdom and the Caribbean governments in providing information on the status options and monitoring the process of decolonization.

