A Comparative Study of the Autonomy Arrangement of the Former Netherlands Antilles in Relation to the Åland Example

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Abstract

In this study, the Caribbean part of the Kingdom of the Netherlands is examined as an example of an autonomy arrangement that has been subject to change, but is at the same time inflexible due to its robust constitutional entrenchment. With special reference to particular timeframes and conflicts, this research compares the autonomy arrangement of the former Netherlands Antilles to the Åland Example. All autonomies evolve in their unique directions. Those that are embedded in a relatively stable and democratic environment remain the longest, and contribute to the organisation of a state. As of now, the autonomy arrangement of Aruba, Curaçao and St Maarten seems to be constitutionally stable as it is domestically entrenched in multiple ways that are comparable to the Åland Example, and is safeguarded by the international community that advocates the right of self-determination of former colonies. The relations within the Kingdom of the Netherlands are, however, not completely exempted from the ghosts of the colonial era, as is visible in the authority of the country of the Netherlands within the Kingdom's relations, both institutionally and in its structural parenting role when it comes to law enforcement and finances. In the words of the fox in *The Little Prince*, the Netherlands still maintains a certain responsibility for its `tamed´ territories in the West.

Keywords:

Autonomy, Confederation, Entrenchment, Federation, Integration, Right of Self-Determination

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"Men have forgotten this truth," said the fox. "But you must not forget it. You become responsible, forever, for what you have tamed . . . "

From *The Little Prince* by Antoine de Saint-Exupery

Lotte Tange[1]

1. A Brief Introduction

The Kingdom of the Netherlands currently consists of four autonomous constituent countries[2]: the Netherlands, Aruba, Curaçao and St Maarten, of which the last three are located in the Caribbean. The country of the Netherlands consists of a territory in Europe and the islands of Bonaire, Saba and St Eustatius in the Caribbean. Bonaire, Saba and St Eustatius are integrated with the Netherlands and have the status of *publieke lichamen*, which means in broad terms that their position is similar to that of municipalities, with adjustments for their size, distance from the European part of the Netherlands, local economy and geographical position.[3] This constitutional order, which came into place on 10 October 2010, is relatively new. The overseas territories of the Netherlands were already granted autonomy under the Kingdom Charter of 1954, when the islands were still constitutionally unified under the Netherlands Antilles. The constitutional changes of 2010, and the several referenda that preceded this new legal order, show that the autonomy settlement of the Caribbean part of the Kingdom of the Netherlands has been subject to changes, and is thus not *settled* quite yet.

Although the timeframe and the conflicts that form the background to the autonomy negotiations of the former Netherlands Antilles are very different to that of the Åland Islands, it could be helpful to compare the two settlements both

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[2] Countries refer here to the sub-state territorial units making up the Kingdom of the Netherlands.
[3] *New Constitutional Order,* n.d.

legally and institutionally. Both autonomy settlements concern islands that are separated from the mainland by water (and thus not located within the tangible borders of the central power), and are inhabited by people with a different language and cultural/historical background. The Åland Islands stands out as an autonomous territory with a very strong legal position, both in relation to its powers and the permanency of the autonomy arrangement.[4] It could therefore be helpful to compare the new constitutional order of the Kingdom of the Netherlands with that of the Åland Islands, as the Åland Example is of concrete value as a very robust institutionalised autonomy solution.[5] Moreover, different scholars have expressed the need to outline and systematise the wide scope of different institutionalised autonomy solutions,[6] as it allows for a more context-sensitive analysis of current and future autonomy arrangements, as well as for their robustness and longevity.

In short, the study of the constitutional evolution of the Caribbean autonomy can make a contribution by (1) ensuring that the constitution of the Kingdom is no longer vulnerable to accusations of colonialism, and (2) by saying something about the longevity and robustness of the autonomy settlement. I will start by briefly describing the geography, demography, history and economy of the Caribbean part of the Kingdom of the Netherlands, as well as the first autonomy arrangement which the former Netherlands Antilles achieved under the Kingdom Charter of 1954. Since autonomy is a disputed matter in the social science literature,[7] autonomy is hereby defined as "the transfer of certain powers from a central government to that of the (thereby created) self-governing entity, and the relatively independent exercise of these powers".[8] The interest of this research focusses on a territorial form of autonomy, and on the power sharing between the state or central power and the various autonomous governments involved.

2. A Brief History of the Dutch West Indies

I started this research with a quote from *The Little Prince* as this important lesson by the fox seems to have become a red thread in the history of relations between the Netherlands and its colonies in the West. When the Netherlands `tamed´ the Caribbean islands as important trade bases for slaves and goods in the colonial era, the country did not foresee the consequences in the long term – ultimately, the territories stopped being profitable, but continued to be both

[4] Suksi 2013, p. 53.
[5] Spiliopoulou Åkermark and Stephan 2013.
[6] On the variance in autonomy positions see Suksi 2013. See also Wolff (2013) and *Autonomy Arrangements in the World, 2016.*
[7] Ackrén 2009.
[8] Wolff 2013, p. 4.

economically and politically dependent upon their metropolitan power. This section partly explains this dependency based on the geography, demography, history and economy of the small islands in the Caribbean. As all the research was conducted within the Netherlands, and it was not possible within the constraints of this study to collect material and sources from the Caribbean part of the Kingdom, this text should be read bearing these Dutch `glasses´ in mind.[9]

2.1. Geography and Demography

The Dutch territory in the Caribbean consists of six islands in total. The Leeward Islands of Aruba, Bonaire and Curaçao (also referred to as the ABC islands) are located off the north coast of Venezuela. The Windward Islands of St Maarten, St Eustatius and Saba (or the SSS islands) are located about 900 kilometres further to the north, close to Puerto Rico, Anguilla and St Kitts. St Maarten is the Dutch side of an island that is called Saint-Martin on the French side. Known as the smallest island in the world to have ever been split between two different nations, this island has been shared by the French and the Dutch for over 350 peaceful years under the Treaty of Concordia.[10]

Table 1. Carribean Islands according to Population and Area.[11]

	Area (sq. km.)	Population
Aruba	193	104000
Curaçao	444	159000
Bonaire	288	19500
St Maarten	34	39500
St Eustatius	21	3200
Saba	13	1950

Due to inadequate fresh water supplies, poor soils and overgrazing, nearly all consumer and capital goods of the Caribbean islands have to be imported. The SSS islands have volcanic, barren soil with little or no natural irrigation, which

[9] There exists some linguistic confusion about the different names referring to the Netherlands. Citizens of the Netherlands are called Dutch as is their language. Since the citizens of the Caribbean part of the Kingdom share the same nationality as the people from the Netherlands, they are technically also Dutch. However, for clarity purposes in this research I refer to `Dutch´ affairs only when it considers affairs of the country of the Netherlands.
[10] The division of this island does have significance for the debate about potential independence for St Maarten in the future, since France will automatically get involved in that scenario as Saint Martin opted to integrate with France.
[11] The population numbers in this table are approximate and based on calculations by the United Nations. See Worldometers, 2017 & Centraal Bureau voor de Statistiek, 2016.

problematises agriculture. Only 10% of the land is considered arable. The Southern islands of Aruba, Curaçao and Bonaire have bare and eroded soil as a result of overgrazing. Natural resources are also very limited, with some phosphates found on Curaçao and salt on Bonaire. It was not for nothing that the Spaniards named the ABC islands *Islas Inútiles* when they first laid hands on them. Needless to say, the territory is not of high significance to the Netherlands either when it comes to natural resources, which might partly explain the `take-it-or-leave-it´ character of the most recent autonomy negotiations.[12] While the Caribbean is not of much importance to the Netherlands, there is an asymmetry between the metropolis and the overseas territories that leaves an enduring mark on the Kingdom relations, which Oostindie & Klinkers call a "perpetual legacy of ambivalent Caribbean dependency".[13] I shall come back to this Caribbean dependency later in this text.

On the ABC islands, Papiamentu is the dominant language. This creole descends from Portuguese and West African languages, with a strong admixture of Dutch and lexical contributions from Spanish and English. On the SSS islands, most people speak English and Caribbean English. In 2007, English and Papiamento were made official languages in the former Netherlands Antilles, alongside the Dutch language.[14] Legislation is still written in Dutch, but parliamentary debate is now in Papiamentu or English depending on the island, which was an important step in the acknowledgement of the identity and culture of the Caribbean populations in the autonomy arrangement.

The cultural variety of the islands is very diverse. A large part of the Antillean population descends from European colonists and African slaves. The remainder of the population originates from other Caribbean islands, Latin America, and East Asia, among others. Some of the islands are inhabited by more than 50 nationalities, with different religions and ethnic backgrounds (although Dutch nationality is still prevalent). The majority of the population are followers of the Christian faith, mostly Roman Catholic. Curaçao also hosts a sizeable group of Jews. No group can really claim to be indigenous, apart from the Arawak Indians who became extinct under the previous Spanish rule. The people of Curaçao now have the saying "everyone is a *Yu di Kórsou*" – a child of Curaçao.[15] An appreciation of this cultural and ethnic complexity is important in the analysis of autonomy settlements, even though ethnic or religious conflict has been mostly absent in the autonomy negotiations of the Netherlands Antilles.

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[12] In late 2008, the Dutch Prime Minister Balkenende commented that the deal had by now become the Antillean citizen´s to `take-it-or-leave-it´ (Gardner & Prassl, 2009, p. 13).
[13] Oostindie & Klinkers, 2003, p. 11.
[14] Government of the Netherlands Antilles, 2007.
[15] Gardner and Prassl, 2009, p. 7.

2.2. History and Economy

In 1634 the Dutchman Johan van Walbeeck conquered the island of Curaçao. This was a historical event that backfired in discussions on the future of the former Netherlands Antilles, since the Netherlands wanted to get rid of the colonies in the West multiple times. Oostindie & Klinkers (2003) emphasise that while the territory of Indonesia was perceived to be of utmost importance to the Netherlands, and therefore attracted much attention in Dutch politics, this was rarely the case with respect to the Caribbean territories. The Netherlands was the only colonial power that named its colonies *wingewesten* – which literally translates into `regions of profit´ – a word that definitely applied to the Dutch East Indies at that time. The islands in the Caribbean Sea, however, proved a very different reality in the long term. The Spaniards had already labeled Curaçao, Aruba and Bonaire *Islas Inútiles* because there was no gold or silver to be found. The Netherlands, however, saw the islands in a more strategic manner at that time, because it could serve as a naval base from where the Spaniards could be fought in the Americas.

During the 17th century, the Antillean islands were occupied by the so called Dutch West India Company (WIC). The WIC fortified Curaçao for use as a commercial centre and trade base. After the Netherlands and Spain had signed the Peace of Westphalia in 1648, Curaçao lost its function as a naval base. The island then became a major base for the slave trade during the period of colonisation. Slaves were brought in from Africa to work in the plantations and salt ponds until the abolition of slavery in 1863. While Curaçao emerged as a market for the slave trade, Bonaire became a plantation of the West India Company, cultivating dye wood and maize and harvesting salt around Blue Pan. The discovery of gold in 1824 caused a gold rush on Aruba, which lasted until 1916 when the mines became so unprofitable that they were forced to shut down.

The SSS islands were discovered earlier than the ABC islands, by Christopher Columbus in 1493. The first settlement on St Eustatius was established in 1636, which changed hands between the Dutch, French, and Spanish 22 times. It was not until 1678 when the Dutch West India Company stationed a commander on St Eustatius, who also governed over the islands of St Maarten and Saba. The Dutch section of St Maarten proved to be valuable to the West India Company due to its salt deposits. Also known as *The Golden Rock*, St Eustatius developed into a major point of transhipment of goods, and became famous for its trade in arms and ammunition during the American war for independence. During the 17th and 18th centuries, the island was also of some importance for sugar cultivation. Saba was believed to be a popular hideout for pirates in the 1600s because of its rocky shores. The island progressed slowly because of its difficult terrain and remains the least populated part of the Kingdom.

After the Dutch West India Company went bankrupt near the end of the 18th century, the islands came under the control of the Dutch state. From 1815 they were governed directly under King Willem I. Suriname and the Caribbean islands were briefly merged into one single colony, but this proved unsuccessful because of too many mutual differences. The West Indies were then divided into Suriname and *Curaçao en onderhorigen* (Curaçao and subordinates). From there, the islands gradually obtained a restricted form of self-government. In 1936, *Curaçao en onderhorigen* was renamed to *Gebiedsdeel Curaçao* (Territory of Curaçao), and the so-called *Koloniale Raad* (Colonial Council) was replaced by the *Staten van Curaçao,* consisting of fifteen members of which five were appointed by the Governor of the Netherlands and ten were `democratically´ chosen. In 1937, the first elections took place, in which 5% of the population was allowed to participate.[16]

After the abolition of slave trade in 1863, the West Indies became economically backward – the *wingewest* ended up costing more than it yielded. Dutchmen were quite regularly suggesting that the islands should be sold. In 1869, a member of parliament observed that `it is an easy life, living at someone else´s expense´, a sentiment that has been repeated many times up until now.[17] Oil wells in Venezuela meant a brief economic turnaround for the islands when Shell constructed an oil refinery on Curaçao in 1915. This refinery briefly boosted the economy of the islands as it created a lot of jobs. During World War II, the refinery also proved to be of great importance to the Allies, who obtained an important amount of fuel for their planes there. American military was stationed on the island to defend it. Meanwhile, the Dutch war cabinet in London developed a new policy that had to change the colonial relations. 1954 was the year in which the islands were granted autonomy for the first time.[18]

3. The Kingdom Charter of 1954

The Dutch Kingdom Charter of 1954 claimed to create a `new legal order´ that prevailed over the Constitution of the Netherlands (Art. 5). The Charter gave the different countries within the Kingdom of the Netherlands the possibility to determine their own legislation in most areas, however, the Caribbean islands needed the approval of the Kingdom government with regard to a number of subjects (Art. 44). This means that the Kingdom government could intervene in certain amendments to the internal constitutions of the overseas territories, for example those concerning the protection of basic human rights, and the powers

[16] Donker 2003.
[17] Oostindie and Klinkers, 2003, p. 59.
[18] Donker 2003.

of parliament and the courts. Amendments to the Constitution of the Netherlands do not require this approval unless they concern `Kingdom Affairs´ (see below). It is important that this first autonomy of the Caribbean part of the Kingdom was not revocable without the consent of the parliaments of all countries (Art. 3).

According to the Kingdom Charter, the Caribbean islands and the Netherlands would administer their common affairs (or Kingdom Affairs) on the basis of `equivalence´, a choice of words which probably intended to spread the idea that the former colonies would no longer be subordinated to the Netherlands and that they would be involved in decision making regarding the common affairs of the Kingdom. Nevertheless, as mentioned above, this does not mean that the Charter of 1954 actually treated all countries of the Kingdom as entirely *equal*. Next to equivalence, the new legal order was `voluntary´ in the sense that the relation between the Netherlands and the Netherlands Antilles was henceforth based on mutual consent, which intended to express the idea that the era of Dutch colonial domination had ended.[19]

3.1. Power Distribution and `Kingdom Affairs´

The Netherlands Antilles (and eventually Aruba) were granted autonomy except with regard to the so-called *Kingdom Affairs*, which are listed exhaustively in the Kingdom Charter (Art. 44). Examples of Kingdom Affairs are foreign affairs, defence, nationality and extradition. The Kingdom was also charged with safeguarding fundamental human rights, legal certainty and good governance in the entire Kingdom (Art. 43). The different countries within the Kingdom could choose to handle a non-Kingdom affair jointly, which occurred for example in the combat of international terrorism and drug trafficking. The economic development of the Netherlands Antilles, its public debt, and problems with youth crime also became somewhat of a common affair since the late 1990s in the sense that efforts to tackle these problems are coordinated to some extent between the Netherlands and the Caribbean islands.[20]

The Charter allows the Caribbean countries to maintain contacts with foreign states and international organisations more or less independently, as long as the position of the Kingdom as a whole is not at stake. The Kingdom government decides when this is the case. The Caribbean countries are members of several international organisations, but they cannot join such organisations against the will of the Kingdom government. Moreover, the different countries within the Kingdom are not allowed to conclude international treaties as this capacity is

[19] Hillebrink 2007, p. 143.
[20] Ibid.

exclusively attributed to the *Staten-Generaal* of the Kingdom (Art. 24).[21] The Charter did provide that the Caribbean islands would be involved in the conclusion of treaties which directly affect them (Art. 28). Moreover, the overseas countries could negotiate international agreements with foreign states, and then request the Kingdom to conclude such agreements on their behalf (Art. 26). The islands are also granted the right of veto on the application of financial and economic treaties to their territory if they expect to be negatively affected (Art. 25).

3.2. Unified by Freedom

The coat of arms of the Netherlands Antilles (which was created on October 30, 1964) said *Libertate unanimus,* which means "Unified by freedom" in Latin.[22] Nevertheless, how applicable this motto is in view of the autonomy arrangement that first came in place in 1954 is questionable. The first draft of the Kingdom Charter was written by the Dutch government and modified on a number of points during negotiations with representatives from Suriname and the Netherlands Antilles. The final text was approved by the parliaments of both countries (which had been elected in a democratic manner), but as an exercise of *self-determination*, the process was definitely flawed in certain aspects. Options such as independence from, or integration with, the Netherlands were not considered an option at that time, and no referendum was held on the islands to inquire as to the opinion of the inhabitants.

Also in 1986, when Aruba achieved its *status aparte* under the condition that it would become independent in 1996, no referendum was held, nor was there a referendum when it was later decided that Aruba would not become independent after all.[23] In 1977, a referendum had been organised on the island, but this suffered from too many defects to represent an accurate popular opinion. While it was clear that most Aruban people did not want independence, and did not want to stay a part of the country of the Netherlands Antilles either, it was far from clear what kind of relationship with the Netherlands actually had the preference of the Aruban population. This means that the *status aparte* of Aruba under the Kingdom Charter was also not really created on the basis of a free and informed choice of self-determination.[24]

[21] The *Staten-Generaal* (States General) is the bicameral legislature of the Netherlands, consisting of the Senate (*Eerste Kamer*) and the House of Representatives (*Tweede Kamer*).
[22] Government of the Netherland Antilles, 1964.
[23] This *status aparte* indicated the special status of Aruba as an autonomous island within the Kingdom of the Netherlands between 1986 and 2010.
[24] Hillebrink 2007, pp. 234-235.

During the 1990s, much dissatisfaction was expressed about the legal order of the 1954 Kingdom Charter for reasons of corruption, financial mismanagement, island separatism, and accusations of colonialism (among others). This dissatisfaction came from both the national and international corners, and will be addressed more extensively in the following section of this research. There never appeared to be a majority among the population of the Netherlands Antilles in support of independence from or complete integration with the Netherlands, since the few political parties on the islands that campaigned for such a fundamentally different legal status never received much support during elections.[25] Nonetheless, we could view the Caribbean islands as falling within the scope of UN Resolution 1514, granting them the right of self-determination (a topic that also will be addressed later in this research). International pressure to determine the constitutional preference of the overseas populations of `ex-colonies´ partly explains the referenda that were organised on the Netherlands Antilles between 1993 and 2009, which resulted in the new constitutional order of 2010. This process will also be analysed more extensively in section 4.4.

4. Comparative Framework

The Charter of 1954 remains intact today as the Constitution of the Kingdom of the Netherlands, and remains virtually unaltered with the exception of its membership.[26] The recent changes to the constitutional order of Aruba, Bonaire, Curaçao, Saba, St Maarten, and St Eustatius in 2010 do raise questions about the `robustness´ of their autonomy settlement, especially in comparison to the Åland Example. According to Spiliopoulou Åkermark,[27] we can discern five factors, or rather clusters of factors, influencing the success or failure of autonomy arrangements, namely:

1. Timing of the establishment of the autonomy;
2. The nature of the dispute and domestic dynamics;
3. The democracy requirement, i.e. The legal and political institutions in the state in which the autonomy is created, and the way the arrangement has been negotiated and introduced;
4. The role of external actors and the international society;
5. The institutional design of the autonomy arrangement.

In the following sections I will compare the new constitutional order of the Kingdom of the Netherlands with the autonomy arrangement of the Åland Islands, structured according to this framework.

[25] Id. p. 235.
[26] Oostindie and Klinkers 2003, p. 10.
[27] See Spiliopoulou Åkermark 2013a, p 18.

4.1. Timing of the Autonomy Establishment

According to Spiliopoulou Åkermark,[28] the prospects of arriving at a successful introduction of an autonomy solution are strongest when the state in question is undergoing a regime change or a wider re-shuffle. Such periods of flux are, however, no preconditions for the establishment of an autonomy arrangement, as was the case in the constitutional re-arrangement of the Netherlands Antilles within the Kingdom of the Netherlands, in which calm negotiations prevailed and no major changes were made to the Constitution of the Netherlands, nor to the Kingdom Charter. Where the Åland Example was negotiated and introduced in the aftermath of wider re-arrangement of European territories after World War I (1914-1918), the negotiations about the Netherlands Antilles should be seen first in light of international decolonisation and self-determination sentiments, and second in light of the economic situation of and political tensions between the countries within the former constitution of the Netherlands Antilles and Aruba.

First of all, international pressure on the Netherlands increased in the context of the internationally established right of self-determination, most importantly in GA Resolution 1514 (XV), the Declaration on the Granting of Independence to Colonial Countries and Peoples. During the 19th and 20th century the word `colony´ gained a growing negative connotation, describing a situation where a foreign white elite deprives the non-white masses of self-government and human rights in order to “extract immense riches for their own profit”.[29] But the term was also still used to refer to “distant territories that remain, in some way, politically dependent on the metropolitan power”.[30] This latter definition matches the so-called “perpetual legacy of ambivalent Caribbean dependency” in the Kingdom relations.[31] Within the UN, colonies were eventually thus described as Non-Self-Governing Territories (NSGTs).

Chapter XI of the UN Charter, the Declaration Regarding Non-Self-Governing Territories, was a revolutionary statement for international law, since the colonial powers of 1945 promised that the interests of the colonial peoples would be of prior importance in the administration of their NSGTs (Art. 73). The Administering Members furthermore promised to support the political, economic, social and educational development of the territories, and to advance self-government, while taking the political aspirations of the inhabitants into account.[32] Between 1945 and 1970 many states, including the Netherlands,

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[28] Ibid.
[29] Aldrich and Connell 1998, p. 3.
[30] Id. p. 1.
[31] Oostindie and Klinkers 2003, p. 11.
[32] Hillebrink 2007, p. 10.

claimed that Art. 2, para. 7 prohibited the UN from *directly interfering* in the administration of their NSTGs. Nevertheless, Resolution 1541 constituted a large step towards consensus on the issue of decolonisation, and formed the background to the first autonomy negotiations regarding the Netherlands Antilles between 1948 and 1954.

Inspired by the international wave of decolonisation that decimated the Western empires during the 1950s and 1960s, Dutch politics was gripped by the sentiment that overseas possessions were a thing of the past. Suriname agreed to leave the Kingdom of the Netherlands and became independent in 1975. The Netherlands Antilles, however, refused independence which meant that the political structure and relations within the Kingdom of the Netherlands needed a different kind of reshaping. The economic situation of and political tensions between the countries within the former constitution of the Netherlands Antilles and Aruba, which led up to the constitutional reshaping of the Caribbean membership in the Kingdom Charter in 2010, will be described in the next section, as they formed the conflict behind the most recent amendments to the constitutional order of the Kingdom Charter.

4.2. The Nature of the Conflict

As mentioned earlier, the nature of the conflict surrounding the autonomy negotiations of the Netherlands Antilles was not one of violence and minority disputes, nor one of quarrel about profitable land or natural resources. Most of all, the Netherlands Antilles were increasingly seen as an outdated colonial construct. Furthermore, the economic situation of and tensions between the countries within the former constitution of the Netherlands Antilles made for the constitutional reforms of 2010. During the first decades after 1954, the autonomy of the Netherlands Antilles was practically unchallenged within the Kingdom. Since the 1990s, however, the way in which the islands made use of its autonomy encountered increasing criticism. In the opinion of the country of the Netherlands, the Antillean governments were unable to effectively maintain the rule of law, provide good government and protect the human rights of their inhabitants. Much criticism has also been directed at the economic policies and the public spending of the government of the former Netherlands Antilles, an area in which the country was fully autonomous at the time.[33]

The financial situation of the Netherlands Antilles also became a big concern for the Kingdom, since the Antillean debt reached a level of more than 100% of its GDP in 2005. The IMF recommended drastic cutbacks and a thorough

[33] Hillebrink 2007, p. 146.

liberalisation of the Antillean economy, supplemented with financial aid from the country of the Netherlands. The Netherlands Antilles implemented at least a number of the IMF´s recommendations, but the Netherlands refused to provide the full back up that was promised because it considered the Antillean effort insufficient. This decision seeded antipathy towards the Netherlands on the Caribbean islands. The Dutch (though officially Kingdom) intervention in the offshore corporate business developing in the region also caused consternation on Curaçao. The common feeling was that the Dutch were preventing Curaçao from developing a strong economy of its own.[34] The antipathy towards the Netherlands was not strong enough to compel independence, but the islands clearly felt the desire to take more direct control over their island affairs.

Moreover, the unity of the Netherlands Antilles has been under pressure from the force of island separatism from the very beginning. The Netherlands Antilles was a country made up of very diverse islands that have few economic ties and are located far apart. The Netherlands Antilles was also never considered a nation. Therefore, hardly any attempts at nation building have been made in the past, and politicians and political parties have traditionally only represented their own islands and peoples within the umbrella government of the Netherlands Antilles. Those centrifugal forces in Antillean politics became stronger after the Netherlands decided in 1972 that Suriname and the Netherlands Antilles should become independent in the near future. Aruba forced its way out of the Netherlands Antilles in 1986, which left the country economically and politically more unstable than before, with an increasing number of people wishing to “leave the sinking ship”.[35] The departure of Aruba made for an even bigger imbalance between the other islands in the country formation – with Curaçao being the biggest island in scale and control. As the seat of the Antillean government, there was a perception among people on the remaining islands that not enough money nor attention was leaving Curaçao for its neighbours.[36]

All of the above made that the government of the Netherlands was no longer content to merely respect the autonomy of the overseas territories, provide aid, and hope that the economy of the Netherlands Antilles would take turn for the better. More attention was paid to the Kingdom Affairs, and the involvement of the Kingdom with the autonomous affairs of the Caribbean countries increased. A few examples of this new Dutch involvement were the administrative supervision on St Maarten, the establishment of a common coast guard for the Caribbean islands, and the refurbishment of the Caribbean prisons.[37] I will come

[34] Gardner and Prassl 2009, p. 12.
[35] Hillebrink 2007, p. 247.
[36] Gardner & Prassl 2009, p. 12.
[37] Hillebrink 2007, p. 166.

back to this Dutch parenting role in the Kingdom relations at a later stage. For now, it is important to know that in the public opinion of the Netherlands, Antillean politicians were not able to provide good government for the islands, and that the Dutchmen felt they should take charge, also because the criminality on Curaçao was spilling over towards the Netherlands. Since the islands were not ready for independence in any kind of way, some Dutch politicians proposed the full integration of the Netherlands Antilles into the country of the Netherlands as a province or municipality.[38]

The population of the overseas islands, however, did not seem to be keen upon either integration within the Netherlands, nor independence. It is thus not the political model of the association of the Netherlands Antilles and the Netherlands that was disputed, but the structure of relations between the islands of the Netherlands Antilles, and between the individual islands and the Kingdom. In 2005, negotiations started to dismantle the Netherlands Antilles into five separate entities. The Netherlands offered to assume a part of the public debt of the Antilles, but in return demanded that it should have a stronger say in the areas of law enforcement and public spending in the five new entities.[39] During this process the legal order of the 1954 Kingdom Charter stayed mostly intact, with adjustments for the newly created autonomies. The exact legal and political institutions of the old and new autonomy arrangement, and the way in which they have been negotiated and introduced, will be explained in the next section.

4.3. The Democracy Requirement

Because the democracy requirement is the most research intensive factor, and the least accessible in terms of public information, this factor will be touched upon briefly by explaining the legal and political institutions of the former Netherlands Antilles and the way in which the Charter of 1954 and the new constitutional order of 2010 have been negotiated and introduced. It is, however, difficult to make any statements about the quality of the individual democratic governments on the autonomous islands, as the democracy on the Caribbean islands would be an interesting research topic on its own.[40] This research will only focus on the constitutional entrenchment and historical timeline of the autonomy arrangement of the former Netherlands Antilles.

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[38] Id. p. 191.
[39] Id. p. 168.
[40] After St. Maarten became an autonomous country in 2010 the government fell five times because representatives leave their fraction quite regularly in the fifteen-seat parliament. This makes the democracy on St Maarten very unstable.

4.3.1. Legal and Political Institutions

Suksi concludes that the autonomy arrangement of the Åland Islands is entrenched in various ways in the legal order of Finland, which partly explains the longevity of the autonomy arrangement, as well as its robustness.[41] For Åland, several entrenchment modes are in place at the same time, including *general entrenchment*, *special entrenchment* and *regional entrenchment* – the various meanings of which will be explained at a later stage. At the international level, a *general international entrenchment*[42] applies as well, since the Council of the League of Nations decided to approve the agreement between Finland and Sweden on the terms under which the Åland Islands would remain under Finnish sovereignty.[43] This section will only deal with entrenchment modes of a domestic nature, as international modes of entrenchment will be touched upon in the next section about the role of external actors and the international society in the autonomy negotiations. For the Kingdom of the Netherlands, different entrenchment modes are in place due to the different timeframe of the autonomy negotiations and the colonial history of the autonomous territories, but similarities apply as well on a domestic level.

The first and foremost difference between the Åland Islands and the former Netherlands Antilles is that Åland is part of a sovereign Republic, while the Caribbean islands are part of a Kingdom. The Netherlands has been a Kingdom since 1813. In the Netherlands, the King is the Head of State, or rather the `inviolable part´ of the government, although he has no direct powers. Promulgating laws and decisions requires the signatures of both the King and a minister, but the ministers are ultimately always responsible. In short, the King does perform some tasks of a political nature, such as the signing of laws, but his role is mostly of a ceremonial or symbolic nature, being the face of the Kingdom in foreign relations. In post-colonial Dutch relations, the House of Orange is essential in the maintenance of good relations within the Kingdom, as for the Caribbean populations the Royal Family has more emotional appeal than the Dutch political leaders.[44]

The position of the King and his succession is regulated in the Constitution, which makes the Netherlands a constitutional monarchy.[45] The Kingdom of the Netherlands as a whole is governed by a constitutional settlement – also called the *Statuut*.[46] Signed by the Netherlands, the Netherlands Antilles and Suriname

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[41] See Suksi 2013.
[42] Entrenchment by which “the international community guarantees a sub-state arrangement in the creation of which it perhaps has participated” (Suksi, 2013, p. 51).
[43] Suksi 2013, p. 51.
[44] Oostindie and Klinkers 2003, p. 13.
[45] Parlement & Politiek, n.d.
[46] For the complete Statuut see: *Statuut voor het Koninkrijk der Nederlanden*, 2010.

on October 28, 1954, this `Charter for the Kingdom of the Netherlands´ regulates the relationship between the countries. Before 2010, the *Statuut* applied to the Netherlands, the Netherlands Antilles and Aruba, since Suriname gained independence in 1975 and Aruba acquired a *status aparte* from the Netherlands Antilles in 1986. The current constitutional structure came into place on 10 October 2010 after dismantling the Netherlands Antilles as a country entirely.

The country of the Netherlands Antilles originally existed of six islands, each of which formed a separate administrative unit, called *eilandgebied* (island territory). The Islands Regulation of the Netherlands Antilles (ERNA) provided that the individual islands were autonomous in all areas except civil, penal and labour law, the police, prisons, monetary affairs, health care, social security, taxation, and partly in education. The populations of the islands elected an Island Council, which appointed a number of Commissioners. Together with the Lieutenant Governor (who was appointed by the Kingdom government), the Commissioners formed an Executive Council. Curaçao had a special position under the ERNA, with a slightly larger amount of autonomy and more authorities than the other islands.[47]

After 2010, Dutch legislation gradually replaced Antillean law on Bonaire, St Eustatius and Saba. The three integrated islands have a single police force, fire department and ambulance service with a central dispatch centre. The new constitutions of Aruba, Curaçao and St Maarten are called *Staatsregelingen*. The autonomous countries make their own legislation on all subjects that are not Kingdom Affairs. This legislation is materially often quite similar to Dutch legislation though, since the legal system of the Caribbean countries is based on Dutch law to start with, and because the countries lack the capacity to develop a completely new law system themselves. Their judicial system also depends to a large extent on lawyers and judges from the Netherlands.[48] In the new constitutional relationships, there is still one Joint Court of Justice and one Joint Public Prosecutions Service for Aruba, Curaçao, St Maarten, Bonaire, St Eustatius and Saba, as has been the case for the Netherlands Antilles and Aruba before the new legal order of 2010.[49]

The autonomous Caribbean islands now have a parliamentary system similar to the Netherlands, with an executive branch composed of the Governor (representative of the King) and a Council of Ministers, who depend on the support of a majority in parliament (the *Staten*). All registered inhabitants of the islands have the right to vote in elections for the *Staten*. The countries have an

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[47] Hillebrink 2007, p. 165.
[48] Id. p. 164.
[49] Government of the Netherlands, 2010.
For more information on the Dutch court system see: *The Dutch court system,* n.d.

electoral system based on proportional representation. In the former *Staten* of the Netherlands Antilles, each of the five islands had a fixed number of seats. Curaçao had a majority of fourteen seats on a total of twenty-two seats. St Maarten and Bonaire had each three seats, and Saba and St Eustatius had one seat each. The *Staten* represented the population of the country as a whole, but because all of the existing political parties had their power base in only one of the islands, the members of the *Staten* mostly represented their own island.[50]

Only the Kingdom of the Netherlands can be considered a State, which means that only the Kingdom – not the individual autonomous countries – has international legal status. The Crown of the Kingdom is hereditarily worn by Her Majesty Juliana, Princess of Oranje-Nassau, followed by her lawful successors (Art. 1a). His Majesty King Willem-Alexander is currently represented in Aruba, Curaçao and St Maarten by a Governor, whose powers, duties, and responsibilities are regulated by the *Statuut*, and who is appointed by the King (Art. 2). The Kingdom as a whole is governed by a Council of Ministers, in accordance with Art. 7 of the *Statuut*. This Council consists of the Dutch Cabinet, augmented by Ministers Plenipotentiary representing the governments of Aruba, Curaçao and St Maarten.

The Charter grants a large degree of autonomy to the previous colonial holdings. All areas are considered to be internal competences of the autonomous territories unless the Charter explicitly states otherwise. Art. 3 of the Charter specifies which areas are considered common affairs, or `Kingdom Affairs´, including defence, foreign relations and nationality. Consequently, there is only one Minister of Foreign Affairs who has ultimate responsibility for the foreign relations of the Kingdom as a whole. Moreover, all Antillean people have Dutch passports and European citizenship. The Treaties of the European Union, however, are only ratified for the European part of the Kingdom. The Caribbean parts of the Kingdom are listed as Overseas Countries and Territories (OCTs). Since OCTs are associated with the Union, the Caribbean part of the Kingdom enjoys a number of benefits, for example regarding exports to the EU, and funding from various EU sources like the European Development Fund (EDF).

4.3.2. Legal Entrenchment of the Autonomy Settlement

As mentioned before, this section will deal with entrenchment modes of a domestic nature, as international modes of entrenchment will be touched upon in a later section on the role of external actors and the international society in the autonomy negotiations. Just like the Åland Islands, the autonomy arrangement of the former Netherlands Antilles has *general entrenchment* in the constitutional

[50] Hillebrink 2007, p. 165. The parliamentary system was not affected by the 2010 arrangement.

order of the state. General entrenchment means that the sub-state arrangement is enclosed in the provisions of the national constitution.[51] The autonomy of the Netherlands Antilles is entrenched in the provisions of the *Statuut* of the Kingdom, however, not in the national Constitution of the country of the Netherlands. Nevertheless, the Kingdom Charter of 1954 claims to create a legal order that prevails over the Constitution of the Netherlands, which means that the Constitution of the Netherlands actually incorporates the provisions of the *Statuut* (Art. 5).

Next to *general entrenchment,* the autonomy arrangements of the Åland Islands and the former Netherlands Antilles also have some sort of *regional entrenchment* in common. Regional entrenchment implies that "a separate regional reaction through the representative assembly of the sub-state entity or through a regional referendum is envisaged whenever the legislation concerning the sub-state arrangement is being amended".[52] Where the Self-Government Act of the Åland Islands requires that any amendment to the Self-Government Act has to be consented to by the Legislative Assembly of the Åland Islands, the *Statuut* of the Kingdom of the Netherlands requires that amendments shall not be approved by the King before Aruba, Curaçao and St Maarten accept the amendment. This acceptance by Aruba, Curaçao and St Maarten is made by *landsverordening,* or national ordinance (Art. 55).

The autonomy of the former Netherlands Antilles also has some sort of *special entrenchment,* as does the autonomy of the Åland Islands. Special entrenchment implies that the "statute outlining the more practical modalities attached to the sub-state entity can be revised only according to a special amendment rule that complicates the amendment of the statute".[53] According to the Self-Government Act of the Åland Islands, any amendment thereof has to be passed in the Parliament of Finland in the same procedure as an amendment to the Constitution, and the amendment also has to be passed with the qualified majority of two-thirds by the Legislative Assembly of the Åland Islands.[54] In case of the *Statuut* of the Kingdom, the *landsverordening* shall not be adopted before the *Staten* approves of it in two readings. If the draft is approved by two-thirds of the votes in the first reading, the second reading will take place within a month after the draft has been approved in the first reading. However, only when the amendment of the *Statuut* touches upon the Constitution of the Netherlands, the amendment has to be passed in the Parliament of the Netherlands in the same procedure as an amendment to the Constitution, in line with Art. 55.

[51] Suksi 2013, p. 50.
[52] Ibid.
[53] Id. p. 51.
[54] Ibid.

4.3.3. The Way the Autonomy Arrangement has been Negotiated and Introduced

Whether the former Netherlands Antilles and Aruba could still be identified as `colonies´ of the Netherlands at the time of the referendum in 2005 is debated by social scientists, historians, politicians and activists. What is certain is that the colonial history of the Kingdom relations does cast a shadow over the present relations between the European and the Caribbean part of the Kingdom, which is for example visible in the active role of the Netherlands in the financial supervision of the former Netherlands Antilles. The autonomy of the Caribbean islands has been a process that spreads out over a century of history. This section deals with the specifics of this historical process up to the 2005 referenda.

In 1922, the term `colonies´ was deleted from the Dutch Constitution to enable the development of the constitutional status of Indonesia, and the principle that the internal affairs of the overseas territories should be administrated by the institutions of those territories, was introduced for the first time. This action meant the first decentralisation of authorities from the central power of the Netherlands to all overseas territories, but did definitely not affect the subordination of the old colonies. Also, the Netherlands could still unilaterally decide to change the constitution back in its own favour.[55] In 1936, the Netherlands Antilles were given new statutory regulations in which the measure of autonomy was broadened. For the first time in history, a largely elected local Council was founded in the Antilles (*Staten of Curaçao*), although no more than 5% of the local population was permitted to vote, and the new regulations still mostly left decisive competences with the appointed Governor in place.[56]

World War II meant a definitive breach in the Dutch colonial history. During the war, and in the following decade, colonial affairs became a major concern for successive Dutch cabinets, with most attention focused on Indonesia. Only after the independence of Indonesia in 1949 did the Dutch slowly started to shift their attention to the Caribbean. Since 1945, the Caribbean colonies continued under the new flag of *overseas territories*, only to become `equivalent´ and autonomous partners within the Kingdom nine years later. By then, a parliamentary democracy with universal suffrage had become effective on the Caribbean islands. In 1948, *Gebiedsdeel Curaçao* was renamed into the Netherlands Antilles, and henceforth all members of the *Staten* were elected by universal suffrage.[57]

[55] Hillebrink 2007, p. 178.
[56] Oostindie and Klinkers 2003, p. 61.
[57] Id. p. 64.

During the same year, a Round Table Conference started that was supposed to lay the foundations for a new constitutional order within the Kingdom. With this initiative, the Netherlands hoped to improve its international image, which was damaged by the hardline stance it had taken in Indonesia´s call for independence. However, the Dutch refusal to accept propositions such as the immediate recognition of full equality between the Antilles and the Netherlands, and the separation of Aruba from the Netherlands Antilles, made for a difficult start. Moreover, the Dutch Council of Ministers objected to the suggestions of Jonkman – the new Minister of the Overseas Territories – for the establishment of a `Cabinet of the Kingdom´ and other Kingdom institutions. It was decided, however, not to postpone the one central element everybody agreed upon: the realisation of full autonomy for the Netherlands Antilles.[58]

In November 1948, the Council of Ministers agreed to the rough draft of an interim regulation, which only became fully applicable on the Antillean islands in February 1951 and was quite disappointing to the Netherlands Antilles as the draft was not the product of mutual consultations, which was at odds with the notion of equality. There was a strong wish to resume the suspended Round Table Conference of 1948 as soon as possible. At the end of 1951 a preparatory commission for the Round Table Conference held meetings in Willemstad and Paramaribo, resulting in the draft proposal for the Charter, within which the range of Kingdom affairs had been more narrowly defined. In April 1952, the Round Table Conference was resumed. In contrast with the Round Table Conference of 1948, the consultations were now taking place between the Dutch, Suriname and Antillean governments directly.[59]

The federal elements of the Charter, which will be touched upon in section 7, were part of a compromise reached between the Netherlands and Suriname during the negotiations on the Kingdom Charter. At first, a structure had been designed in which the Kingdom would become a fully functioning federation with its own legislature, executive and judiciary. This institutional design would guarantee that the interests of the overseas countries were properly represented, but it was also feared that a federal structure would make too large a demand on the limited human resources of the small islands. After Indonesia had become independent, the draft for a federal *Rijksgrondwet* (Constitution of the Realm) of 1948 was considered too burdensome by the Netherlands, also because a large part of the constitutional law of the country of the Netherlands would have to be incorporated into it.[60]

[58] Id. p. 77.
[59] Id. p. 78.
[60] Hillebrink 2007, p. 170.

In 1950, the Netherlands presented a *Schets van een Statuut* (Draft for a Charter), followed in 1952 by a *Werkstuk* (Working Paper), both of which abandoned the idea for a real federation and replaced it with a structure in which there would be no separate federal level, but merely co-operation between the countries. No new institutions would be created, and it was proposed that the common affairs of the countries would be handled mostly by the existing institutions of the Netherlands. At the request of Suriname, the final text of the Charter returned to the federal language of the original `Constitution for the Realm´ in some respects.[61] Suriname also advocated for formal recognition of the principle of self-determination, and insisted on the `equality´ of the three countries being expressed in the Charter, which was not accepted in the final draft since it provided the possibility for a transitional phase towards full independence of the former colonies, which was still considered one step too far at that time.[62]

One of the aims of the Kingdom Charter of 1954 was to end all remaining doubts regarding the status of the Dutch overseas territories. The Charter was supposed to transform the colonial relation of subordination into a relation based on `equivalence´. However, from the perspective of constitutional law, the autonomous countries were not entirely treated equally. The Charter was born from the desire to make as few changes to the constitutional order of the Netherlands as were necessary to realise a substantial amount of autonomy for the overseas territories at relatively low costs. The Netherlands was not prepared to create a federal structure that would give the Caribbean territories a say in Dutch affairs, and was also not prepared to relinquish all constitutional control over the overseas territories.[63] Between the lines of the 1954 Kingdom Charter, the leading role in the Kingdom relations was therefore still assigned to the Netherlands, which will become more clear at a later stage.

In almost all respects the outcome of the Round Table negotiations was close to the wishes of the former West Indies. However, the `democratic deficit´ of the Kingdom, which includes a Ministerial Council of the Kingdom – a redefinition of the Dutch Council of Ministers including a Plenipotentiary Minister from each Caribbean country – was an important motive for the Surinamese striving towards independence. The Dutch refusal to meet the Antillean, and especially Surinamese wishes to conduct their own, autonomous foreign policies also led to frictions as the Netherlands repeatedly refused to give up any responsibility for

[61] Ibid.
[62] Oostindie and Klinkers 2003, p. 81.
[63] Hillebrink 2007, pp. 179-180.

foreign affairs to the Caribbean countries. Even though this issue would lead to another Round Table Conference in 1961, the Dutch government would not make any concessions.[64]

After the re-shaping of the political relations, the core of the transatlantic Kingdom relations moved into the sphere of development aid, as the Netherlands Antilles faced great economic difficulties. The islands benefited from the Dutch responsibility to assist financially, but also discovered that the growing dependence on development aid could bring a significant limitation to their autonomy. Violent riots in Willemstad on 30 May 1969 triggered a new political era in which the Dutch government quite suddenly moved to the active pursuit of independence for the Caribbean territories, which soon led to the transfer of sovereignty to Suriname in 1975. Dutch marine intervention to restore the peace in Willemstad led politicians to think about the dilemma of having a constitutional relationship which obliged the Netherlands to offer military assistance, but which denied any scope for remedying the source of possible tensions. Moreover, the Netherlands Antilles continued to grow more dependent on Dutch development aid, and since the Charter left the Netherlands little opportunity to get directly involved in the overseas administrations, this slowly stimulated the desire to get rid of the last territories of the colonial empire. In November 1971, the Dutch House of Commons announced its support for the transfer of sovereignty to Suriname and the Netherlands Antilles for the first time, and with an overwhelming majority. Yet, within Antillean politics pragmatism made the option of political independence unpopular. It was clear that independence for the Netherlands Antilles was still a distant political goal.[65]

The Round Table Conference of 1983 was probably the most important political event for the Netherlands Antilles since 1954. At the Round Table Conference of 1983 the countries and the islands decided that Aruba would be allowed to secede from the Netherlands Antilles and become a separate country within the Kingdom in 1986, in preparation for independence in 1996. Although the decision that Aruba would become independent was taken by mutual agreement, the general perception was that the government of the Netherlands had forced Aruba to accept it in exchange for being allowed to leave the Netherlands Antilles. There existed little doubt that the people of Aruba did not want independence, at least not in the near future. The date of independence was only agreed upon because Aruba wanted to leave the Netherlands Antilles, and the Netherlands still wanted all of the Caribbean islands to leave the Kingdom as soon as possible.[66]

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[64] Oostindie and Klinkers 2003, p. 90.
[65] Id. p. 116.
[66] Hillebrink 2007, p. 249.

Institutionally, the *status aparte* of Aruba made for some significant changes in the Kingdom Charter. One more Plenipotentiary Minister was seated in the Hague, as well as one more Governor on Aruba. Both the Minister of Antillean Affairs and the cabinet in charge – Cabinet for Antillean Affairs – added `and Aruba´ to their titles (KabNA). The KabNA office in Curaçao, established in 1970 and upgraded in 1975, was complemented with an office in Aruba. A third office was established in St Maarten in the early 1990s. Nevertheless, the KabNA was a criticised public body at the time and ceased to exist in 1998. Its functions were taken over by the Ministry of the Interior, which was renamed to the `Ministry of the Interior and Kingdom Relations´. Against the background of worrisome developments within the Republic of Suriname [67] the Hague recognised that the direct and short-term transfer of sovereignty to the Netherlands Antilles was a mission impossible. The 1990s thus became a decade of revaluation and continuation of the Kingdom relations.[68]

Since the Netherlands is still arguably the dominant authority in the Kingdom relations, there exists a presumed duty under international law to conduct referenda to determine the constitutional preference of the peoples of the Netherlands Antilles. I will further elaborate on this international pressure in the next section. In the process of autonomy for the former Netherlands Antilles, it partly explains the various referenda on the constitutional future of the Netherlands Antilles organised between 1993 and 2009.[69] A first (although dubious) referendum was held on Aruba in 1977, which resulted in a *status aparte* within the Kingdom of the Netherlands in 1986. In 1993, a similar referendum was held on Curaçao with the anticipation that the island would choose a similar fate. At that time, however, the popular vote (55%) favoured the status quo solution of maintaining the integrity of the Netherlands Antilles.

In the decade following that first referendum on Curaçao, perceptions of the political situation changed considerably, prosperity had taken root in Aruba, and tensions rose between the remaining constituents of the Netherlands Antilles. A referendum held on St Maarten in 2000 ended up in a popular vote for autonomy within the Kingdom. All islands of the Netherlands Antilles were asked to exercise their right of self-determination at the same time in 2005. St Maarten chose autonomy within the Kingdom along with Curaçao, as they had done five years previously; Saba and Bonaire chose to integrate with the Netherlands and St Eustatius preferred the status quo, though once it was clear that the Netherlands Antilles would be dissolved, St Eustatius decided to integrate with

[67] In 1980, a military coup in Suriname was followed by political murders, internal warfare as well as corruption, drug trafficking and economic crisis (Klinkers and Oostindie 2003, p. 131).
[68] Oostindie and Klinkers 2003, p. 131.
[69] Gardner and Prassl 2009, p. 11.

the Netherlands along with Bonaire and Saba. The overwhelming majority of voters from the different islands at the time disliked both the status quo and full independence, which seems to demonstrate a stronger antipathy towards the Netherlands Antilles than towards the Kingdom as a whole among the populations of the overseas territories.[70]

The referenda of 2005, and the resulting breakup of the Netherlands Antilles in 2010, meant an important step in the self-determination of the peoples of the Caribbean territories of the Kingdom of the Netherlands. Just as for the Åland Islands, we can take note of the fact that for Aruba, Curaçao and St Maarten, several entrenchment modes are in place at the same time and simultaneously in a way that safeguards the longevity and robustness of the autonomy arrangement. Regarding the autonomy of the former Netherlands Antilles, general entrenchment, special entrenchment and regional entrenchment apply within the domestic constitutional framework of the Kingdom. The total entrenchment effect of these separate entrenchment modes serves to fix the autonomy arrangement in the legal order of the Kingdom of the Netherlands. It is, however, not a direct safeguard for the quality of the democracy and good governance on the individual autonomous islands.

4.4. The Role of External Actors and the International Society

Leaving the topic of entrenchment at the national constitutional level, it is possible to point out methods of entrenchment within international law, or international relations as well. It is possible to mention at least two different categories of entrenchment in this context. In the case of the Åland Islands a general form of international entrenchment was in place when the Council of the League of Nations decided to approve the agreement between Finland and Sweden on the terms under which the Åland Islands would remain under Finnish sovereignty. This international guarantor institution is not in place anymore, since the League of Nations was dismantled and replaced by the United Nations, which did not want to assume this role in the autonomy arrangement. Nevertheless, Finland has continued to recognise its responsibility to uphold the Åland Islands settlement as a unilateral obligation under international law.[71]

In the case of the former Netherlands Antilles, general international entrenchment was not in place in a legally binding manner. During the referenda in 2005, the Netherlands Antilles, and its individual islands, were not on the list of Non Self-Governing Territories which the UN reviews under Art 73, since the UN recognised the decolonisation of the Netherlands Antilles by its removal

[70] Gardner and Prassl 2009, p. 13.
[71] Suksi 2013, p. 51.

from UN consideration in 1955 after the Netherlands submitted the Kingdom Charter of 1954 for review.[72] Between 1951 and 1955 the UN discussed the relationship between the Netherlands and its Caribbean territories. Since (1) the populations of the islands did not openly disapprove of the new status, (2) the representatives of the islands seemed to be happy with the agreement, (3) the Netherlands would probably not block a wish for independence if it was expressed by the population of one of the islands, and (4) the islands obtained self-government in the areas on which the Administering Member (in this case the Netherlands) should report (social, economic and educational conditions), the December 1955 GA resolution warranted that the Netherlands no longer needed to report on its Caribbean territories.[73]

The status of the Netherlands Antilles and Suriname did remain somewhat unclear after the GA Resolution of 1955, as there existed disagreement among states on the application of Chapter XI of the UN Charter to Suriname and the Netherlands Antilles.[74] Moreover, the 1955 Resolution removed the Netherlands Antilles from the UN list of Non Self-Governing Territories five years before the UN General Assembly formally defined the legitimate options of political equality in 1960. A review of the Kingdom Charter under the criteria of 1960 could have made for adjustments to the 1955 GA Resolution, but no mechanism was in place to do this.[75] Despite the absence of legally binding international entrenchment, the *right of self-determination* has an uncontested status in both international law and in Dutch constitutional law, resulting in the 2005 referenda on the Netherlands Antilles.[76]

In short, there was no direct international entrenchment mode in the autonomy arrangement of the former Netherlands Antilles, but pressure from the international law corner did play an important role in the 2005 referenda on the Caribbean islands. These referenda changed the political landscape of the former Netherlands Antilles and made matters of decolonisation, self-determination and self-governance re-emerge in the Kingdom relations, and ultimately, the relations with the international community.[77] Entrenchment under the right of self-determination is an additional option of entrenchment under international law. According to Suksi,[78] this mode of entrenchment could protect existing sub-state

[72] Corbin 2006, p. 1.
[73] Hillebrink 2007, p. 189.
[74] Id. p. 230.
[75] Corbin 2006, p. 5.
[76] The UN General Assembly adopted the Decolonisation Declaration in 1960 which confirmed that "all peoples have a right to self-determination (and) by virtue of that fact they freely determine their political status and freely pursue their economic, social and cultural development" (Id. p. 6).
[77] Id. p. 5.
[78] Suksi 2013.

arrangements against weakening of the arrangement against the will of the population, provided that the beneficiaries of the arrangement could be characterised as a people. It is difficult to say, however, whether the inhabitants of Aruba, Curaçao, and St Maarten constitute a *people* under this definition, as there is no indigenous population left on the islands and the cultural variety of the islands is very diverse.

Table 2. The new constitutional order of the Netherlands Antilles in a scheme with other Non-Independent Territories in the Caribbean/Atlantic region.[79]

Non Self-Governing Territories	Self-Governing Territories	Integrated Territories
Anguilla	**Aruba**	Guadeloupe & dependencies
Bermuda	**Curaçao**	Martinique
British Virgin Islands	**St Maarten**	French Guiana
Cayman Islands	Puerto Rico	St Martin
Montserrat	Greenland	**Saba**
Turks & Caicos Islands	Faroe Islands	**St Eustatius**
US Virgin Islands		**Bonaire**
St. Helena (South Atlantic)		

Resolution 1541 (XV) of 15 December 1960 recognises three political status options as forms of decolonisation if they are the outcome of a process of self-determination, namely *independence, free association,* and *integration*. According to General Assembly Resolution 2625 of 1970 it is also possible that self-determination and decolonisation lead to “any other status freely chosen by the population”. Since the populations of the Netherlands Antilles and Aruba were not interested in independence, and will probably not be in the near future either, a somewhat special constitutional structure was formed in 2010, which will be analysed compared to the Åland Example in the next section. Regarding the international status of the new constitutional order of 2010, it would be interesting to review the new political status of Curaçao and St Maarten against the international recognised criteria of free association, and the status of Bonaire, St Eustatius and Saba against the criteria of integration. Unfortunately, that would not be possible given the practical constraints of this research.

[79] Corbin 2006, p. 9.

To conclude this section, there was no direct role for kin-states in the autonomy negotiations of the former Netherlands Antilles. There was also no need for direct involvement of the international community, as security and minority issues where not really part of the problem on the Caribbean islands. We can definitely conclude, however, that there was an assumed pressure from the international community in the autonomy negotiations of the former Netherlands Antilles, resulting in the 2005 referenda that meant an important step in the self-determination of the inhabitants of the Caribbean parts of the Kingdom of the Netherlands.

4.5. The Institutional Design of the Autonomy Arrangement

Autonomy arrangements are meant to provide institutional solutions that allow the different segments of diverse societies to realise their aspirations for self-determination by peaceful means.[80] According to Spiliopoulou Åkermark[81], institutional design needs to address, more or less comprehensively, all the core aspects of the conflict that forms the background to the autonomy arrangement. A solution does not necessarily comprise one full package that is introduced through one single agreement or legal act, but can be addressed over a longer period of time in many different topics. In the case of the Åland Example, the settlement approached four core areas:[82]

> The *power-sharing problem* by establishing a system of territorial autonomy with exclusive competences and while guaranteeing enough links and cooperation instruments with the central state;
>
> The *security problem* by reconfirming the earlier demilitarisation regime and expanding it through the neutralisation of the territory during war. It also allowed for the establishment of a local police under the exclusive competence of the Autonomous government and parliament;
>
> The *identity and minority culture protection issue* with extensive language guarantees and by recognising exclusive competence of Ålandic authorities in matters of education and culture;
>
> The *economic resources issue* and the *financial viability* of the newly established autonomy by allowing for control of land by the Ålandic government and parliament and by introducing limitations to the rights of establishment of business.

Due to the practical limitations of this research, I have chosen to not discuss all areas extensively in relation to the autonomy arrangement of the former Netherlands Antilles. I would like to start off with the power sharing problem, as

[80] Wolff 2013, p. 7.
[81] Spiliopoulou Åkermark 2013a.
[82] Ibid.

this problem inherently touches upon issues such as cultural protection and economic arrangements – especially the latter one in the case of the Caribbean islands. The security issue appears to be of minor relevance in the case of the Kingdom of the Netherlands, since both the Caribbean islands (which are naturally poor in resources and not located in a conflict area) and the country of the Netherlands (which is part of the European Union and internationally protected under the NATO) are not under any direct military threat by neighbouring countries or other external actors, and are also not involved in any ethno political conflict. In contrast with the Åland Example, where the island is demilitarised and neutralised, *Defensie* is viewed as a common affair of the Kingdom of the Netherlands.[83] Dutch military is stationed on the Caribbean islands to protect the coastal borders from illegal migration and drug trafficking.

In light of the power-sharing problem, the Kingdom of the Netherlands has a somewhat ambiguous structure, since the autonomous islands in the Caribbean are part of the Kingdom, but not of the country of the Netherlands, while the Kingdom is often identified with the European country of the Netherlands only.[84] The official explanation of the Charter of 1954 states that the Charter is a legal document with its own `special character´. The reason for this choice of words is that the constitutional order of the Kingdom of the Netherlands does not really seem to fit any of the "traditional" forms of government as explained by Wolff.[85]

The Charter has some characteristics of a federation, which implies a "constitutionally entrenched structure in which the entire territory of a given state is divided into separate political units, all of which enjoy certain exclusive executive, legislative and judicial powers independent of the central government".[86] There is indeed a division of power between the Kingdom and the autonomous islands, based on the exhaustive list of subjects in the Charter. The Charter also seems to create a number of federal institutions, such as the Council of Ministers, a *Raad van State*[87] (Council of State) of the Kingdom, and a Kingdom legislator. But despite this federal language, Hillebrink (2007) argues convincingly that there are no *real* institutions of the Kingdom. The Charter merely attributed new functions to the existing institutions of the Netherlands, and the existing institutions of the former Netherlands Antilles are given "the

[83] *Defensie* (defence) is an umbrella term for the military force of the Kingdom of the Netherlands. The ministry that is occupied with (international) security issues is called the Ministry of Defence (*Ministerie van Defensie*).
[84] Hillebrink 2007, p. 325.
[85] See Wolff 2013.
[86] Wolff 2013, p. 5.
[87] In the Netherlands, the *Raad van State* is a constitutionally established advisory body to the Dutch Government, that must be consulted by the cabinet on proposed legislation before a law is submitted to parliament. The *Raad van State* also serves as one of the four highest courts of appeal in administrative matters.

right to influence the fulfilment of these functions by the Netherlands". Basically, there is no true division of power between the Kingdom institutions and the institutions of the country of the Netherlands, and there is thus no real equivalence between the constituent parts of the Kingdom.[88]

The Kingdom also has some characteristics of a confederation, which is an "empirically relatively rare form of voluntary association of sovereign member states which pool some competences by treaty without normally giving executive power to the confederal level of government". [89] The Kingdom of the Netherlands is indeed a union of four entities that operate rather independently, and which have some international personality.[90] The union established by the Charter has very little control over the citizens of the autonomous countries, the Council of Ministers of the Kingdom more or less functions as a procedure for conferring with the Ministers Plenipotentiary as Ambassadors of their countries, and decisions of the Kingdom are almost always based on consensus between the countries.[91]

Nevertheless, the powers of the Kingdom government to intervene in the administration and legislation of the Caribbean islands do not conform to this description of confederations (bear in mind the renewed Kingdom involvement in public spending and law enforcement on the Caribbean islands). Other Kingdom powers are usually only employed with the consent, or even at the request of, the autonomous countries. Another important difference with confederations is that the Kingdom Charter is not an international treaty and that the countries are not official sovereign states, even though the Charter does bear some resemblance to a treaty in the sense that it is based on `voluntariness´ and can only be amended with the approval of all the parties involved. Moreover, the countries could be seen as proto-states in the sense that they can perform most of the functions of states and they can choose to become independent.[92] In the end, it is all a matter of definition.

In conclusion, the Kingdom of the Netherlands does not officially fit any of the traditional forms of government. It is not a nation state in the traditional sense, since there have so far been no signs of the development of a trans-

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[88] Hillebrink 2007, p. 170.
[89] Wolff 2013, p. 5.
[90] Although it is assumed that only the Kingdom as a whole has international legal personality, Aruba, Curaçao and St Maarten can still exercise at least one right under international law, namely the right to self-determination, which suggests that the countries have some form of international personality. GA Resolution 2625 (XXV) of 1970 declares that territories such as the Netherlands Antilles and Aruba have 'a separate status' under international law. If it is assumed that the Charter creates a form of free association between the countries, than they should also be viewed as having international personality (Hillebrink 2007, pp. 171-172).
[91] Id. p. 172.
[92] Ibid.

Atlantic community of interests that could lead to the birth of a nation. According to Hillebrink (2007, 170), the federal and unitary traits that the text of the 1954 Charter exhibits, are no more than `constitutional make-up´. The Kingdom functions a bit like a confederation, although it cannot be called that either, because it is not based on a treaty, the countries are not independent states, and the institutions of the Kingdom do have some – albeit very limited – power over the citizens of the countries.[93]

5. The Role of the Netherlands in the Autonomy Settlement

Taking this ambiguous structure of the institutional design of the Kingdom of the Netherlands into account, it is important to expose the role of the Netherlands in the autonomy arrangements of Aruba, Curaçao and St Maarten. During the breakup of the Netherlands Antilles in 2010, the Netherlands offered to assume a part of the public debt of the Netherlands Antilles, but in return demanded that it should have a stronger say in the areas of law enforcement and public spending in the five new entities. This demand takes away some power from the autonomous territories and brings it back to the central power. What does this mean for the actual *self-government* of the autonomous islands of Aruba, Curaçao and St Maarten?

According to the Dutch government, the Netherlands has "an obligation to promote the wellbeing of its former colonies, as laid down by the United Nations," which means that the Netherlands is "responsible for the wellbeing of all the subjects of the Kingdom (…) greater wellbeing is the result of good governance, a healthy economy, and properly functioning law enforcement and education systems." The Netherlands views this responsibility for example in the courts, the combat of crime, the police force, and the prosecution services in the Caribbean part of the Kingdom. Although Aruba, Curaçao and St Maarten are now autonomous countries, a lot of these responsibilities go "beyond their capacity." [94] Assuming this responsibility of the Netherlands for the wellbeing of the former Netherlands Antilles, the role of the Netherlands in the new constitutional order takes the following forms:

> ensure good governance on the autonomous islands that is free of corruption;
> improve the wellbeing of the integrated inhabitants of Bonaire, St Eustatius and Saba;
> assume 70% of the government debt of the Caribbean part of the Kingdom, totalling € 1.7 billion;

[93] Hillebrink 2007, p. 186.
[94] *Role of the Netherlands*, n.d.

supervise the budgetary policy and public finances of Curaçao and St Maarten;
cooperate to fight crime and drugs trafficking between the Caribbean islands.

To ensure good governance on the autonomous islands in the Caribbean – where corruption and criminality often complicates democracy – the Netherlands supports the judiciary in the region, and maintains the regional Coastguard and the RTS (*Recherche Samenwerkingsteam*), which is a team of criminal investigators from the Netherlands, the former Netherlands Antilles, and Aruba. On average, the Netherlands has 22 judges and 10 public prosecutors working on the Caribbean islands to assist and advise the Public Prosecutions Service and the Common Court of Justice. Moreover, the regional Coastguard – which is a military partnership between the Netherlands, Aruba, Curaçao and St Maarten – is dedicated to combat drugs trafficking, perform border patrols, perform customs surveillance at sea, enforce compliance with environmental and fishing legislation, and ensure safe shipping.

Next to judiciary help and military presence to combat corruption and criminality on the islands, the Netherlands provides development aid to the former Netherlands Antilles through various partnership programmes. The different programmes support development of the autonomous governments, education systems, law enforcement, as well as social and economic progress in the region. Since St Maarten had to establish an entirely new government in 2010, and urgently required experienced personal to work in the various institutions such as the police force, the prison system and the immigration services, the Netherlands assisted St Maarten by providing financial aid to help recruit personnel from outside the island. This aid, called *Meerkostenregeling St Maarten,* stopped on 1 November 2013, in accordance with the cooperation agreement concluded between the Netherlands and St Maarten on 4 April 2011.[95]

With the breakup of the Netherlands Antilles in 2010, the governments of the Netherlands Antilles and the Netherlands, and the executive councils of Curaçao and St Maarten agreed that "on the basis of cooperation between equal partners" financial supervision was established over the countries Curaçao and St Maarten to ensure compliance with the budget standards laid down in the Act, aimed at the goal that "over time supervision becomes unnecessary".[96] Under this Financial Supervision (Curaçao and St Maarten) Act, the Council of Ministers of the Kingdom had to decide five years after the Act´s legal entry (10 October 2010), whether or not financial supervision of Curaçao and St Maarten could be

[95] Rijksoverheid, 2011.
[96] Algemene Rekenkamer, 2010.

lifted. The evaluation committee that was thus established under the Financial Supervision Act in 2015 decided to maintain the financial supervision for Curaçao and St Maarten because both islands had not entirely and autonomously complied with the norms of the law. The next evaluation will take place in 2018.[97]

What can we say about this role of the Netherlands being `responsible´ for providing structural support in light of the colonial history of the relations between the Netherlands and the former Netherlands Antilles? What does this parenting role mean for the autonomy of the Caribbean islands? And what was the role of Finland in the autonomy arrangement of Åland in the first phases? These are all interesting topics for future research, as well as the role of the European Union in the Caribbean part of the Kingdom and integration between different countries within the Caribbean region – since the paths followed by the different non-sovereign and sovereign countries in the Caribbean seem very divergent. Unfortunately, there is no room to address these topics extensively within the constraints of this research.

6. Conclusion

The Åland Islands are internationally known for the Åland Islands Settlement of 1921, which created an autonomy arrangement in a conflict resolution context including some special rights for the inhabitants of the Åland Islands. Suksi (2013) has shown that this autonomy settlement is not carved in stone, but can and has been changed in the past. The same goes for the autonomy settlement of the former Netherlands Antilles, which was most recently changed in 2010 with the dismantling of the country of the Netherlands Antilles. The study of the constitutional background of this autonomy arrangement is important in the case of the new constitutional order of the Kingdom of the Netherlands, as it can make a contribution by (1) ensuring that the constitution of the Kingdom is no longer vulnerable to accusations of colonialism, and (2) saying something about the longevity and robustness of the autonomy `settlement´.

In the case of the Kingdom of the Netherlands, there exists general confusion about what this `Kingdom´ exactly entails, both due to linguistic confusion surrounding the names for the Netherlands and the Dutch, and due to the fact that the constitutional order of the Kingdom of the Netherlands does not really seem to fit any of the traditional forms of government. So in the end, there are six Caribbean islands, four countries, twelve provinces and one Kingdom. The Kingdom of the Netherlands currently consists of four autonomous countries: the

[97] Dutch Carribean Legal Portal, 2015.

Netherlands, Aruba, Curaçao and St Maarten. Bonaire, Saba and St Eustatius are integrated parts of the country of the Netherlands. This constitutional order, which came in place on 10 October 2010, is relatively new, and shows that the autonomy settlement of the Caribbean part of the Kingdom of the Netherlands has been subject to changes, and is thus not *settled* quite yet.

All autonomies evolve in their unique directions. The ones embedded in a relatively stable and democratic environment will remain the longest, and contribute to the generally reasonable organisation of a state.[98] Relatively new autonomies might benefit from the comparison with more established autonomy arrangements, such as the Åland Islands. As of now, the autonomy arrangement of Aruba, Curaçao and St Maarten seems to be constitutionally stable as it is domestically entrenched in multiple ways that are comparable to the Åland example, and safeguarded by the international community that advocates the right of self-determination of former colonies. The relations within the Kingdom of the Netherlands are, however, not completely exempted from the ghosts of the colonial era, as is visible in the authority of the country of the Netherlands within the Kingdom relations, both institutionally and in its structural parenting role when it comes to law enforcement and finances.

What of the future? As of now, the break-up of the Netherlands Antilles seems to have at least solved the centrifugal forces that caused conflicts within the Netherlands Antilles and made for a change in membership for Aruba, Curaçao and St Maarten within the Charter. However, no major changes were made to the actual content of the Kingdom Charter. The virtually identical character of today´s Kingdom Charter since 1954 can be attributed to the rigid entrenchment of this document, which can only be amended with the approval of all parties involved. This makes the autonomy arrangement of the former Netherlands Antilles robust, but also inflexible. Since 1954, the world has changed greatly, both politically and economically, which erodes traditional notions of sovereignty and autonomy. Increasing globalisation and international `interweaving´ is especially visible in the Dutch membership in the European Union, in which the Netherlands is less autonomous than Aruba, Curaçao and St Maarten are currently within the Kingdom.[99] Major political changes such as this make an unammended Charter implausible in the long term. What form the legal order of the Kingdom of the Netherlands will eventually take is a thing that only time can reveal. But, in the right words of the fox in *The Little Prince*, the Netherlands will still have a certain responsibility for their `tamed´ territories in the West.

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[98] Suksi 2013, p. 57.
[99] Oostindie and Klinkers, 2003, p. 230.

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Appendix

Glossary of Key Terms

ABC-islands – geographical umbrella term for the Leeward Islands: Aruba, Bonaire and Curaçao.

SSS-islands – geographical umbrella term for the Windward Islands: St Eustatius, Saba and St Maarten.

Charter for the Kingdom of the Netherlands – constitutional settlement of the Kingdom of the Netherlands, and thereby the leading legal document of the Kingdom. Describes the political relationship between the four countries that constitute the Kingdom of the Netherlands: the Netherlands, Aruba, Curaçao and St Maarten.

Chapter XI – international UN declaration regarding non self-governing territories that safeguards the well-being of the inhabitants of these territories.

Defensie – an umbrella term for the military force of the Kingdom of the Netherlands. The ministry that is occupied with (international) security issues is called the Ministry of Defence (*Ministerie van Defensie*).

Dutch West Indies – the Caribbean territories of the Netherlands that were occupied during the colonial era, including the former Netherlands Antilles and, until 1975, Suriname.

Eilandenregeling Nederlandse Antillen (ERNA) – captured the `autonomy´ of the Netherlands Antilles before the Constitution of the Netherlands Antilles came into force in 1955, shortly after the Kingdom Charter in 1954, and formed the Constitution of the Netherlands Antilles at that time.

Governor – representative of the Government of the Kingdom of the Netherlands in the Caribbean territory, representative of the King, and head of the local Government (though without independent authority).

Kingdom Affairs – considered as common affairs of all countries of the Kingdom of the Netherlands, and specified in Article 3 of the Kingdom Charter, including foreign relations, nationality, defence and extradition.

Kingdom Charter – (see Charter for the Kingdom of the Netherlands)

Overseas Countries and Territories (OCTs) – 25 countries and territories that have special links with Member States of the European Union: either Denmark, France, the Netherlands or (until recently) the United Kingdom. The relation between the EU and the OCTs is based on EU law, not on the constitutional law of the Member State.

Publieke lichamen – an administrative division of the Kingdom of the Netherlands, or a government that performs certain tasks within a certain spatial area or a specific content area.

Raad van State – a constitutionally established advisory body to the Dutch Government, that must be consulted by the cabinet on proposed legislation before a law is submitted to parliament. The *Raad van State* also serves as one of the four highest courts of appeal in administrative matters.

Resolution 1514 (XV) – United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples.

Staatsregeling van de Nederlandse Antillen – the constituting arrangement, i.e. Constitution for the former country of the Netherlands Antilles between 1955 and 2010.

Staten-Generaal – the bicameral legislature of the Netherlands, consisting of the Senate (Eerste Kamer) and the House of Representatives (Tweede Kamer).

Status Aparte – indicated the special status of Aruba as an autonomous island within the Kingdom of the Netherlands between 1986 and 2010. The term is currently still used to refer to the status of the islands of Curaçao and St Maarten as well, although it was abolished from the Kingdom Charter in 2010 as this status is no longer special, but rather the norm for all countries within the Kingdom.

Statuut – (see Charter for the Kingdom of the Netherlands)

Wingewest – an area used for profit, or an economically exploited region, mostly by governments. In case of the Netherlands, the former colonies in the Caribbean and the East Indies were used as such.