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Year 1945: The Kingdom of the Netherlands, the Proclamation of the Independence of the Republic of Indonesia (August 17, 1945) and the Beginning of a new Constitutionalism in Asia. A Study on History of Constitutionalism and Decolonization*

Carlos Sardinha**

Abstract

The Japanese saw themselves as liberators of the Asiatic peoples. As a Japan's war aim, the establishment of the so-called Greater East Asia Co-Prosperity Sphere was to be understood as a decolonization and liberation of the East Asian peoples which were living under colonial rule. Against this background, in her Radio address made on December 6, 1942 Queen Wilhelmina of the Netherlands promised a conference at which a joint consultation would take place after the end of World War II about the structure of the Kingdom of the Netherlands and its parts in order to adapt it to post-war world. The plans of Queen Wilhelmina of the Netherlands comprised the creation of a commonwealth of the Netherlands, Indonesia, Surinam and Curaçao. In any case, any ideas on the constitution of the Kingdom of the Netherlands, including a dominion status for the Dutch East Indies, a federation between the Netherlands and Indonesia or the regulation of the relations of the Netherlands and Indonesia on the basis of equality of position, excluded any demand for complete independence. After the surrender of the Dutch troops to the Japanese on March 8, 1942, the liberation of the Dutch East Indies was never at the top of the list of American priorities. As the emerging leading power in the Pacific – supplanting the British – it is important, in this context, to know the attitude of the United States of America towards the political future of colonialism in general and the Dutch East Indies in particular. There was in the United States of America a widespread opinion unfavourable to colonialism. It seems that the American public opinion, besides the independence, did only accept a Dutch mandate under international law, excluding therefore the possibility of the East Indies continuing to be considered a part of the Netherlands. Against this background, it is worth to stress that both the Covenant of the League of Nations (1920) and the Charter of the United Nations (1945) foresee the independence of territories put under mandate. Unlike the Covenant of the League of Nations (1920), the Charter of the United Nations (1945) establishes that dependent territories could be voluntarily placed under mandate by states responsible for their administration. This means that colonial powers could, on a voluntary basis, place colonial territories under mandate. Consequently, the Charter of the United Nations (1945) ignores "... the staunch European opposition to trusteeship or any other formula which would challenge their sovereignty". Not long after the Charter of the United Nations (1945) was drafted, a new balance of power unfavourable to colonial powers became evident. This was the beginning of an evolution that would eventually led to an important transformation of International Law: the decolonization as a new manifestation of the principle of self-determination of peoples adequated to regulate the access of colonial peoples to independence. Beginning in 1945, the Proclamation of the Independence of the Republic of Indonesia (August 17, 1945) can be considered the starting point of this transformation of International Law and praxis. Two days after Japan's surrender (August 15, 1945), on August 17, 1945, Indonesian nationalist and independence activist Sukarno, in the name of the Indonesian people, proclaimed the independence of the Republic of Indonesia. The decision to proclaim Indonesia's Independence taken by the nationalist leaders Sukarno and Mohammad Hatta and the following political course taken by the Indonesian Republic confirmed their desire of giving legal form to a pure Indonesian, Asiatic, non-Western Independence, that eventually did not contradict the spirit of the Japanese version of the principle "Asia for the Asians". Anticolonialism and independence are to be considered expression of humanity and justice. Therefore, in the context of the so-called "Five Obligations" (Pantja Dharma) where the alliance with Japan occupies a central place, Indonesian Antiwesternism has its roots in the inhumanity and injustice of colonialism. In other words, against the background of European imperialism and colonialism, the Proclamation of Indonesia's independence reveals the beginning of a new, Asiatic, eventually, Indonesian constitutionalism based on the principle "Asia for the Asians" with its Antiwesternism and Pan-Asiatic elements amalgamated by Indonesian nationalists during the period of Japanese occupation of the Dutch East Indies.

Keywords: Dutch East Indies; Kingdom of the Netherlands; Republic of Indonesia; Anticolonialism; Decolonization; Mandate; Trusteeship; Independence; Revolution; Pancasila; 1945 Constitution; Antiwesternism; Integralism; Japanism.

* This study was conducted at libraries in the Netherlands and in Germany, namely at the NIOD (that is, at the Institute for War, Holocaust and Genocide Studies) (Amsterdam, The Netherlands), at the Amsterdam University Library (Amsterdam, The Netherlands), at the Berlin State Library – Prussian Cultural Heritage (Berlin, Germany) and at the University Library of the Free University of Berlin (Berlin, Germany).

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1. The Empire of Japan's surrender (August 15, 1945) and the Proclamation of the Independence of the Republic of Indonesia (August 17, 1945)

Not long before the attack of the forces of the Empire of Japan upon the United States of America at Pearl Harbor (December 7, 1941)¹, a feeling of an existing economic complementarity between Japanese capitalism and the agriculture-based economies of Southeast Asia caused an adviser to Prime Minister Fumimaro Konoe² to write about a bloc where the idea of freedom from imperialism and exploitation would play a central role³. The new Prime Minister General Hideki Tojo⁴ gave a new impulse to The Greater East Asia Co-Prosperity Sphere, a new order based on the Japanese version of the principle "Asia for the Asians" which had been proclaimed in August 1940 in a radio address by Matsuoka Yōsuke, the Foreign

Minister of the Empire of Japan in the Cabinet presided over by the above mentioned Prime Minister Fumimaro Konoe⁵. The Japanese saw themselves as liberators of the Asiatic peoples⁶. In this respect, General Tojo was an ardent defender of the ideology of a "holy war of liberation" of Asia in solidarity with Japan⁷. The Japanese would bring to the people of Indonesia "...liberation from the oppression of the US and British puppets of the Dutch government in exile..."⁸. For the Indonesian nationalists⁹ the liberation of Indonesia from the Dutch colonialism¹⁰ would begin with the expulsion of the Dutch by the Japanese¹¹. As the Japanese arrived in Java in March 1942, they were greeted by the Indonesians as liberators from the colonial yoke¹². The 9th of March, the remembrance day of the fall of the Netherlands Indies authority, was declared a day of celebration by the Japanese¹³. It is worth mentioning that the Nationalist leader Sukarno¹⁴, who had been imprisoned and later exiled by the

¹ See MELBER, T., *Pearl Harbor. Japans Angriff und der Kriegseintritt der USA*. München, 2016.

² Prince Fumimaro Konoe, Prime Minister of the Empire of Japan, presided over three Cabinets: Konoe I (June 4, 1937-January 5, 1939), Konoe II (July 22, 1940-July 18, 1941) and Konoe III (July 18, 1941-October 18, 1941).

³ See BEASLEY, W. G., *Japanese Imperialism 1894-1945*, Reprint. Oxford, 2013, p. 233-234. On imperialism in Southeast Asia, see TARLING, N., *Imperialism in Southeast Asia: A fleeting, passing phase*. London and New York, 2001. For a report on the economy of the Dutch East Indies published significantly in 1942 during the Japanese Occupation of this territory, see BROEK, J. O. M., *Economic Development of the Netherlands Indies*, Reprint. New York, 1971.

⁴ General Tojo presided over the Cabinet of the Empire of Japan between October 18, 1941 and July 22, 1944.

⁵ See YELLEN, J. A., *The Greater East Asia Co-Prosperity Sphere: When Total Empire Met Total War*. Ithaca and London, 2019, p. 4. On The Greater East Asia Co-Prosperity Sphere, see further BEASLEY, W. G., *Japanese Imperialism 1894-1945*, Reprint. Oxford, 2013, p. 233-250; SATOSHI, N., *Japan's Colonial Moment in Southeast Asia 1942-1945. The Occupiers' Experience*. London, 2018, p. 108-157; HERDE, P., *Grossostasiatische Wohlstandssphäre: Die japanische Besatzungspolitik auf den Philippinen und in Indonesien im Zweiten Weltkrieg und ihre Folgen*, Sitzungsberichte der Wissenschaftlichen Gesellschaft an der Johann Wolfgang Goethe-Universität Frankfurt am Main, Vol. XXXIX, Nr. 4. Stuttgart, 2002, p. 136.

⁶ See YELLEN, J. A., *The Greater East Asia Co-Prosperity Sphere: When Total Empire Met Total War*. Ithaca and London, 2019, p. 4; HOTTA, E., *Japan 1941: Countdown to Infamy*. New York, 2014, p. 11f.; IENAGA, S., *Japan's Last War: World War II and the Japanese, 1931-1945*. Oxford, 1979, p. 153ff.

⁷ Recently, SATOSHI, N., *Japan's Colonial Moment in Southeast Asia 1942-1945. The Occupiers' Experience*. London, 2018, p. 158ff., namely p. 164.

⁸ See SATOSHI, N., *Japan's Colonial Moment in Southeast Asia 1942-1945. The Occupiers' Experience*. London, 2018, p. 166.

⁹ On Indonesian Nationalism, see McMAHON, R. J., *Colonialism and Cold War. The United States and the Struggle for Indonesian Independence, 1945-49*. Ithaca and London, 1981, p. 9ff.

¹⁰ On Dutch colonialism, see SOARES, R. *Administração e Direito Colonial*, Lições refundidas e atualizadas por CARVALHO, A. – BASTOS, M. – RAMALHO, O., Universidade de Coimbra, Faculdade de Direito. Coimbra, 1962, p. 235-244.

¹¹ See TOUWEN-BOUWSMA, E., The Indonesian Nationalists and the Japanese "Liberation" of Indonesia: Visions and Reactions. In: *Journal of Southeast Asian Studies*, Vol. 27, No. 1, 1996, p. 4: "... there were signs that nationalist sympathy for Japan was also gaining ground in the same period. The Japanese propaganda "Asia for the Asians" was increasingly seen as an ideal solution to a political situation which seemed to have reached an impasse. (...) The Parindra (Partai Indonesia Raya/the Greater Indonesia Party), the largest nationalist party, was becoming steadily more pro-Japan minded. The popularity of Japan intensified as one aspect of the growing anti-Dutch animus, which was a projection of the frustrated desire for freedom. The idea took hold that the liberation of Indonesia would begin with the expulsion of the Dutch by the Japanese." On the Japanese occupation of the Dutch East Indies, see KAHIN, G. McT., *Nationalism and Revolution in Indonesia*. Southeast Asia Program Publications, Southeast Asia Program, Reprint. Ithaca, New York, 2003, p. 101ff.; DE JONG, L., *The Collapse of a Colonial Society. The Dutch in Indonesia during the Second World War*, With an introduction by KEMPERMAN, J., *Verhandelingen van het Koninklijk Instituut voor Taal-, Land- en Volkenkunde*, Vol. 206. Leiden, 2002; HERDE, P., *Grossostasiatische Wohlstandssphäre: Die japanische Besatzungspolitik auf den Philippinen und in Indonesien im Zweiten Weltkrieg und ihre Folgen*, Sitzungsberichte der Wissenschaftlichen Gesellschaft an der Johann Wolfgang Goethe-Universität Frankfurt am Main, Vol. XXXIX, Nr. 4. Stuttgart, 2002, p. 219ff.; VAN DEN DOEL, H. W., *Afscheid van Indië. De val van het Nederlandse imperium in Azië*. Tweede en derde, herziene druk. Amsterdam, 2001, p. 69ff.; RICKLEFS, M. C., *A History of Modern Indonesia since c.1300*, Second Edition. London [et al.], 1993, p. 199ff.; ZWAAN, J., *Nederlands-Indië onder Japanse bezetting (1942-1945)*. In: *Oorlog en Verzet in Nederlands-Indië 1941-1949 en de voorlichting aan de na-oorlogse generaties*. Amsterdam, 1989, p. 7ff.; AZIZ, M.A., *Japan's Colonialism and Indonesia*. 'S-Gravenhage, n.d., p. 166ff. On p. 166, we can read the following: "The Japanese came to the Archipelago with the definite aim to eliminate all Dutch influence as quickly as possible from the life of Indonesia. The termination of all European and American influence – political, economic and cultural – was indeed one of the fundamental objects of the Asiatic Co-Prosperity plan."

¹² See BOURCHIER, D., *Illiberal Democracy in Indonesia: The ideology of the family state*. London and New York, 2015, p. 50: "The Japanese soldiers were surprised also at the ease of their victory and the extraordinary welcome they received from the Indonesians. The battle-hardened troops were in many places greeted as heroes."; ANDERSON, B. R. O'G., *Java in a Time of Revolution. Occupation and Resistance, 1944-1946*. Ithaca and London, 1972, p. 35.

¹³ See AZIZ, M.A., *Japan's Colonialism and Indonesia*. 'S-Gravenhage, n.d., p. 175.

¹⁴ On Sukarno, see HERING, B., *Soekarno: Architect van een natie – Architect of a nation, 1901-1970*. Amsterdam – Leiden, 2001; GIEBELS, L., *Soekarno, Nederlandsch onderdaan. Biografie 1901-1950*. Amsterdam, 1999; LEGGE, J. D., *Sukarno: A Political Biography*, Third Edition. Singapore, 2003; DAHM, B., *Sukarnos Kampf um Indonesiens Unabhängigkeit. Werdegang und Ideen eines asiatischen Nationalisten*, Vol. XVIII der Schriften des Instituts für Asienkunde in Hamburg. Frankfurt am Main – Berlin, 1966.

Dutch because of his nationalist activities, was released by the Japanese¹⁵. Contrary to other Nationalist leaders like Sutan Sjahrir, the first Prime Minister of the Republic of Indonesia (1945-1947)¹⁶ and one of the few Indonesian nationalists who did not participate in public life during the Japanese occupation, Sukarno decided to cooperate with the Japanese¹⁷. As a Japan's war aim, the establishment of the above mentioned Greater East Asia Co-Prosperty Sphere was to be understood as a decolonization and liberation of the East Asian peoples which were living under colonial rule¹⁸. Against this background, the cooperation between the Japanese occupiers and Indonesians was not to be considered condemnable, because Japan was not the enemy of the Indonesians. According to Indonesian nationalists, the collaboration between Japan and the Indonesians was to be interpreted as a phase in their struggle for freedom and against colonialism. Therefore, Japan played an important role in the decolonization in East Asia, including Indonesia¹⁹.

Two days after Japan's surrender²⁰, on August 17, 1945, Indonesian nationalist and independence activist Sukarno, in the name of the Indonesian people, proclaimed the independence of the Republic of Indonesia together with Mohammad Hatta. In his short proclamation, the chief of the Indonesian nationalists expresses the intent of accomplishing as quickly as possible all necessary steps towards the transference of power²¹. Significantly, nationalist leaders like the above mentioned Sutan Sjahrir favoured a Proclamation of Independence "... militantly anti-Japanese in character...", refusing to participate in the meeting where the text of the Proclamation of the Independence of the Republic of Indonesia was drawn up²². To understand why this proclamation was possible one must take into consideration that since the occupation of the Dutch East Indies after the KNIL²³'s surrender to the Japanese on March 8, 1942 the Indonesian nationalists enjoyed the support of the Japanese

¹⁵ See KAHIN, G. McT., *Nationalism and Revolution in Indonesia*. Southeast Asia Program Publications, Southeast Asia Program, Reprint. Ithaca, New York, 2003, p. 104; GIEBELS, L., *Soekarno, Nederlandsch onderdaan. Biografie 1901-1950*. Amsterdam, 1999, p. 121ff. and p. 278ff.; SLUIMERS, L., The Japanese Military and Indonesian Independence. In: *Journal of Southeast Asian Studies*, Vol. 27, No. 1, 1996, p. 28: "In this situation of growing economic and political tensions in the countryside (...), Imamura and Kodama in June 1942 decided to allow Sukarno to return from Sumatra, where he had been banished by the Dutch, to Java. (...) In a sense the return of Sukarno, the generally acknowledged leader of the Indonesian nationalists, inaugurated certain change in Japanese policy as it was not to be expected that Sukarno, a flamboyant orator, would long keep quiet." Lieutenant-General Imamura Hitoshi was the first Commander-in-Chief of the 16th Army (Empire of Japan) and Count Kodama Hideo was his senior political advisor.

¹⁶ See a list of the Prime Ministers of the Republic of Indonesia in KAHIN, A., *Historical Dictionary of Indonesia*, Third Edition. Lanham – Boulder – New York – Toronto – Plymouth, UK, 2015, p. 536. Further, MRÁZEK, R., *Sjahrir: Politics and Exile in Indonesia*, Studies on Southeast Asia No. 14, Southeast Asia Program. Ithaca, New York, 1994, p. 283ff.

¹⁷ See HERDE, P., *Grossostasiatische Wohlstandssphäre: Die japanische Besatzungspolitik auf den Philippinen und in Indonesien im Zweiten Weltkrieg und ihre Folgen*, Sitzungsberichte der Wissenschaftlichen Gesellschaft an der Johann Wolfgang Goethe-Universität Frankfurt am Main, Vol. XXXIX, Nr. 4. Stuttgart, 2002, p. 227: "Dennoch haben sich die führenden Politiker, vor allem Sukarno und Mohammad Hatta (...) zur Kollaboration mit den Japanern entschlossen, da sie darin die einzige Möglichkeit sahen, die Sache der Unabhängigkeit ihres Landes weiter zu fördern."; VAN DEN DOEL, H. W., *Afscheid van Indië. De val van het Nederlandse imperium in Azië*. Tweede en derde, herziene druk. Amsterdam, 2001, p. 72.

¹⁸ See ZWAAN, J., *Nederlands-Indië onder Japanse bezetting (1942-1945)*. In: *Oorlog en Verzet in Nederlands-Indië 1941-1949 en de voorlichting aan de na-oorlogse generaties*. Amsterdam, 1989, p. 9f.

¹⁹ See ZWAAN, J., *Nederlands-Indië onder Japanse bezetting (1942-1945)*. In: *Oorlog en Verzet in Nederlands-Indië 1941-1949 en de voorlichting aan de na-oorlogse generaties*. Amsterdam, 1989, p. 7. According to this Author, the foundation of the Republic of Indonesia was planned by the Japanese "...long before the Japanese Armies conquered the Netherlands Indies." See ZWAAN, J., *Nederlands-Indië onder Japanse bezetting (1942-1945)*. In: *Oorlog en Verzet in Nederlands-Indië 1941-1949 en de voorlichting aan de na-oorlogse generaties*. Amsterdam, 1989, p. 8.

²⁰ August 15, 1945.

²¹ See BOURCHIER, D., *Illiberal Democracy in Indonesia: The ideology of the family state*. London and New York, 2015, p. 80ff.; VAN DEN DOEL, H. W., *Indonesian Independence, Struggle for*. In: BENJAMIN, Th. (ed.), *Encyclopedia of Western Colonialism since 1450*, Vol. 2. Detroit, MI, 2007, p. 631f.; VAN DEN DOEL, H. W., *Afscheid van Indië. De val van het Nederlandse imperium in Azië*. Tweede en derde, herziene druk. Amsterdam, 2001, p. 84ff.; KAHIN, G. McT., *Nationalism and Revolution in Indonesia*. Southeast Asia Program Publications, Southeast Asia Program, Reprint. Ithaca, New York, 2003, p. 134ff., namely p. 136; ANDERSON, B. R. O'G., *Java in a Time of Revolution. Occupation and Resistance, 1944-1946*. Ithaca and London, 1972, p. 66ff., namely p. 82; ANDERSON, B. R. O'G., *Some Aspects of Indonesian Politics under the Japanese Occupation: 1944-1945*, Interim Reports Series, Modern Indonesia Project, Southeast Asia Program, Department of Far Eastern Studies. Ithaca, New York, 1961, p. 65ff. A facsimile of this proclamation accompanied with a Dutch translation can be found in SMIT, C., *De liquidatie van een imperium: Nederland en Indonesië 1945-1962*. Amsterdam, 1962. For the full text of Sukarno's statement, see KAHIN, G. McT., *Sukarno's Proclamation of Indonesian Independence*. In: *Indonesia*, No. 69, Apr., 2000, p. 1-3, namely p. 2-3. The Charter of the United Nations had been signed in the United States of America, in San Francisco, on June 26, 1945.

²² See KAHIN, G. McT., *Nationalism and Revolution in Indonesia*. Southeast Asia Program Publications, Southeast Asia Program, Reprint. Ithaca, New York, 2003, p. 136 with footnote 2; HERDE, P., *Grossostasiatische Wohlstandssphäre: Die japanische Besatzungspolitik auf den Philippinen und in Indonesien im Zweiten Weltkrieg und ihre Folgen*, Sitzungsberichte der Wissenschaftlichen Gesellschaft an der Johann Wolfgang Goethe-Universität Frankfurt am Main, Vol. XXXIX, Nr. 4. Stuttgart, 2002, p. 244ff.; ANDERSON, B. R. O'G., *Java in a Time of Revolution. Occupation and Resistance, 1944-1946*. Ithaca and London, 1972, p. 40; ANDERSON, B. R. O'G., *Some Aspects of Indonesian Politics under the Japanese Occupation: 1944-1945*, Interim Reports Series, Modern Indonesia Project, Southeast Asia Program, Department of Far Eastern Studies. Ithaca, New York, 1961, p. 65: "Hatta himself reports that at 5:00 p. m. on the 14th he was visited by Sjahrir who told him that he was absolutely opposed to any independence that came as the gift of the Japanese." On Sukarno's pro-Japan activities during the Japanese occupation of the Dutch East Indies, see KAHIN, G. McT., *Nationalism and Revolution in Indonesia*. Southeast Asia Program Publications, Southeast Asia Program, Reprint. Ithaca, New York, 2003, p. 104: "For several years it was repeatedly claimed by Dutch spokesmen that Soekarno was an unprincipled, pro-Japanese collaborator."

²³ Koninklijk Nederlands-Indisch Leger, that is, Royal Netherlands Indies Army.

authorities²⁴ as part of Japan's policy of turning the indigenous population against the Dutch colonialism and preparing them for taking part at the above mentioned Greater East Asia Co-Prosperity Sphere, as said before, a new order based on the Japanese version of the principle "Asia for the Asians"²⁵. On September 15, 1943, the Japanese established the Central Advisory Council in Java chaired by Sukarno, a body with less powers than the People's Council established by the Dutch (*Völkerraad*), in order to provide Indonesians with popular representation²⁶. At the 4th Session of the Central Advisory Council in Java on November 15, 1944, Sukarno gave a speech listing five guidelines for the Indonesian Nation, the so-called "Five Obligations" (*Pantja Dharma*), where the alliance with Japan occupies a central place: 1- "We stay - together with the other peoples of Greater East Asia - in this war for live and death in a front with Dai Nippon²⁷ and we are ready to sacrifice, because this war defends justice and truth."; 2- "We will establish an Indonesian State, which is independent, united, sovereign, just and flourishing, which will respect the merits of Dai Nippon and which will live as a genuine member in the bosom of the Greater East Asiatic family of peoples."; 3- "We will endeavor, with sincere enthusiasm, to achieve glory and greatness by defending and respecting our own civilization and culture, by promot-

ing the Asiatic culture and by penetrating the world culture"; 4- "We serve - in strong brotherhood with the peoples of Greater East Asia - with unshakable loyalty the own State and People under permanent responsibility before the Mighty God". 5- "We fight with fervent desire for perpetual peace in the world, which is based on the parentage of the whole human race and therefore corresponds to the ideal of the Hakko Ichiu."²⁸ Sukarno saw Western imperialism as his main opponent²⁹. Therefore, Sukarno's vision of the Indonesian Nation was not to be separated from the Japanese ideal of *Hakkō ichiu*³⁰, that is, from Japanism as a distinct type of internationalism aiming at overcoming Westernism and corresponding to the principle on which Japan's foreign policy was based³¹.

Japan's policy towards Indonesia began to change in September 1944 when the successor of General Tojo as Prime Minister of the Empire of Japan, General Koiso, declared in Tokio (September 7, 1944), after praising the success of Japan's policy of associating the indigenous population to the administration of the East Indies and stressing their collaborative spirit towards the Japanese local military authorities, that the independence of these territories should be approved in the future³². The guidelines issued on this occasion by the staff of the 7th Area Army at Singapore³³ to execute the Koiso's Declaration (Sep-

²⁴ See ELSBREE, W. H., *Japan's Role in Southeast Asian Nationalist Movements 1940 to 1945*, Issued under the auspices of the International Secretariat, Institute of Pacific Relations. Cambridge, Massachusetts, 1953, p. 76ff. On the Japanese role in the nationalist movement in Indonesia, see HORNBECK, S. K., The United States and the Netherlands East Indies. In: *The Annals of the American Academy of Political and Social Science, Foreign Policies and Relations of the United States*, Vol. 255, 1948, p. 127; SLUIMERS, L., The Japanese Military and Indonesian Independence. In: *Journal of Southeast Asian Studies*, Vol. 27, No. 1, 1996, p. 19-36 namely p. 19: «"Sukarno and Hatta are puppets who just like other puppets will be punished!" So it was suggested that the Republic of Indonesia, proclaimed on 17 August 1945 by the these two prominent politicians was "made in Japan", and meant only to harass the Allied authorities who were attempting to restore the pre-war situation.» As you can see, the two prominent politicians are the above mentioned Sukarno and Hatta. Nonetheless, Sluimers defends the opinion according to which there was no community of interests between the Japanese military administration and the Indonesian nationalists with respect to Indonesian independence. See SLUIMERS, L., The Japanese Military and Indonesian Independence. In: *Journal of Southeast Asian Studies*, Vol. 27, No. 1, 1996, p. 35-36. On p. 36, we can read: "The Indonesians on the other hand only wanted to make use of the Japanese to get rid of Western dominance and so to settle their own affairs." On the Japanese Military Government in Indonesia during the Occupation Period, namely, on its organization, see AZIZ, M.A., *Japan's Colonialism and Indonesia*. 'S-Gravenhage, n.d., p. 152ff.

²⁵ See SATO, S., Indonesia 1939-1942: Prelude to the Japanese Occupation. In: *Journal of Southeast Asian Studies*, Vol. 37, No. 2, 2006, p. 225-248, namely p. 225: "On 17 August 1945, two days after Japan surrendered, Indonesia declared independence and a national revolution ensued. Since then it has become a historiographical convention to view the Japanese occupation as a prelude to Indonesian independence."

²⁶ See KAHIN, G. McT., *Nationalism and Revolution in Indonesia*. Southeast Asia Program Publications, Southeast Asia Program, Reprint. Ithaca, New York, 2003, p. 106.

²⁷ That is, „Greater Japan“.

²⁸ See DAHM, B., *Sukarnos Kampf um Indonesiens Unabhängigkeit. Werdegang und Ideen eines asiatischen Nationalisten*, Vol. XVIII der Schriften des Instituts für Asienkunde in Hamburg. Frankfurt am Main – Berlin, 1966, p. 214.

²⁹ See DAHM, B., *Sukarnos Kampf um Indonesiens Unabhängigkeit. Werdegang und Ideen eines asiatischen Nationalisten*, Vol. XVIII der Schriften des Instituts für Asienkunde in Hamburg. Frankfurt am Main – Berlin, 1966, p. 213. Making reference to Sukarno, we can read the following: "Denn sein Hauptgegner war der westliche Imperialismus geblieben, und er wurde nicht müde, die Gerüchte, die aus der Propaganda der Alliierten, aus Flugschriften und Radiosendungen herrührten, zu bekämpfen."

³⁰ In English, "Brotherhood of the Peoples". See DAHM, B., *Sukarnos Kampf um Indonesiens Unabhängigkeit. Werdegang und Ideen eines asiatischen Nationalisten*, Vol. XVIII der Schriften des Instituts für Asienkunde in Hamburg. Frankfurt am Main – Berlin, 1966, p. 188 und p. 257f.: „Hakko-Ichiu (Bruderschaft der Völker)“.

³¹ On *Hakkō ichiu*, see YELLEN, J. A., *The Greater East Asia Co-Prosperity Sphere: When Total Empire Met Total War*. Ithaca and London, 2019, p. 94ff.

³² See KAHIN, G. McT., *Nationalism and Revolution in Indonesia*. Southeast Asia Program Publications, Southeast Asia Program, Reprint. Ithaca, New York, 2003, p. 115; HERDE, P., *Grossostatische Wohlstandssphäre: Die japanische Besatzungspolitik auf den Philippinen und in Indonesien im Zweiten Weltkrieg und ihre Folgen*, Sitzungsberichte der Wissenschaftlichen Gesellschaft an der Johann Wolfgang Goethe-Universität Frankfurt am Main, Vol. XXXIX, Nr. 4. Stuttgart, 2002, p. 241f. For the text of the Koiso's Declaration (September 7, 1944) in English translation, see BENDA, H. J. – IRIKURA, J. K. – KISHI, K. (ed.), *Japanese Military Administration in Indonesia: Selected Documents*. Translation Series, No. 6, Southeast Asia Studies Yale University. N.p., 1965, p. 259: «Statement by Premier Koiso before the 85th Imperial Diet, September 9, 1944, on the "Independence of the East Indies": "Last year, in conformity with the desires of the natives, the Empire undertook measures relative to their political participation. In the interim, the natives of the various areas thoroughly comprehended the Empire's true intentions and consistently continued their tremendous efforts toward the successful climax of the Greater East Asia war; moreover, their cooperation with local military governments has been truly something to behold. In response to these circumstances and in order to ensure the permanent welfare of the East Indies, the Empire here states that their independence will be sanctioned in the future.»

³³ On the 7th Area Army, see AZIZ, M.A., *Japan's Colonialism and Indonesia*. 'S-Gravenhage, n.d., p. 160: "The 16th and 25th Armies, the occupiers of Java and Sumatra respectively, were under the 7th Area Army with headquarters at Singapore. The latter constituted a part of the Chief Command of the Southern Expeditionary forces under Field Marshal Terauchi with headquarters first at Singapore and later near Saigon."

tember 7, 1944) in Java show, however, how this new policy should be understood: on one side, it was not allowed to discuss neither the independence's moment, nor the territories to become independent, nor the future East Indies' constitution; on the other side, the nationalist spirit should be stimulated to the highest degree possible in order to fully integrate Java in Japan's war effort. General Harada's interpretation of this guidelines was made clear to Sukarno in a meeting of the "people's representatives" that took place in Djakarta a day after the Koiso's Declaration (September 8, 1944): according to the general - he was the commandant of the 16th Army stationed in Java - if Japan should lose the war, the East Indies would not be independent. Therefore, the Indonesian people should double his war efforts for the benefit of Japan. Sukarno shows his zeal for Japan's cause praising in two radio speeches the "Great Asiatic War", urging the Indonesian people to crush and to destroy the Allies in order to achieve independence. In an emotional tone, he accuses America, England and The Netherlands of trying to return to Indonesia; to avoid this, the Indonesians should fight them to dead side-by-side with the Japanese³⁴. After the landing of the American forces on the island of Leyte in the Philippines on October 10, 1944, Sukarno makes an impressive appeal for fighting side-by-side with the Japanese. According to Sukarno, Indonesia's independence could be achieved only in cooperation with the Empire of Japan (*Dai Nippon*, that is, "Greater Japan")³⁵. On December 7, 1944, three years after the attack on Pearl Harbor, Prime Minister Koiso affirms that in the foreseeable future Indonesia would be granted independence³⁶. On March 1, 1945 the 16th Army stationed in Java announced the establishment of the "Investigating Committee for Preparatory Work for Independence"³⁷. As the war turned against

Japan, the Japanese government installed in Java on May 28, 1945 a commission with the task of preparing Indonesia's independence³⁸. As a result of this political efforts, on July 21, 1945 the Japanese Cabinet confirms the decision of the Supreme Council for the Direction of the War of granting independence to Indonesia in a short time³⁹. The atomic bombing of Nagasaki (August 9, 1945) prevented the proclamation of an Indonesian Republic before Japan's surrender. It is not entirely clear what happened on August 17, 1945, the day of the proclamation of the independence of the Republic of Indonesia, and the days before⁴⁰. We know that Sukarno feared the reaction of the Japanese garrison in Batavia (Djakarta) in case of a nationalist revolt and, because of that, refused the demand of young revolutionary leaders that wanted him and Hatta to proclaim the Republic without foreign interference. After being kidnapped and put under pressure by these, Sukarno and Hatta were freed by the Japanese and put under their protection in Batavia. It seems that the senior nationalist leaders, having worked closely with the Japanese authorities during the occupation⁴¹, were conscious of the risk of being accused of collaboration⁴²; on the other hand, with the unexpected Japan's surrender, they knew that it would be only a matter of time until the Allies could re-establish the pre-war *status quo* in the East Indies. To avoid alienating the young radical anti-Japanese nationalist leaders, but without taking the risk of a conflict with the Japanese troops, Sukarno and Hatta decided themselves for proclaiming Indonesia's independence immediately, with the tacit consent of the Japanese military authorities⁴³. After Japan's surrender, the Japanese troops were ordered to continue to maintain law and order in the occupied territories until the arrival of the Allied forces⁴⁴. Therefore, the Japanese commanders preferred

³⁴ See JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11b - *Nederlands-Indië II*, tweede helft. Leiden, 1985, p. 979ff.; ELSON, R. E., *The Idea of Indonesia: A History*. Cambridge - New York, 2008, p. 103ff. Further, ANDERSON, B. R. O'G., *Some Aspects of Indonesian Politics under the Japanese Occupation: 1944-1945*, Interim Reports Series, Modern Indonesia Project, Southeast Asia Program, Department of Far Eastern Studies. Ithaca, New York, 1961, p. 9ff. On Sukarno's pro-Japan activities during the Japanese occupation of the Dutch East Indies, see the above cited work by KAHIN, G. McT., *Nationalism and Revolution in Indonesia*. Southeast Asia Program Publications, Southeast Asia Program, Reprint. Ithaca, New York, 2003, p. 104.

³⁵ See DAHM, B., *Sukarnos Kampf um Indonesiens Unabhängigkeit. Werdegang und Ideen eines asiatischen Nationalisten*, Vol. XVIII der Schriften des Instituts für Asienkunde in Hamburg. Frankfurt am Main - Berlin, 1966, p. 213: „Sind sich alle Kameraden darüber klar, zutiefst bewußt, so, daß es ihnen in Fleisch und Blut und Mark und Bein eingedrungen ist, daß Indonesiens Unabhängigkeit nur auf dem Wege der Zusammenarbeit mit *Dai Nippon* verwirklicht werden kann?“

³⁶ See SLUIMERS, L., *The Japanese Military and Indonesian Independence*. In: *Journal of Southeast Asian Studies*, Vol. 27, No. 1, 1996, p. 33.

³⁷ See Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI, Investigatory Body for Preparatory Work for Indonesian Independence), In: KAHIN, A., *Historical Dictionary of Indonesia*, Third Edition. Lanham - Boulder - New York - Toronto - Plymouth, UK, 2015, p. 55.

³⁸ See ASSHIDDIQIE, J., *The Constitutional Law of Indonesia. A Comprehensive Overview*. Petaling Jaya, Selangor, Malaysia, 2009, p. 59ff.

³⁹ See BRUGMANS, I. J. (Dir.), *Nederlandsch-Indië onder Japanse bezetting: Gegevens en documenten over de jaren 1942-1945*. Franeker, 1960, p. 85; see also SMIT, C., *De indonesische quaestie: De wordingsgeschiedenis der soevereiniteitsoverdracht*. Leiden, 1952, p. 43.

⁴⁰ See SMIT, C., *De indonesische quaestie: De wordingsgeschiedenis der soevereiniteitsoverdracht*. Leiden, 1952, p. 44ff.; JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11b - *Nederlands-Indië II*, tweede helft. Leiden, 1985, p. 1032ff.

⁴¹ See ZWAAN, J., *Nederlands-Indië onder Japanse bezetting (1942-1945)*. In: *Oorlog en Verzet in Nederlands-Indië 1941-1949 en de voorlichting aan de na-oorlogse generaties*. Amsterdam, 1989, p. 7ff.

⁴² On Sukarno's pro-Japan activities during the Japanese occupation of the Dutch East Indies, see the above cited work by KAHIN, G. McT., *Nationalism and Revolution in Indonesia*. Southeast Asia Program Publications, Southeast Asia Program, Reprint. Ithaca, New York, 2003, p. 104.

⁴³ See SIJATAUW, J. G., *De Japanse bezetting van Nederlands-Indië 1942-1945. Een gezamenlijke ervaring van duizenden*. Voorburg, 2013, p. 173ff.

⁴⁴ See BOURCHIER, D., *Illiberal Democracy in Indonesia: The ideology of the family state*. London and New York, 2015, p. 80; VAN DEN DOEL, H. W., *Afscheid van Indië. De val van het Nederlandse imperium in Azië*. Tweede en derde, herziene druk. Amsterdam, 2001, p. 84; DENNIS, P., *Troubled days of peace: Mountbatten and South East Asia Command, 1945-46*. Manchester, 1987, p. 82: "Originally it had been proposed that a leaflet should be dropped over the key areas of Java to advise the local populace of the impending arrival of the allied forces, and warning them not to obey either the defeated Japanese or the self-proclaimed republic. Since the allies were not due to land for several weeks, this was clearly a recipe for complete confusion, and after some discussion it was decided to direct the commander of the Southern Army, Field Marshal Count Terauchi, to continue to maintain law and order until the allies were capable of assuming control."

a solution that allowed them to deny responsibility for the proclamation of Indonesia's independence⁴⁵. Nevertheless, it was in the house of the Rear Admiral Tadashi Maeda in Batavia that the proclamation of Indonesia's independence was signed in the early morning of August 17, 1945. In the evening of that day, Maeda offered the members of the independence commission a banquet to celebrate the occasion. There he stated that: "*independence is a national right of each people*"⁴⁶. In face of the emerging post-war world, it seems that some of the Japanese officers believed that it would be in Japan's interest to associate themselves to the birth of the new Republic.

We can therefore conclude that:

- Indonesia's independence was proclaimed by senior nationalist leaders, namely Sukarno and Hatta;
- The nationalists responsible for the proclamation of Indonesia's independence belonged to a political local elite that collaborated with the Japanese authorities during the occupation of the Dutch East Indies;
- Towards the end of the war, the Japanese planned to give independence to the occupied territories in Southeast Asia, in order to make them take part as independent nations in the Japanese Greater East Asia Co-Prosperity Sphere;
- With the goal of preparing Indonesia's independence, the Japanese authorities installed a commission formed by Sukarno, Hatta and other nationalist leaders chosen by the Japanese;
- As a reaction to the Japanese atrocities, an anti-Japanese mood spread among the nationalist young movement. After Japan's surrender (August 15, 1945), these young revolutionaries decided to put Sukarno and Hatta under pressure, challenging them to proclaim Indonesia's independence without Japanese interference;
- After Japan's surrender, the Japanese, being ordered to continue to maintain law and order in the occupied territories, were reluctant to openly support the independence plans of the nationalists. It can be said, however, that among the Japanese officers the mood was favourable to Indonesia's independence. In face of the emerging post-war world, it seems that some of them believed that it would be in Japan's interest to associate themselves to the

birth of the new Republic. Rear Admiral Tadashi Maeda, in whose house the proclamation of independence was signed, affirmed on this occasion that: "*independence is a national right of each people*";

- The members of the nationalist young movement did not sign the declaration of independence. Only Sukarno and Hatta signed the document;
- Indonesia's independence was proclaimed in the name of the Indonesian people, without any reference either to Japan or to the Allies, namely The Netherlands.

2. The controversial restoration of Dutch Rule in the East Indies after World War II

Before making reference to the efforts made by the Dutch to restore their sovereignty over the East Indies, it is important to examine some political statements made by Queen Wilhelmina of the Netherlands during World War II concerning the future of the Dutch overseas territories. For example, on May 24, 1940 Queen Wilhelmina of the Netherlands made a Radio address from London via BBC where she states clearly that: "*Our constitution made the Overseas territories into an indestructible unity...*"⁴⁷. In other Radio addresses she expresses the existing unity between her and the overseas territories, which are described as overseas parts of the Kingdom of the Netherlands⁴⁸ or insists on the idea of unity between the Motherland and the overseas territories and on the indivisible character of the Kingdom of the Netherlands⁴⁹. About a month after the fall of the Dutch East Indies (March 8, 1942), Queen Wilhelmina of the Netherlands speaks about the creation of a "*Buitengewone Raad van Advies*" (in English, "*Extraordinary Council of Advice*") with the task of providing the Dutch Cabinet in Exil with advice and information and composed by Dutch from the occupied territories of the Dutch East Indies, from Suriname and Curaçao living outside the Netherlands, giving expression to the unity of the Kingdom of the Netherlands⁵⁰. As a matter of fact, with the 1922 Dutch Constitutional Reform the Dutch East Indies had become part of the territory (*grondgebied*) of the Kingdom of the Netherlands⁵¹. On December 6, 1942, about a year after the Japanese attack on Pearl Harbor (December 7, 1941), Queen Wilhelmina of the Netherlands made a Radio address proclaiming that "*...after the war it will be possible to reconstruct the Kingdom*

⁴⁵ See JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11b - *Nederlands-Indië II*, tweede helft. Leiden, 1985, p. 1037f., citing ANDERSON, B. R. O'G., *Java in a Time of Revolution. Occupation and Resistance, 1944-1946*. Ithaca and London, 1972, p. 80; SMIT, C., *De indonesische quaeestie: De wordingsgeschiedenis der soevereiniteitsoverdracht*. Leiden, 1952, p. 45.

⁴⁶ See JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11b - *Nederlands-Indië II*, tweede helft. Leiden, 1985, p. 1040.

⁴⁷ See *De Koningin sprak. Proclamaties en radio-toespraken van H. M. Koningin Wilhelmina 1940-1945*, ingeleid door Dra. SCHENK, M. G. en SPAAN, J. B. Th., Driebergen - Franeker, 1945, p. 18: "*Onze grondwet maakte de gebieden van overzee tot een onverbrekelijke eenheid en het is mij tot meer voldoening dan ik onder woorden kan brengen, te ervaren, dat dit voorschrift geen lege letter is*".

⁴⁸ See Bijlage I – Teksten toespraken, 28 juli 1940. In: SCHAAP, J., *Het recht om te waarschuwen: Over de Radio Oranje-toespraken van koningin Wilhelmina*. Amsterdam, 2007, p. 226, lines 50-53: "*De delen van het Rijk overzee, die zoo treffend in hun denken en voelen blij gaven van hun medeleven in de ramp, die het Moederland trof, zijn meer dan ooit nauw met ons verbonden in hun denken en voelen.*"

⁴⁹ See Bijlage I – Teksten toespraken, 28 november 1941. In: SCHAAP, J., *Het Recht om te waarschuwen: Over de Radio Oranje-toespraken van koningin Wilhelmina*. Amsterdam, 2007, p. 243, line 96: "*... saamhoorigheid van het moederland met de gebieden overzee...*" and p. 244, lines 164-166: "*Met innig vertrouwen zie ik het oogenblik tegemoet waarop Nederland zal zijn vrij geworden en alle delen van ons dapper Rijk hereenigd zullen zijn ton één ondeelbaar geheel...*".

⁵⁰ See Bijlage I – Teksten toespraken, 3 april 1942. In: SCHAAP, J., *Het Recht om te waarschuwen: Over de Radio Oranje-toespraken van koningin Wilhelmina*. Amsterdam, 2007, p. 246, lines 18-24.

⁵¹ On the 1922 Dutch Constitutional Reform and posterior evolution, see *infra* "Chapter IV – The Proclamation of the Independence of the Republic of Indonesia (August 17, 1945) and the Beginning of a new Constitutionalism in Asia."

on the solid foundation of complete partnership, which will mean the consummation of all that has been developed in the past.”⁵² It is obvious that according to Queen Wilhelmina of the Netherlands, from a constitutional point of view, the Dutch East Indies were not to be separated from the Motherland.

The Allied strategy in the Pacific war theatre was conducted by the American Joint Chiefs of Staff alone, with the political approval of the President of the United States of America. The Dutch Government was represented in the two Pacific War Councils (in London and Washington, D.C.), but both were mere consultative bodies of the Joint Chiefs of Staff without real influence on its decisions⁵³. The liberation of the Dutch East Indies was never at the top of the list of American priorities⁵⁴. As the emerging leading power in the Pacific – supplanting the British – it is important, in this context, to know the attitude of the United States of America towards the political future of colonialism in general and the Dutch East Indies in particular. There was in the United States of America a widespread opinion unfavourable to colonialism⁵⁵. America’s aversion to colonialism has its origins in the country’s colonial background and traditional support for independence movements in the colonies⁵⁶. For example, in a letter to Hubertus van Mook⁵⁷, a native of Java, Lieutenant Governor-General of the Dutch East Indies since January 1942 and Minister of Colonial Affairs in the Second Gerbrandy Cabinet since May 1942, P. H. W. Sitsen, former East Indies government official, after relating some examples of anti-Dutch feelings in the Amer-

ican society, stresses that for the Americans only one thing was important: to spread democracy. Sitsen points out that Americans tended to consider imperialism just as bad as Nazism: for him this was very strange, considering the widespread American imperialism in the press in the United States of America⁵⁸. Interesting is also an episode related by Van Kleffens, Dutch Minister for Foreign Affairs in the above mentioned Second Gerbrandy Cabinet. In February 1942, at a time when the KNIL⁵⁹ was still resisting the Japanese, Van Kleffens, while taking lunch with the chief editors of the New York Times, noticed a sentiment favourable to an immediate and complete independence of the Asian peoples after the war. The minister’s reaction was illuminating and shows well the difference between the American and Dutch mentality in respect of colonialism: for Van Kleffens, the natives’ lack of administrative abilities and the necessity to protect them against their own inveterate [sic] failings like passion for gambling and nepotism made it indispensable to maintain them temporarily, at least in the Netherlands Indies, under a “governing hand”⁶⁰. Against this background American anticolonialism reached a peak under President Franklin D. Roosevelt⁶¹. In a press conference held in March 1941, a year before the KNIL⁶²’s surrender to the Japanese, President Roosevelt affirmed “...that any nationality, no matter how small, has the inherent right to its own nationhood”⁶³. In the same year, he stressed to the Dutch envoy that The Netherlands should quickly and systematically take steps towards the independence of the East Indies, being the first step making of Java “a sort of

⁵² See *The Queen Looks at the Future. Important Statements of H.M. Queen Wilhelmina on War and Peace Aims* [online]. The Netherlands Information Bureau. New York City z.j. [1943], p. 11-13, namely p. 12. Available at: Towards a Netherlands Commonwealth Text of H.M. Queen Wilhelmina’s radio address of December 6th, 1942, outlining plans for the creation of a Commonwealth of the Netherlands, Indonesia, Surinam and Curaçao., *The Queen Looks at the Future, Wilhelmina, prinses der Nederlanden* - DBNL [Accessed 12 February 2025].

⁵³ In a memorandum from March 09, 1942 (cited by JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 382) the Joint Chiefs of Staff express the opinion that the Pacific War Council in Washington, D.C. is “... of a nature to let off steam but not such as would in any way affect the United States in its military decisions”.

⁵⁴ At the time of Japan’s surrender, the Dutch East Indies were - as said above - almost entirely occupied by the Japanese.

⁵⁵ See JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 97. Further, SBREGA, J. J., *The Anticolonial Policies of Franklin D. Roosevelt*. In: *Political Science Quarterly*, Vol. 101, Nr. 1, 1986, p. 65-84; HOMAN, G. D., *The United States and the Netherlands East Indies: The Evolution of American Anticolonialism*. In: *Pacific Historical Review*, Vol. 53, Nr. 4, 1984, p. 423-446; McMAHON, R. J., *Colonialism and Cold War. The United States and the Struggle for Indonesian Independence, 1945-49*. Ithaca and London, 1981, p. 43ff.; McMAHON, R. J., *Anglo-American Diplomacy and the Reoccupation of the Netherlands East Indies*. In: *Diplomatic History*, Vol. 2, Nr. 1, 1978, p. 1-23, namely p. 5; WILLIAMS, J. E., *The Joint Declaration on the Colonies: An Issue in Anglo-American Relations, 1942-1944*. In: *British Journal of International Studies*, Vol. 2, Nr. 3, 1976, p. 267ff., namely p. 273; HABIBUDDIN, S. M., *Franklin D. Roosevelt’s Anti-Colonial Policy towards Asia. Its Implications for India, Indo-China and Indonesia (1941-45)*. In: *Journal of Indian History*, Vol. LIII, No. 3., 1975, p. 497ff., namely p. 499: “People in general distrusted colonialism and imperialism and considered freedom and self-determination as the basic human right of the people.”

⁵⁶ See WILLIAMS, J. E., *The Joint Declaration on the Colonies: An Issue in Anglo-American Relations, 1942-1944*. In: *British Journal of International Studies*, Vol. 2, Nr. 3, 1976, p. 273.

⁵⁷ Hubertus van Mook was one of the East Indies government officials that fled to Australia on behalf of the Governor-General of the Dutch East Indies Alidius Tjarda van Starckenborgh Stachouwer in the night from 6 to 7 March, 1942, just before the surrender of the Dutch troops to the Japanese on March 8, 1942.

⁵⁸ Letter from August 21, 1942, cited by JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 99.

⁵⁹ As mentioned above, KNIL means “Koninklijk Nederlands-Indisch Leger”, that is, “Royal Netherlands Indies Army”.

⁶⁰ See Van Kleffens: *Reisverslag Ver. Staten (jan.-maart 1942)*, p. 33 (13 febr. 1942), cited by JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 98, footnote 2.

⁶¹ See McMAHON, R. J., *Colonialism and Cold War. The United States and the Struggle for Indonesian Independence, 1945-49*. Ithaca and London, 1981, p. 43ff., namely p. 43-44.

⁶² As mentioned above, KNIL means “Koninklijk Nederlands-Indisch Leger”, that is, “Royal Netherlands Indies Army”.

⁶³ See McMAHON, R. J., *Colonialism and Cold War. The United States and the Struggle for Indonesian Independence, 1945-49*. Ithaca and London, 1981, p. 54, cited by JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 101, footnote 1; HABIBUDDIN, S. M., *Franklin D. Roosevelt’s Anti-Colonial Policy towards Asia. Its Implications for India, Indo-China and Indonesia (1941-45)*. In: *Journal of Indian History*, Vol. LIII, No. 3., 1975, p. 499-500.

Dominion"⁶⁴. However, in April 1942, shortly after the KNIL⁶⁵'s surrender to the Japanese, he wrote to Queen Wilhelmina of the Netherlands that "*The Netherlands Indies must be restored – and something within me tells me that they will be.*"⁶⁶, a statement that, considering the circumstances, cannot be interpreted as an unconditional support to the restoration of the Dutch colonial rule in the East Indies, but merely as a word of encouragement and hope sent to Queen Wilhelmina of the Netherlands in a particularly difficult moment of Netherlands' history. Post-war economic objectives of the United States of America in Asia contributed to the American anticolonial attitude towards the Dutch⁶⁷. In an interview held in March 1942, Herbert Feis, the Commercial Adviser to the Department of State, told Van Kleffens⁶⁸ that the United States of America would not allow the United Kingdom and The Netherlands "(...) to dictate the prices at which it could buy its tin and its rubber"⁶⁹. Accordingly, in a speech given in May 1942, Under Secretary of State Sumner Welles affirmed clearly: "*The age of imperialism is ended. The right of people to their freedom must be recognized, as the civilized world long since recognized the rights of an individual to his personal freedom. The principles of the Atlantic Charter must be guaranteed to the world – in all oceans and continents*"⁷⁰. Some months later, in November 1942, Secretary of State Cordell Hull formulates this idea even more precisely in a statement to John Winant (Ambassador of the United States of America to the United Kingdom): "*The President and I and the entire Government, earnestly favor freedom for all dependent peoples at the earliest date practicable. Our course in dealing with the Philippines situation in*

this respect, as in all other important respects, offers, I think, a perfect example of how a nation should treat a colony or a dependency in cooperating with it in all essential respects calculated to assist it in making all necessary preparation for freedom"⁷¹. In a letter from August 6, 1942, Sir Ronald Campbell reported to the Foreign Office that Roosevelt did not think of the Dutch – whom he calls "*poor dears*" – getting the East Indies back: this territory should instead be placed under the supervision of an international body in which the Dutch would also be represented⁷². It seems that the American public opinion, besides the independence, did only accept a Dutch mandate under International Law, excluding therefore the possibility of the East Indies continuing to be considered a part of the Netherlands⁷³. For Wendell Willkie, the Republican nominee in the 1940 United States Presidential Election, "*In Africa, in the Middle East, and throughout the Arab world, as well as in China and in the Far East, freedom means orderly but scheduled abolition of the colonial system.*"⁷⁴. At this time, the Roosevelt Administration was working on an alternative system to the colonial empires⁷⁵. In a conference organized by the Institute of Pacific Relations and held in San Francisco in January 1944, F. H. Visman, a former member of the Netherlands Indies Council (*Raad van Nederlands-Indië*), affirmed in his lecture that "*the Indonesians on the whole*" hoped for the return of the Dutch administration, stressing that Queen Wilhelmina's radio address of December 6, 1942 constituted the political foundation for this return. On the other hand, he expressed his opposition to any form of international administration of the East Indies after the war⁷⁶. In a conference held in January 1945,

⁶⁴ See JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 101.

⁶⁵ As mentioned above, KNIL means "Koninklijk Nederlands-Indisch Leger", that is, "Royal Netherlands Indies Army".

⁶⁶ See ROOSEVELT, E. (ed.), F. D. R. *His Personal Letters, 1928 – 1945*, Vol. II. New York, 1950, p. 1305, cited by JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 101, footnote 4.

⁶⁷ See HABIBUDDIN, S. M., Franklin D. Roosevelt's Anti-Colonial Policy towards Asia. Its Implications for India, Indo-China and Indonesia (1941-45). In: *Journal of Indian History*, Vol. LIII, No. 3., 1975, p. 497: "*It was contended by some that after the war Asia would be a prosperous customer in the world market and the American interest was definitely on the side of eliminating the imperialism of the 19th century and the declaration of the State Department in this regard represented not "idealism" but need for "commercial survival"*". Further, HABIBUDDIN, S. M., Franklin D. Roosevelt's Anti-Colonial Policy towards Asia. Its Implications for India, Indo-China and Indonesia (1941-45). In: *Journal of Indian History*, Vol. LIII, No. 3., 1975, p. 517: "*Roosevelt was also anxious to end the colonial rule of the Dutch East Indies. The United States Government after the occupation of the colony by Japan was very anxious and on April 17, 1940, Secretary of State, Hull, said that the Netherland East Indies was an important factor in the commerce of the whole world, and they produced considerable portion of world supplies of important commodities and many countries including the United States depended upon them for such commodities.*"

⁶⁸ See *supra*.

⁶⁹ See WILLIAMS, J. E., The Joint Declaration on the Colonies: An Issue in Anglo-American Relations, 1942-1944. In: *British Journal of International Studies*, Vol. 2, Nr. 3, 1976, p. 273-274, namely, p. 274 with footnote 1.

⁷⁰ See McMAHON, R. J., *Colonialism and Cold War. The United States and the Struggle for Indonesian Independence, 1945-49*. Ithaca and London, 1981, p. 55, footnote 31, cited by JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 102, footnote 2.

⁷¹ See McMAHON, R. J., *Colonialism and Cold War. The United States and the Struggle for Indonesian Independence, 1945-49*. Ithaca and London, 1981, p. 55, footnote 33.

⁷² See JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 102.

⁷³ See JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 98. Further, HABIBUDDIN, S. M., Franklin D. Roosevelt's Anti-Colonial Policy towards Asia. Its Implications for India, Indo-China and Indonesia (1941-45). In: *Journal of Indian History*, Vol. LIII, No. 3., 1975, p. 518. Referring to the Dutch East Indies, we can read the following: "*Roosevelt included the colony in his scheme of trusteeship. He told Molotov in May 1942, that the colony would someday be ready for self-government and the Dutch knew it and that they could not hold the area too long.*"

⁷⁴ See *The Times*, 27 Oct. 1942, cited by WILLIAMS, J. E., The Joint Declaration on the Colonies: An Issue in Anglo-American Relations, 1942-1944. In: *British Journal of International Studies*, Vol. 2, No. 3, 1976, p. 269, with footnote 5. Further, HABIBUDDIN, S. M., Franklin D. Roosevelt's Anti-Colonial Policy towards Asia. Its Implications for India, Indo-China and Indonesia (1941-45). In: *Journal of Indian History*, Vol. LIII, No. 3., 1975, p. 501: "*Wilkie after his tour of Asia in the fall of 1942, demanded that the US should take strong stand against imperialism and extend the Atlantic Charter to Asia.*"

⁷⁵ See WILLIAMS, J. E., The Joint Declaration on the Colonies: An Issue in Anglo-American Relations, 1942-1944. In: *British Journal of International Studies*, Vol. 2, No. 3, 1976, p. 270.

⁷⁶ See JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 389. In the conference which took place on December 4, 1942 in Mont-Tremblant (Canada), most lectures rejected the continuation of colonialism; the end declaration, however, did not speak of immediate independence but only of "equal partnership".

the Dutch, French and British delegations were exposed to attacks against colonialism on the part of the United States, Canada, Australia and New Zealand⁷⁷. We can say that the victory of the Allied Powers in World War II caused the rise of a new superpower in Asia, the United States of America, a superpower which was favourable to those who were fighting against colonialism in this part of the globe⁷⁸. In fact, for President Roosevelt, colonialism constituted the leading obstruction to international comity, peace and justice⁷⁹. About three months before the opening session of the United Nations Conference, the so-called San Francisco Conference (April 25, 1945)⁸⁰, Special Assistant to the Secretary of State of the United States of America Leo Pasvolsky records as follows his conversation with Soviet Ambassador Gromyko: “He⁸¹ repeated the statement made by Sobolev⁸² that, while the Soviet Government has neither colonies nor experience in colonial administration, it is greatly interested in the subject. He asked me if I would care to outline for him the principal problems in this field as we see them. I summarized for him the various alternative approaches to such problems as the distinction between trust and colonial areas; the possible declaration of general principles applicable to both; the machinery of international trusteeship for detached areas; the possibilities and structure of regional commissions for colonial areas; the question of international accountability; and the relation between the international organization and the possible regional commissions. I said that our basic thought runs generally in terms of the ideas expressed in Secretary Hull⁸³’s memorandum, and that we consider our treatment of the Philippines as a desirable type of attitude toward dependent areas. In reply to his question as to whether all of these problems would have to be discussed at the United Nations Conference, I said that only questions relating to international trusteeship properly belong on the agenda of the conference. Colonial problems as such might be touched upon, but probably ought to be taken up in earnest at some special conference or by some other means. He inquired whether such a discussion of colonial problems would involve only the colonial powers or also the other important powers. Might it not even be appropriate, he asked, that such a discussion be arranged by the future international organization, since the problems raised might well come within the scope of the General Assembly and the Economic and Social Council? I said that any one of these procedures was possible”⁸⁴. In a memorandum on the forthcoming conversations with Oliver Stanley, British Secretary of State for the Colonies⁸⁵, Pasvolsky summarizes as

follows the British and American views on “*Independence or self-government as the ultimate goal for dependent peoples*”: “*British View. – In British opinion the goal should be self-government within the framework of empire. – Our Proposed View. – Our thinking to date favors independence as the goal of those dependencies capable of enjoying it. We think, however, that permitting such territories the option of freely choosing whether to be independent or to remain within an empire, might be acceptable*”⁸⁶. Appended to this memorandum there is a memorandum on “*The Background of Recent Department Work Regarding Dependent Areas*”, where we can read, with reference to a “*Draft Declaration by the United Nations on National Independence*” from March 9, 1943: “*Perhaps the most significant proposal, however, was the stipulation that colonial peoples should be granted progressive measures of self-government and should be given full independence in accordance with a fixed time schedule*”⁸⁷. In a memorandum of March 1945, Charles Taussig, Adviser on Caribbean Affairs, says, referring to President Roosevelt, that “*he thought that Stanley⁸⁸ was more liberal on colonial policy than Churchill*”. Then he adds: “*(...) I felt there was a genuine streak of liberalism in him, and that under his leadership, the British would make some substantial changes in their whole colonial policy. I told the President of the £ 120,000,000 appropriation that Parliament had made for Colonial Development over the next ten years (...)*”. In the same meeting, Roosevelt said “*he was concerned about the brown people in the East⁸⁹. He said that there are 1,100,000,000 brown people. In many eastern countries, they are ruled by a handful of whites and they resent it. Our goal must be to help them achieve independence – 1,100,000,000 potential enemies are dangerous. He said he included the 450,000,000 Chinese in that. He then added, Churchill doesn’t understand this*”. Clear enough are also the statements made by Roosevelt concerning Indo-China and New Caledonia: “*(...) I asked the President if he had changed his ideas on French Indochina as he had expressed them to us at the luncheon with Stanley⁹⁰. He said no he had not changed his ideas: that French Indo-China and New Caledonia should be taken from France and put under a trusteeship. The President hesitated a moment and then said – well if we can get the proper pledge from France to assume for herself the obligations of a trustee, then I would agree to France retaining these colonies with the proviso that independence was the ultimate goal. I asked the President if he would settle for self-government. He said no. I asked him if he would settle for dominion status. He said no – it must be independence. He said that is to be the policy and you*

⁷⁷ See JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 389f.

⁷⁸ See VAN DEN DOEL, H. W., *Afscheid van Indië. De val van het Nederlandse imperium in Azië*. Tweede en derde, herziene druk. Amsterdam, 2001, p. 80.

⁷⁹ See SBREGA, J. J., The Anticolonial Policies of Franklin D. Roosevelt. In: *Political Science Quarterly*, Vol. 101, No. 1, 1986, p. 65.

⁸⁰ This Conference ended with the signature of the Charter of the United Nations on June 26, 1945.

⁸¹ The Soviet Ambassador to the United States of America Andrei Gromyko.

⁸² The Minister-Counselor of the Soviet Embassy in the United Kingdom.

⁸³ Cordell Hull, Secretary of State of the United States of America.

⁸⁴ See Memorandum of Conversation, by Mr. Leo Pasvolsky, Special Assistant to the Secretary of State, Washington, January 13, 1945. In: *Foreign Relations of the United States, Diplomatic Papers - 1945*, Vol. I – *General: The United Nations*. Washington, 1967, p. 15f.

⁸⁵ This memorandum has the same date as the memorandum of conversation with the Soviet Ambassador: January 13, 1945. See above.

⁸⁶ See Memorandum of Conversation, by Mr. Leo Pasvolsky, Special Assistant to the Secretary of State, Washington, January 13, 1945. In: *Foreign Relations of the United States, Diplomatic Papers - 1945*, Vol. I – *General: The United Nations*. Washington, 1967, p. 19.

⁸⁷ See Annex – Memorandum, January, 13, 1945. In: *Foreign Relations of the United States, Diplomatic Papers - 1945*, vol. I – *General: The United Nations*. Washington, 1967, p. 21.

⁸⁸ Oliver Stanley, British Secretary of State for the Colonies. See above.

⁸⁹ East Asia.

⁹⁰ Oliver Stanley, British Secretary of State for the Colonies. See above.

can quote me in the State Department”⁹¹. As we can see, as an alternative system to the colonial empires, President Roosevelt’s plans included the establishment of a system of international trusteeships for the colonies with independence as its ultimate goal⁹². The attitude of the United States of America towards the political future of colonialism in general and the restoration of the Dutch East Indies in particular was, therefore, unfavourable. As stated before, there was in the United States of America a widespread opinion unfavourable to colonialism. Against this background, President Roosevelt decided to include the Dutch East Indies in his system of international trusteeships, rejecting the possibility of the East Indies continuing to be considered a part of the Netherlands. On the other hand, according to Queen Wilhelmina the Dutch East Indies were not to be separated from the Motherland. F. H. Visman, a former member of the Netherlands Indies Council (*Raad van Nederlands-Indië*) expressed his opposition to any form of international administration of the East Indies after the war.

3. The San Francisco Conference

(April 25, 1945–June 26, 1945): the fate of the Non-Self-Governing Territories and the system of international trusteeships in the United Nations Charter.

The delayed reoccupation of the Dutch East Indies

When we look back at the 20th century today we recognize that it achieved a continuing historical importance specially because of a determined reason: both world wars had questioned the moral and juridical basis upon which the supremacy of the West rested. The hope of a new beginning was based upon two facts: on the one hand, the belief in the economic and military power of the United States of America; on the other hand the emerging Communist Bloc, which under the leadership of the Soviet Union menaced the West and so doing contributed towards maintaining the cohesion of the Western Allies. This

political consensus made the project of a peaceful, united Europe with Germany’s participation possible and drove it forward, contributing to maintaining Europe’s position of power in the world. The United Kingdom and France, both colonial powers, did manage to achieve a position under International Law that was able to preserve their world power status. The Charter of the United Nations (1945) recognized them a permanent membership in the United Nations Security Council with veto power and, while establishing the principle of self-determination of peoples⁹³, did not expressly stipulate the end of colonialism⁹⁴. Towards the end of World War II, the United States of America and the United Kingdom discussed the creation of a world organization with supervisory powers over all colonies under the idea according to which all imperial powers should be made accountable to an international organization. The main objective of the British was to prevent the foundation of a world organization that would interfere with the British Empire, hastening its decline⁹⁵. From August 21, 1944 to October 7, 1944, took place at the Dumbarton Oaks estate in Washington, D.C., USA, the Washington Conversations on International Peace and Security Organization, the so-called Dumbarton Oaks Conference, at which delegations from the United States of America, the United Kingdom, the Soviet Union and China deliberated over the establishment of an international organization of universal character which could succeed the League of Nations and maintain peace and security in the world. The Charter of the United Nations (1945) which established the new international organization was drafted at the San Francisco Conference (April 25, 1945–June 26, 1945) after the Yalta Conference took place on February 4–11, 1945, mostly on the basis of the proposals of the Dumbarton Oaks Conference⁹⁶. The American views were written into the text of the Charter of the United Nations (1945) and an international trusteeship system was established which did not put British colonial interests at risk⁹⁷. Actually, against the background of President Roosevelt’s plans for an alternative system to the

⁹¹ See Memorandum of Conversation, by the Adviser on Caribbean Affairs (Taussig), Washington, March 15, 1945. In: *Foreign Relations of the United States, Diplomatic Papers - 1945*, vol. I – General: *The United Nations*. Washington, 1967, p. 121f. and p. 124.

⁹² See McMAHON, R. J., *Colonialism and Cold War. The United States and the Struggle for Indonesian Independence, 1945-49*. Ithaca and London, 1981, p. 61ff.; WILLIAMS, J. E., The Joint Declaration on the Colonies: An Issue in Anglo-American Relations, 1942-1944. In: *British Journal of International Studies*, Vol. 2, No. 3, 1976, p. 271, with footnote 1; HABIBUDDIN, S. M., Franklin D. Roosevelt’s Anti-Colonial Policy towards Asia. Its Implications for India, Indo-China and Indonesia (1941-45). In: *Journal of Indian History*, Vol. LIII, No. 3., 1975, p. 501ff.

⁹³ See Charter of the United Nations, Article 1 (2) – Article 55.

⁹⁴ Unlike the Covenant of the League of Nations (see Article 22), the Charter of the United Nations does not use the word “colony”.

⁹⁵ See WILLIAMS, J. E., The Joint Declaration on the Colonies: An Issue in Anglo-American Relations, 1942-1944. In: *British Journal of International Studies*, Vol. 2, Nr. 3, 1976, p. 290ff.

⁹⁶ See SCHEUERMANN, M., *Die Vereinten Nationen: Eine Einführung*. Wiesbaden, 2014, p. 24ff.; VOLGER, H., *Geschichte der Vereinten Nationen*, 2., aktualisierte und erweiterte Auflage. München – Wien, 2008, p. 13ff. On p. 20, we can read the following: “Mit anderen Worten, weil die Diskussion sich an den Vorschlägen von Dumbarton Oaks orientierte, statt bei null anzufangen, entwickelte sich die Charta der Vereinten Nationen mehr oder weniger als eine Variation der Ideen von Dumbarton Oaks. Allerdings ist es auch schwer vorstellbar, daß die Großmächte eine völlig neue Konzeption der Weltorganisation, die beträchtlich von ihren in Dumbarton Oaks entwickelten Ideen abgewichen wäre, akzeptiert hätten.”; SCHLESINGER, S. C., *Act of Creation: The Founding of the United Nations. A Story of Superpowers, Secret Agents, Wartime Allies and Enemies, and Their Quest for a Peaceful World*. Cambridge, MA, 2004; SCHILD, G., *Bretton Woods and Dumbarton Oaks: American Economic and Political Postwar Planning in the Summer of 1944*. New York, 1995, p. 139ff., namely p. 168ff.; HILDERBRAND, R. C., *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security*. Chapel Hill and London, 1990. Further, KELSEN, H., The Old and the New League: The Covenant and the Dumbarton Oaks Proposals. In: *The American Journal of International Law*, Vol. 39, No. 1, 1945, p. 45–83. This study by Hans Kelsen was published in January 1945, that is, before the Yalta Conference (February 4–11, 1945) and the San Francisco Conference (April 25, 1945–June 26, 1945) took place.

⁹⁷ See WILLIAMS, J. E., The Joint Declaration on the Colonies: An Issue in Anglo-American Relations, 1942-1944. In: *British Journal of International Studies*, Vol. 2, Nr. 3, 1976, p. 291: “The end result was favourable for the United Kingdom, although no defence arrangement was agreed to. It faced the post-war world without any new commitment to grant independence to its colonies or a United Nations that could interfere with its running of the Empire.”

colonial empires comprising the establishment of a system of international trusteeships for the colonies⁹⁸, the Charter of the United Nations (1945) considers the possibility of an independence only for the *trust territories*⁹⁹, not for the so called *non-self-governing territories*¹⁰⁰. The colonial powers administering non-self-governing territories were obliged to “develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions (...)”¹⁰¹, a formula that seems to be inspired in the British Colonial Law and practice (namely, the evolution towards Dominion status), but which does not explicitly admit the independence of these territories¹⁰². Against this background it is of importance to compare the Charter of the United Nations (1945) with the Covenant of the League of Nations (1920). The Covenant of the League of Nations (1920) establishes: “To those colonies and territories which as a consequence of the late war¹⁰³ have ceased to be under the sovereignty of the States which formerly governed them¹⁰⁴ and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League. (...)”¹⁰⁵. Comparing the Charter of the United Nations (1945) with the Covenant of the League of Nations (1920), we see that the Covenant of the League of Nations (1920) does not include any principle or rule concerning the political evolution of dependent territories towards self-government or independence, with the exception, as regards to independence, of “(...) Certain communities formerly belonging to the Turkish Empire (...)” which “(...) have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. (...)”¹⁰⁶ (the so-called mandates of type A). For other peoples and territories¹⁰⁷ (the so-called mandates of types B and C), the possibility of their future independence is not mentioned¹⁰⁸. Unlike the

Covenant of the League of Nations (1920), the Charter of the United Nations (1945) establishes as a basic principle of the trusteeship system “to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement”¹⁰⁹. On the other hand, the Charter of the United Nations (1945) establishes that “The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements: (...) to territories voluntarily placed under the system by states responsible by their administration”¹¹⁰. Therefore, according to the Charter of the United Nations (1945) the colonial powers can place territories voluntarily under the trusteeship system with the intention of preparing colonial peoples for independence or, at least, self-government. Consequently, the Charter of the United Nations (1945) ignores “...the staunch European opposition to trusteeship or any other formula which would challenge their sovereignty”¹¹¹.

We can therefore conclude that:

- Both the Covenant of the League of Nations (1920) and the Charter of the United Nations (1945) foresee the independence of territories put under mandate. The difference is that in the Covenant of the League of Nations (1920) only “certain communities formerly belonging to the Turkish Empire” are considered to be capable of independence;
- Neither the Covenant of the League of Nations (1920) nor the Charter of the United Nations (1945) foresees the independence of dependent territories that are not under mandate. This means that neither the Covenant of the League of Nations (1920) nor the Charter of the United Nations (1945) foresees the independence of territories under colonial rule that are not under mandate;
- Unlike the Covenant of the League of Nations (1920), the Charter of the United Nations (1945) establishes the principle according to which the administering powers of non-self-governing territories (namely, territories under colonial rule) accept the obligation “(...) to develop self-government, to take due account of the political aspirations of the

⁹⁸ See *supra*.

⁹⁹ See Charter of the United Nations, Article 76 (b).

¹⁰⁰ See Charter of the United Nations, Article 73.

¹⁰¹ See Charter of the United Nations, Article 73 (b); VAN DEN DOEL, H. W., *Afscheid van Indië. De val van het Nederlandse imperium in Azië*. Tweede en derde, herziene druk. Amsterdam, 2001, p. 78.

¹⁰² On the British colonial praxis, see, for example, CUNHA, J. da S., *Administração e Direito Colonial*. Lisboa, 1956, p. 146ff.

¹⁰³ World War I.

¹⁰⁴ Germany and Turkey.

¹⁰⁵ See The Covenant of the League of Nations, Article 22.

¹⁰⁶ See The Covenant of the League of Nations, Article 22.

¹⁰⁷ See The Covenant of the League of Nations, Article 22.

¹⁰⁸ On the mandates according to the Covenant of the League of Nations (1920), namely, on the the so-called mandates of type A, B and C see CUNHA, J. da S. – PEREIRA, M. da A. do V., *Manual de Direito Internacional Público*, Second Edition. Coimbra, 2004, p. 442-445.

¹⁰⁹ See Charter of the United Nations, Article 76 (b).

¹¹⁰ See Charter of the United Nations, Article 77 (1) (c).

¹¹¹ See McMAHON, R. J., *Anglo-American Diplomacy and the Reoccupation of the Netherlands East Indies*. In: *Diplomatic History*, Vol. 2, Nr. 1, 1978, p. 5.

peoples, and to assist them in the progressive development of their free political institutions (...) ¹¹²;

- Unlike the Covenant of the League of Nations (1920), the Charter of the United Nations (1945) establishes that dependent territories could be voluntarily placed under mandate by states responsible by their administration. This means that colonial powers could, on a voluntary basis, place colonial territories under mandate. Consequently, the Charter of the United Nations (1945) ignores "...the staunch European opposition to trusteeship or any other formula which would challenge their sovereignty" ¹¹³.

Not long after the Charter of the United Nations (1945) was drafted, a new balance of power unfavourable to colonial powers became evident. This was the beginning of an evolution that would eventually lead to an important transformation of International Law: the decolonization as a new manifestation of the principle of self-determination of peoples adequate to regulate the access of colonial peoples to independence ¹¹⁴. Beginning in 1945, the Proclamation of the Independence of the Republic of Indonesia (August 17, 1945) can be considered a starting point for these developments in International Law and praxis concerning colonial peoples (*peuples coloniaux*) ¹¹⁵.

Shortly after the signature of the Charter of the United Nations (June 26, 1945) and before Japan's surrender (August 15, 1945), in July 1945, the Allies decided at the Potsdam's Conference (July 17, 1945-August 2, 1945) to transfer the Dutch East Indies from the American SWPA (South West Pacific Area) under General Douglas MacArthur to the British SEAC (South East Asia Command) under Admiral Lord Louis Mountbatten

as part of the Joint Chiefs of Staff's strategy of giving priority to the Japanese archipelago in the American war effort against Japan ¹¹⁶. This decision caused some division among the Dutch. Van Mook in a telegram sent to the Minister for Overseas Territories Schmutzer ¹¹⁷ on June 21, 1945, expresses his fear that the decision of putting the East Indies in the territory under British operational command could significantly delay its liberation and stresses that under the British the supply of goods was worse than in the American operational area. Van Mook regrets further that such an important decision could be taken without consulting the Dutch authorities and without their approval. The War Council (*Raad van Oorlogsvoering*) presided by the new Prime Minister Schermerhorn ¹¹⁸ had a different opinion. Schermerhorn considers it uncertain that with the change in the commanding areas the liberation of the East Indies would take more time; according to him, the Dutch Government should not oppose the extension of Mountbatten's operational area because the "*British understand our position better*" ¹¹⁹. However, like Van Mook, some members of the Council, namely the Minister without portfolio Van Roijen ¹²⁰ and the Minister for Naval Affairs De Booy ¹²¹, found it questionable not to be consulted before the changing in the commanding areas was settled. According to De Booy, General MacArthur was not permitted to land in Java because the American public opinion was against a military campaign in the Dutch East Indies; therefore the Dutch must hope of Mountbatten, an opinion shared by Prime Minister Schermerhorn and the Minister for Overseas Territories Logemann ¹²². The agreement between the British Government and the Dutch Government concerning the occupation of the East Indies was signed on Au-

¹¹² See Charter of the United Nations, Article 73 (b).

¹¹³ See McMAHON, R. J., Anglo-American Diplomacy and the Reoccupation of the Netherlands East Indies. In: *Diplomatic History*, vol. 2, Nr. 1, 1978, p. 5.

¹¹⁴ See LAOUTIDES, C., Self-Determination and Decolonization. In: GRIFFITHS, R. D. – PAVKOVIĆ, A. – RADAN, P. (ed.), *The Routledge Handbook of Self-Determination and Secession*. London, 2023, p. 60-73; KILIAN, P., Self-Determination of Peoples in the Charter of the United Nations. In: *Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito (RECHTD)*, Vol. 11, No. 3, 2019, p. 341ff.; SIMPSON, B., Self-Determination and Decolonization. In: THOMAS, M. – THOMPSON, A. S. (ed.). In: *The Oxford Handbook of the Ends of Empire*. Oxford, 2018, p. 417-435.

¹¹⁵ Making reference to "(...) developments in international law.", see KILIAN, P., Self-Determination of Peoples in the Charter of the United Nations. In: *Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito (RECHTD)*, Vol. 11, No. 3, 2019, p. 348: «For example, the French version of General Assembly Resolution 1514 of 14 December 1960 (and many others) already use the term "peuples coloniaux". It may be argued that this was a retroactive amendment to the Charter as a result of developments in international law.» See United Nations General Assembly Resolution 1514 (XV), *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14th December 1960 [online]. Available at: Declaration on the Granting of Independence to Colonial Countries and Peoples | OHCHR [Accessed 15 February 2025].

¹¹⁶ See SMIT, C., *De indonesische quaestie: De wordingsgeschiedenis der soevereiniteitsoverdracht*. Leiden, 1952, p. 48. Further, VAN DEN DOEL, H. W., *Afscheid van Indië. De val van het Nederlandse imperium in Azië*. Tweede en derde, herziene druk. Amsterdam, 2001, p. 82ff.; DENNIS, P., *Troubled days of peace: Mountbatten and South East Asia Command, 1945-46*. Manchester, 1987, p. 67ff., p. 89ff., p. 112ff., p. 138ff. and 180ff.; McMAHON, R. J., *Colonialism and Cold War. The United States and the Struggle for Indonesian Independence, 1945-49*. Ithaca and London, 1981, p. 74ff.

¹¹⁷ J. I. J. M. Schmutzer was the Minister for Overseas Territories in the Third Gerbrandy Cabinet (February 23, 1945-June 24, 1945).

¹¹⁸ In office since June 24, 1945. Willem Schermerhorn, Prime Minister of the Kingdom of the Netherlands, presided over the so-called Cabinet Schermerhorn-Drees (June 24, 1945-July 3, 1946). See DUYNSTEE, F. J. F. M. - BOSMANS, J., *Het Kabinet Schermerhorn-Drees 24 juni 1945 - 3 juli 1946. Parlementaire Geschiedenis van Nederland na 1945*, Deel 1. Assen - Amsterdam, 1977.

¹¹⁹ See JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 488f.

¹²⁰ J. H. Van Roijen was Minister without portfolio (June 24, 1945-March 01, 1946) and Minister for Foreign Affairs (March 01, 1946-July 3, 1946) in the so-called Cabinet Schermerhorn-Drees (June 24, 1945-July 3, 1946) [online]. Available at: Kabinet-Schermerhorn-Drees (1945-1946) | Regering | Rijksoverheid.nl [Accessed 15 February 2025].

¹²¹ J. M. de Booy was Minister for Naval Affairs in the Third Gerbrandy Cabinet (February 23, 1945-June 24, 1945) and in the so-called Cabinet Schermerhorn-Drees (June 24, 1945-July 3, 1946) [online]. Available at: Kabinet-Schermerhorn-Drees (1945-1946) | Regering | Rijksoverheid.nl [Accessed 15 February 2025].

¹²² See *Ministerraad, Raad van Oorlogsvoering: Notulen, 20 juli 1945*, cited by JONG, L., *Het Koninkrijk der Nederlanden in de tweede wereldoorlog*, Deel 11c - *Nederlands-Indië III*. Leiden, 1986, p. 489. J. H. A. Logemann was Minister for Overseas Territories in the so-called Cabinet Schermerhorn-Drees (June 24, 1945-July 3, 1946) [online]. Available at: Kabinet-Schermerhorn-Drees (1945-1946) | Regering | Rijksoverheid.nl [Accessed 15 February 2025].

gust 24, 1945. The forces under Mountbatten were, however, not enough to bring the East Indies easily under control. In a letter sent to the Minister for Overseas Territories Logemann on August 2, 1945, Van Mook, Lieutenant Governor-General of the Dutch East Indies, pointed out that the British admiral had only some Australian divisions at his disposal to fulfill his task. For his part, due to the extension of the British operational command, Van Mook was no more able to receive the military equipment he asked for in the headquarters of General MacArthur and needed to equip the Dutch forces destined to the East Indies. On the other hand, the Australian Government, which in a 1943 statement had acknowledged as its duty to do everything it could to give the Dutch, French and Portuguese colonies back “to their proper owners” and, therefore, had committed itself to provide the Dutch with the facilities needed to accommodate and train an army of about 30.000 men in Australian soil soon after the liberation of the Netherlands, decided, in a meeting of the War Cabinet which took place on May 31, 1945, to reconsider his promise and to examine the possibility of a small force consisting in 5600 Netherlands army, air and civil affairs personnel being assembled in Australia. The time it took to transfer the military command to Admiral Mountbatten, the shortage of men and shipping, the lack of reliable intelligence, the priority given to the liberation of the British colonies of Malaya and Singapore and the fact that any military movements in the region could only be accomplished after the signature of the agreement that formalized the Japanese surrender, which occurred on September 2, 1945, delayed the reoccupation of the Dutch East Indies¹²³.

4. The Proclamation of the Independence of the Republic of Indonesia (August 17, 1945) and the Beginning of a new Constitutionalism in Asia

It was not until the founding of the first People’s Council (*Volksraad*) created by law of December 16, 1916¹²⁴ and its

opening in 1918 that the peoples of the Dutch East Indies began to participate in the affairs of the central government of this colony¹²⁵. In 1922 took place an important constitutional reform in the Kingdom of the Netherlands. All references to “colonies” (*koloniën*) were removed from the Dutch Constitution (*Grondwet*) and replaced by the inclusion of the Dutch East Indies, Suriname and Curaçao as parts of the Kingdom of the Netherlands¹²⁶. In this sense, after this constitutional reform the Dutch East Indies became part of the territory (*grondgebied*) of the Kingdom of the Netherlands. Nonetheless, the Dutch Constitution (*Grondwet*) was to be applied only to the European territories of the Kingdom of the Netherlands¹²⁷. In July 1936, few years before the outbreak of World War II (September 1939), the so-called Sutarjo Petition, a Petition asking for more autonomy for the Dutch East Indies within the Kingdom of the Netherlands, namely asking for a conference aiming at preparing dominion status for Indonesia after ten years, was submitted to the People’s Council (*Volksraad*) by Sutarjo Kartohadikusumo, a native bureaucrat¹²⁸. On September 14, 1940 the Governor-General of the Dutch East Indies Alidius Tjarda van Starckenborgh Stachouwer appointed a “Commission to Study Constitutional Reforms” (*Commissie tot Bestudering van Staatsrechtelijke Hervormingen*) headed by F. H. Visman, a member of the Council of the Indies (*Raad van Indië*), the so-called Visman Commission, in order to study the ideas of the peoples of the Dutch East Indies with respect to constitutional reforms¹²⁹. Further, Ch. J. I. M. Welter, Minister for Colonial Affairs in the Second Cabinet presided over by D. J. de Geer (August 10, 1939-August 26, 1940) and in the First Cabinet presided over by P. S. Gerbrandy (September 3, 1940-June 12, 1941), declared to the Lower House of the Dutch Parliament (*Tweede Kamer*) that the final goal of the Dutch colonial policy was to implement the autonomy of the Dutch East Indies within the Kingdom of the Netherlands while preserving its unity

¹²³ See McMAHON, R. J., *Anglo-American Diplomacy and the Reoccupation of the Netherlands East Indies*. In: *Diplomatic History*, Vol. 2, Nr. 1, 1978, p. 6: “Mountbatten found his command short of the men and shipping necessary to fulfill its expanded responsibilities and lacking any reliable intelligence estimates in regard to actual conditions in the East Indies. Since the liberation of the British colonies of Malaya and Singapore was SEAC’s top priority, the reoccupation of the East Indies was delayed even further.” Further, HORNBECK, S. K., *The United States and the Netherlands East Indies*. In: *The Annals of the American Academy of Political and Social Science, Foreign Policies and Relations of the United States*, Vol. 255, 1948, p. 127-128; SMIT, C., *De indonesische kwestie: De wordingsgeschiedenis der soevereiniteitsoverdracht*. Leiden, 1952, p. 48f.: “Deze wijziging in het bevelsgebied op het meest ongelukkige ogenblik heeft de bezetting van Indonesië door de geallieerden vertraagd.”

¹²⁴ See SCHMUTZER, E. J. M., *Dutch Colonial Policy and the Search for Identity in Indonesia 1920-1931*. Leiden, 1977, p. 57 with footnote 1.

¹²⁵ On the People’s Council (*Volksraad*), see SOARES, R. *Administração e Direito Colonial*, Lições refundidas e atualizadas por CARVALHO, A. – BASTOS, M. – RAMALHO, O., Universidade de Coimbra, Faculdade de Direito. Coimbra, 1962, p. 238. Further, *Volksraad* (People’s Council). In: KAHIN, A., *Historical Dictionary of Indonesia*, Third Edition. Lanham – Boulder – New York – Toronto – Plymouth, UK, 2015, p. 497-498; SCHMUTZER, E. J. M., *Dutch Colonial Policy and the Search for Identity in Indonesia 1920-1931*. Leiden, 1977, p. 57ff.; ASSHIDDIQIE, J., *The Constitutional Law of Indonesia. A Comprehensive Overview*. Petaling Jaya, Selangor, Malaysia, 2009, p. 53 with footnote 18. On the Statehood and Sovereignty of Indonesia, see recently LEE, S. (ed.), *Encyclopedia of Public International Law in Asia*, Vol. II: *Southeast Asia*. Leiden – Boston, 2021, p. 17ff.

¹²⁶ See *Grondwet (Grondwetsherziening van 1922)* [online], Eerste Hoofdstuk. *Van het Rijk en zijn inwoners. 1: Grondgebied: “Het Koninkrijk der Nederlanden omvat het grondgebied van Nederland, Nederlandsch-Indië, Suriname en Curaçao.”* Available at: www.denederlandsegrondwet.nl/id/vi7ilzlwvwyx/eerste_hoofdstuk_van_het_rijk_en_zijn [Accessed 15 February 2025].

¹²⁷ See *Grondwet (Grondwetsherziening van 1922)* [online], Eerste Hoofdstuk. *Van het Rijk en zijn inwoners. 2: Reikwijdte Grondwet: „De Grondwet is alleen voor het Rijk in Europa verbindende, voor zoover niet het tegendeel daaruit blijkt. Waar in de volgende artikelen het Rijk wordt genoemd, wordt alleen het Rijk in Europa bedoeld.”* Available at: www.denederlandsegrondwet.nl/id/vi7ilzlwvwyx/eerste_hoofdstuk_van_het_rijk_en_zijn [Accessed 15 February 2025].

¹²⁸ See Sutarjo Petition. In: KAHIN, A., *Historical Dictionary of Indonesia*, Third Edition. Lanham – Boulder – New York – Toronto – Plymouth, UK, 2015, p. 459. Further, ABEYASEKERE, S., *The Soetardjo Petition*. In: *Indonesia*, No. 15, Apr., 1973, p. 80-108.

¹²⁹ See De SCHILLER, A. A., *Autonomy for Indonesia*. In: *Pacific Affairs*, Vol. 17, No. 4, 1944, p. 478ff., namely p. 479 with footnote 5. Further, VAN DEN DOEL, H. W., *Afscheid van Indië. De val van het Nederlandse imperium in Azië*. Tweede en derde, herziene druk. Amsterdam, 2001, p. 59f.

(*Rijkseenheid*)¹³⁰. From a constitutional point of view, the invasion of the Netherlands by Nazi Germany (1940) caused the Queen of the Netherlands and the Dutch Government to promise a far-reaching reorganization of the Kingdom of the Netherlands and its component territories (The Netherlands, Netherlands East Indies, Surinam and Curaçao) after the end of World War II¹³¹. Against this background, on January 31, 1941, about a year before the surrender of the KNIL¹³² to the Japanese (March 8, 1942), a memorandum which called for a full parliament of two chambers composed by elected members and an executive with responsible ministers was laid before the People's Council (*Volksraad*). This parliament was to have the highest legislative power in the state¹³³. On January 27, 1942 the Dutch Government further defined the conference on the above mentioned reorganization of the Kingdom of the Netherlands and its component territories. The conference was to be convened following the end of World War II¹³⁴. In the above mentioned Radio address made on December 6, 1942, Queen Wilhelmina of the Netherlands promised a conference at which a joint consultation would take place after the end of World War II about the structure of the Kingdom of the Netherlands and its parts in order to adapt it to post-war world. The plans of Queen Wilhelmina of the Netherlands comprised the creation of a commonwealth of the Netherlands, Indonesia, Surinam and Curaçao¹³⁵. In any case, any ideas on the consti-

tution of the Kingdom of the Netherlands, including a dominion status for the Dutch East Indies, a federation between the Netherlands and Indonesia or the regulation of the relations of the Netherlands and Indonesia on the basis of equality of position, excluded any demand for complete independence¹³⁶. This means that any autonomy of the above mentioned territories was to be implemented within the framework of the Kingdom of the Netherlands (*in het verband van het Koninkrijk*) according to the idea that the Indonesians must be trained for self-government by an "outside power"¹³⁷.

During the last months of the Japanese occupation of the Dutch East Indies, in two sessions from May to July 1945, at the end of World War II, the "Investigating Committee for Preparatory Work for Independence"¹³⁸ adopted the so-called *Pancasila* (that is, "Five Principles") as Indonesian State Philosophy¹³⁹ and presented a draft Constitution for the Republic of Indonesia in the first week of August 1945¹⁴⁰. In this context, we should make reference to one of the participants of these proceedings and an important member of the "Investigating Committee for Preparatory Work for Independence", Sopomo, a jurist who had studied Law in Leiden under the influential Dutch Law Professor Cornelis van Vollenhoven. During the proceedings, after making reference to the words of the chief of the General Affairs Department, Major-General Nishimura, praising the importance of taking into consideration the specific character of a nation

¹³⁰ See VAN DEN DOEL, H. W., *Afscheid van Indië. De val van het Nederlandse imperium in Azië*. Tweede en derde, herziene druk. Amsterdam, 2001, p. 60.

¹³¹ See Bijlage I – Teksten toespraken, 30 juli 1941. In: SCHAAP, J., *Het Recht om te waarschuwen: Over de Radio Oranje-toespraken van koningin Wilhelmina*. Amsterdam, 2007, p. 236-237, lines 59-80. Making reference to this promise, see the Radio address made by Queen Wilhelmina of the Netherlands on April 3, 1942. See Bijlage I – Teksten toespraken, 3 april 1942. In: SCHAAP, J., *Het Recht om te waarschuwen: Over de Radio Oranje-toespraken van koningin Wilhelmina*. Amsterdam, 2007, p. 246, lines 24-30.

¹³² As mentioned above, KNIL means "Koninklijk Nederlands-Indisch Leger", that is, "Royal Netherlands Indies Army".

¹³³ See SCHILLER, A. A., Autonomy for Indonesia. In: *Pacific Affairs*, Vol. 17, No. 4, 1944, p. 483.

¹³⁴ See Bijlage I – Teksten toespraken, 7 december 1942. In: SCHAAP, J., *Het Recht om te waarschuwen: Over de Radio Oranje-toespraken van koningin Wilhelmina*. Amsterdam, 2007, p. 252-253, lines 48-114.

¹³⁵ See *The Queen Looks at the Future. Important Statements of H.M. Queen Wilhelmina on War and Peace Aims* [online]. The Netherlands Information Bureau. New York City z.j. [1943], p. 11-13, namely p. 13. Available at: Towards a Netherlands Commonwealth Text of H.M. Queen Wilhelmina's radio address of December 6th, 1942, outlining plans for the creation of a Commonwealth of the Netherlands, Indonesia, Surinam and Curaçao., *The Queen Looks at the Future, Wilhelmina, prinses der Nederlanden* - DBNL [Accessed 15 February 2025]. Further, HABIBUDDIN, S. M., Franklin D. Roosevelt's Anti-Colonial Policy towards Asia. Its Implications for India, Indo-China and Indonesia (1941-45). In: *Journal of Indian History*, Vol. LIII, No. 3., 1975, p. 518-519.

¹³⁶ See Bijlage I – Teksten toespraken, 31 december 1943. In: SCHAAP, J., *Het Recht om te waarschuwen: Over de Radio Oranje-toespraken van koningin Wilhelmina*. Amsterdam, 2007, p. 265, lines 36-41: "... den nieuwen staatkundigen opbouw van Nederlandsch-Indië in het verband van het Koninkrijk, volgens de grondslagen, welke ik u in breede trekken reeds mededeelde...".

¹³⁷ See SCHILLER, A. A., Autonomy for Indonesia. In: *Pacific Affairs*, Vol. 17, No. 4, 1944, p. 480.

¹³⁸ See *supra*.

¹³⁹ On the constitutional debates of 1945, see BOURCHIER, D., *Illiberal Democracy in Indonesia: The ideology of the family state*. London and New York, 2015, p. 65ff. Further, KUSUMA, A. B. – ELSON, R. E., A note on the sources for the 1945 constitutional debates in Indonesia. In: *Bijdragen tot de Taal-, Land- en Volkenkunde*, Vol. 167, No. 2-3, 2011, p. 196-209. The *Pancasila* was formulated by Sukarno in a speech delivered by him to the "Investigating Committee for Preparatory Work for Independence" referred above on June 1, 1945, during the Occupation Period. For the text of this speech, see FEITH, H. – SMITH, A., Indonesia. In: SMITH, R. M. (ed.), *Southeast Asia: Documents of Political Development and Change*. Ithaca and London, 1974, p. 174ff. Further, BOURCHIER, D., *Illiberal Democracy in Indonesia: The ideology of the family state*. London and New York, 2015, p. 69-70; *Pancasila*. In: KAHIN, A., *Historical Dictionary of Indonesia*, Third Edition. Lanham – Boulder – New York – Toronto – Plymouth, UK, 2015, p. 339-340; DAHM, B., *Sukarnos Kampf um Indonesiens Unabhängigkeit. Werdegang und Ideen eines asiatischen Nationalisten*, vol. XVIII der Schriften des Instituts für Asienkunde in Hamburg. Frankfurt am Main – Berlin, 1966, p. 255ff. The *Pancasila*, the Indonesian State Philosophy, is to be found in the Preamble of the Constitution of the Republic of Indonesia, the so-called 1945 Constitution. According to Sukarno, the Republic of Indonesia should be based on *Pancasila* or the Five Principles: 1- "Belief in the One and Only God"; 2- "Just and civilized humanity"; 3- "The unity of Indonesia"; 4- "Democratic life led by wisdom of thoughts in deliberation amongst representatives of the people" and 5- "Social justice for all the people of Indonesia". See *The 1945 Constitution of the Republic of Indonesia*, Preamble [online]. Available at: constitution_1_1625426222_4c1e13f466840d7ed721.pdf (mkri.id) [Accessed 16 February 2025]. Sukarno was to be in the future celebrated as the "Discoverer of the *Pancasila*" by the people of Indonesia. On the concept of *Pancasila*, see further PRAWIRANEGARA, S., *Pancasila as the Sole Foundation*. In: *Indonesia*, No. 38, Oct., 1984, p. 75: "I. What Is the *Pancasila*? The answer usually given is: The *Pancasila* is the State Philosophy, the philosophy that is the basis of the 1945 Constitution, that constitutes the basis of law for the Republic of Indonesia."

¹⁴⁰ See ASSHIDDIQIE, J., *The Constitutional Law of Indonesia. A Comprehensive Overview*. Petaling Jaya, Selangor, Malaysia, 2009, p. 61.

when defining its government system, Sopomo mentions the Historical School while asserting the importance of History of Law (*Rechtsgeschiede*) in determining a State's internal organization along with its social structure, in this case, the Indonesian History of Law and the Indonesian social structure¹⁴¹. Against the background of a condemnation of Liberalism and Marxism, Supomo attacks Western individualism and praises an organic unity in society in which the State looks after all aspects of the life of a nation and does not give too much importance to the individual. This ideas corresponded to "integralism" as a political theory in accordance with Indonesia's tradition of political thought. Nazi Germany and Imperial Japan are considered examples of integralism. In this context, the terms "totalitarianism" and "integralism" are used with the same meaning by Sopomo when he makes reference to Nazi Germany while praising Nazi precepts like the unity of the people or the Nazi leadership principle of unlimited authority of the *Führer* over the people and the Japanese system which, as Supomo stresses, comprises "... the abiding spiritual and temporal unity of the Most Esteemed Emperor, the state and the whole Japanese people."¹⁴² Further, according to Sopomo the importance given by Japan to unity and the family principle as foundation of the state are very compatible to traditional Indonesian social organization. The traditional constitutional order contains an idea of unity which corresponds to a totalitarian concept, an Indonesian integralist concept¹⁴³. The importance of the reference to Sopomo lays also in the fact that both Sopomo and Sukarno belonged to the same group within the "Investigating Committee for Preparatory Work for Independence" and both favoured a strong and authoritarian State¹⁴⁴. The 1945 Constitution emerged from the draft produced by Supomo's drafting subcommittee (July 12, 1945) whose composition tended to favour a strong, centralized, non-Islamic State favourable both to the Japanese and to Sukarno¹⁴⁵.

On August 7, 1945, the day after the atomic bombing of Hiroshima, Field Marshal Count Hisaichi Terauchi, Commander of the Japanese Southern Area, granted permission for the establishment of the so-called "Preparatory Committee for Indonesian Independence"¹⁴⁶ with the mission of preparing the transfer of power from the Japanese armed forces to this Committee¹⁴⁷. On August 11, 1945 Field Marshal Count Hisaichi Terauchi inaugurated Sukarno as chairman of the "Preparatory Committee for Indonesian Independence" and Mohammad Hatta as deputy chairman¹⁴⁸. The "Preparatory Committee for Indonesian Independence" met for the first time one day after the Proclamation of the Independence of the Republic of Indonesia (August 17, 1945), on August 18, 1945. It added new members to the Committee and the expanded Committee selected Sukarno as President and Mohammed Hatta as Vice President of the Republic of Indonesia and established a commission to approve the final draft of the Constitution of the Republic of Indonesia. On this same day, August 18, 1945, or a week later, the "Preparatory Committee for Indonesian Independence" ratified the text of the 1945 Constitution¹⁴⁹. On August 29, 1945, the "Preparatory Committee for Indonesian Independence" was dissolved and the "Central Indonesian National Committee" was established¹⁵⁰ as an advisory body to the President and his Cabinet of the newly independent Indonesia. Sukarno, assisted by Hatta, appointed 135 members to this new body among "... whom they deemed to be the outstanding Indonesian nationalists and the most important leaders of the chief ethnic, religious, social, and economic groups in Indonesia"¹⁵¹. The first Indonesian Constitution, the Constitution of the Republic of Indonesia, the so-called 1945 Constitution, was officially published in the Gazette of the Republic of Indonesia on February 15, 1946¹⁵². The introductory phrases of the Preamble to this Constitution¹⁵³ read as follows:

¹⁴¹ See BOURCHIER, D., *Illiberal Democracy in Indonesia: The ideology of the family state*. London and New York, 2015, p. 66 with footnotes 8 and 9.

¹⁴² See BOURCHIER, D., *Illiberal Democracy in Indonesia: The ideology of the family state*. London and New York, 2015, p. 66-67.

¹⁴³ See BOURCHIER, D., *Illiberal Democracy in Indonesia: The ideology of the family state*. London and New York, 2015, p. 67.

¹⁴⁴ See BOURCHIER, D., *Illiberal Democracy in Indonesia: The ideology of the family state*. London and New York, 2015, p. 70.

¹⁴⁵ See BOURCHIER, D., *Illiberal Democracy in Indonesia: The ideology of the family state*. London and New York, 2015, p. 74.

¹⁴⁶ See Panitia Persiapan Kemerdekaan Indonesia (PPKI, Committee for the Preparation of Indonesian Independence). In: KAHIN, A., *Historical Dictionary of Indonesia*, Third Edition. Lanham – Boulder – New York – Toronto – Plymouth, UK, 2015, p. 341.

¹⁴⁷ See KAHIN, G. McT., *Nationalism and Revolution in Indonesia*. Southeast Asia Program Publications, Southeast Asia Program, Reprint. Ithaca, New York, 2003, p. 127; VAN DEN DOEL, H. W., *Afscheid van Indië. De val van het Nederlandse imperium in Azië*. Tweede en derde, herziene druk. Amsterdam, 2001, p. 77; ANDERSON, B. R. O'G., *Java in a Time of Revolution. Occupation and Resistance, 1944-1946*. Ithaca and London, 1972, p. 62ff.

¹⁴⁸ See BOURCHIER, D., *Illiberal Democracy in Indonesia: The ideology of the family state*. London and New York, 2015, p. 80; ANDERSON, B. R. O'G., *Java in a Time of Revolution. Occupation and Resistance, 1944-1946*. Ithaca and London, 1972, p. 63. See also ASSHIDDIQIE, J., *The Constitutional Law of Indonesia. A Comprehensive Overview*. Petaling Jaya, Selangor, Malaysia, 2009, p. 61 with footnote 28.

¹⁴⁹ See ASSHIDDIQIE, J., *The Constitutional Law of Indonesia. A Comprehensive Overview*. Petaling Jaya, Selangor, Malaysia, 2009, p. 61-62. Further, BOURCHIER, D., *Illiberal Democracy in Indonesia: The ideology of the family state*. London and New York, 2015, p. 73; VAN DEN DOEL, W., *Indonesian Independence, Struggle for*. In: BENJAMIN, Th. (ed.), *Encyclopedia of Western Colonialism since 1450*, Vol. 2. Detroit, MI, 2007, p. 632; VAN DEN DOEL, H. W., *Afscheid van Indië. De val van het Nederlandse imperium in Azië*. Tweede en derde, herziene druk. Amsterdam, 2001, p. 86; KAHIN, G. McT., *Nationalism and Revolution in Indonesia*. Southeast Asia Program Publications, Southeast Asia Program, Reprint. Ithaca, New York, 2003, p. 138.

¹⁵⁰ See Komité Nasional Indonesia Pusat (KNIP, Central Indonesian National Committee). In: KAHIN, A., *Historical Dictionary of Indonesia*, Third Edition. Lanham – Boulder – New York – Toronto – Plymouth, UK, 2015, p. 244.

¹⁵¹ See KAHIN, G. McT., *Nationalism and Revolution in Indonesia*. Southeast Asia Program Publications, Southeast Asia Program, Reprint. Ithaca, New York, 2003, p. 139f., namely, p. 140.

¹⁵² See ASSHIDDIQIE, J., *The Constitutional Law of Indonesia. A Comprehensive Overview*. Petaling Jaya, Selangor, Malaysia, 2009, p. 62 with footnote 30.

¹⁵³ The text of the Preamble to the 1945 Constitution had been proposed on June 22, 1945 in Jakarta and was based on the so-called Jakarta Charter. This Charter contained the principles on which an independent Indonesia is based. See ASSHIDDIQIE, J., *The Constitutional Law of Indonesia. A Comprehensive Overview*. Petaling Jaya, Selangor, Malaysia, 2009, p. 62. See also ELSON, R. E., *Another Look at the Jakarta Charter Controversy of 1945*. In: *Indonesia*, No. 88, Oct., 2009, p. 105-130.

“Whereas Independence is the inalienable right of all nations; therefore, colonialism must be abolished in the world as it is not in conformity with humanity and justice.

And the moment of rejoicing has arrived in the struggle of the Indonesian independence movement to guide the people safely and well to the gate of the independence of the state of Indonesia which is independent, united, sovereign, just and prosperous; By the blessings of Almighty God and motivated by the noble desire to live a free national life, the people of Indonesia hereby declare their independence.”¹⁵⁴

As we can see, the Preamble condemns colonialism and proclaims Indonesian independence. Doing so the Preamble attacks the Netherlands and the Dutch colonialism clearly. Anticolonialism and independence are to be considered expression of humanity and justice. Therefore, in the context of the so-called “Five Obligations” (*Pantja Dharma*) where the alliance with Japan occupies a central place¹⁵⁵, Indonesian Antiwesternism has its roots in the inhumanity and injustice of colonialism. It gains expression in Indonesian attacks on western capitalism and western political superiority while defending social justice for the people of Indonesia according to *Pancasila*, the Indonesian State Philosophy¹⁵⁶. Decolonization, namely the decolonization of Indonesia is to be understood as the concretization of the ideals of independence and anticolonialism as applied to Indonesia by the Constitution of the Republic of Indonesia, the so-called 1945 Constitution. Decolonization and self-determination have to do with the birth of a new State and therefore with both Constitutional Law and International Law. In fact, the birth of a new State must be seen from the point of view of Constitutional Law, that is, a new State exists when it possesses a permanent population, a defined territory and a government. Under government we can include the capacity to maintain relations, namely diplomatic relations, with other States¹⁵⁷. The validity of the Constitution of the Republic of Indonesia, the so-called 1945 Constitution, must therefore be referred to the success of the Indonesian Revolution¹⁵⁸, to the Indonesian independence and to the condemnation of colonialism as proclaimed in the Preamble to the 1945 Constitution.

In other words, with the success of the Indonesian Revolution a new State began to exist, the Republic of Indonesia, with its population, territory¹⁵⁹ and government as defined in its Constitution. Between the capitulation of the Empire of Japan (August 15, 1945) and the Allied reoccupation of the Dutch East Indies took place a constitutional change caused by the Indonesian Revolution and formalized by the “Preparatory Committee for Indonesian Independence” with the establishment of the Constitution of the Republic of Indonesia, the so-called 1945 Constitution, on August 18, 1945, a day after the Proclamation of the Independence of the Republic of Indonesia (August 17, 1945), or a week later¹⁶⁰.

Generally speaking, the Japanese saw themselves as liberators of the Asiatic peoples. They defended the ideology of a “holy war of liberation” of Asia in cooperation with Japan. For the Indonesian nationalists, the expulsion of the Dutch by the Japanese constituted the beginning of the liberation of Indonesia from the Dutch colonialism which eventually would lead to the independence of Indonesia and to the beginning of a new constitutionalism in Asia, the Indonesian constitutionalism. We can say that the nationalist leaders tried to adapt themselves to the reality emerging from the clash between the Japanese strive to build a new order in Asia and European colonialism. The proclamation of the 17th August, made after Japan’s surrender but before the Dutch could come back to take control of the East Indies affirmed the wish of the Indonesian nationalists to decide their own future without foreign interference. Although they did not succeed in keeping the Japanese out of the events that led to the declaration of independence, the circumstances made clear that the Japanese could not have played the decisive role in the birth of the new Republic and in the beginning of the Indonesian constitutionalism. Just like the Japanese, the Indonesians wanted to get rid of Western dominance. In this sense, the Indonesian independence movement continued Japan’s offensive against the Occident¹⁶¹. The Antiwesternism in Asia after World War II got expression in the so-called “Asian Values” discourse which conceives Asian values as values incompatible

¹⁵⁴ See *Preamble of the Constitution of the Republic of Indonesia*, the so-called 1945 Constitution [online]. Available at: constitution_1_1625426222_4c1e13f466840d7ed721.pdf (mkri.id) [Accessed 16 February 2025].

¹⁵⁵ See *supra*.

¹⁵⁶ In a somewhat emotional tone, see VLEKKE, B. H. M., Progress toward Self-Government. In: *Far Eastern Survey*, Vol. 14, No. 24, 1945, Political Problems of Indonesia (Dec. 5, 1945), p. 348-350, namely p. 349: “Moreover, it is by no means the intention of the Nationalists to destroy everything that Dutch administration and Dutch energy and capital have created in the Indies. Not the destruction of western enterprises but their expropriation for the benefit of the new socialistic Indonesian state was always Soekarno’s ideal.”

¹⁵⁷ See LEE, S. (ed.), *Encyclopedia of Public International Law in Asia*, vol. II: *Southeast Asia*. Leiden – Boston, 2021, p. 19-20.

¹⁵⁸ See ASSHIDDIQIE, J., *The Constitutional Law of Indonesia. A Comprehensive Overview*. Petaling Jaya, Selangor, Malaysia, 2009, p. 62. Further, see Revolution. In: KAHIN, A. *Historical Dictionary of Indonesia*, Third Edition. Lanham – Boulder – New York – Toronto – Plymouth, UK, 2015, p. 405; VAN DEN DOEL, W., Indonesian Independence, Struggle for. In: BENJAMIN, Th. (ed.), *Encyclopedia of Western Colonialism since 1450*, Vol. 2. Detroit, MI, 2007, p. 631ff. See also VAN REYBROUCK, D., *Revolusi. Indonesien und die Entstehung der modernen Welt*, aus dem Niederländischen von ECKE, A., Berlin, 2022.

¹⁵⁹ According to International Law (principle *Uti Possidetis Juris*), the territory of the newly independent State preserves the former colonial boundaries, that is, in the case of Indonesia, the territorial boundaries of the Dutch East Indies. See LEE, S. (ed.), *Encyclopedia of Public International Law in Asia*, vol. II: *Southeast Asia*. Leiden – Boston, 2021, p. 21ff.

¹⁶⁰ See ASSHIDDIQIE, J., *The Constitutional Law of Indonesia. A Comprehensive Overview*. Petaling Jaya, Selangor, Malaysia, 2009, p. 62-63. See *supra*.

¹⁶¹ See SMIT, C., *De indonesische quaestie: De wordingsgeschiedenis der souvereiniteitsoverdracht*. Leiden, 1952, p. 46ff. On Japan’s view of Indonesia’s independence, see HORNBECK, S. K., The United States and the Netherlands East Indies. In: *The Annals of the American Academy of Political and Social Science, Foreign Policies and Relations of the United States*, Vol. 255, 1948, p. 127: “From the Japanese point of view, the Indonesian independence movement became at that point a projection and continuation of Japan’s offensive against the Occident.”

with Western constitutionalism like authoritarianism and the placing of the State above the individual¹⁶². In other words, against the background of European imperialism and colonialism, the Proclamation of Indonesia's independence reveals the beginning of a new, Asiatic, eventually, Indonesian constitutionalism based on the principle "Asia for the Asians" with its Antiwesternism and Pan-Asiatic elements amalgamated by Indonesian nationalists during the period of Japanese occupation of the Dutch East Indies.

5. Conclusion

The Japanese saw themselves as liberators of the Asiatic peoples. In this respect, General Tojo was an ardent defender of the ideology of a "holy war of liberation" of Asia in solidarity with Japan. For the Indonesian nationalists the liberation of Indonesia from the Dutch colonialism would begin with the expulsion of the Dutch by the Japanese. As the Japanese arrived in Java in March 1942, they were greeted by the Indonesians as liberators from the colonial yoke. Contrary to other Nationalist leaders like Sutan Sjahrir, the first Prime Minister of the Republic of Indonesia (1945-1947) and one of the few Indonesian nationalists who did not participate in public life during the Japanese occupation, Sukarno decided to cooperate with the Japanese. As a Japan's war aim, the establishment of the so-called Greater East Asia Co-Prosperity Sphere was to be understood as a decolonization and liberation of the East Asian peoples which were living under colonial rule. Sukarno saw Western imperialism as his main opponent. Therefore, Sukarno's vision of the Indonesian Nation was not to be separated from the Japanese ideal of *Hakkō ichiu* (in English, *Brotherhood of the Peoples*), that is, from Japanism as a distinct type of internationalism aiming at overcoming Westernism and corresponding to the principle on which Japan's foreign policy was based. Therefore, Japan played an important role in the decolonization in East Asia, including Indonesia. On the other hand, in her Radio addresses from London via BBC Queen Wilhelmina of the Netherlands expresses the existing unity between her and the overseas territories, which are described as overseas parts of the Kingdom of the Netherlands, or insists on the idea of unity between the Motherland and the overseas territories and on the indivisible character of the Kingdom of the Netherlands. As a matter of fact, with the 1922 Dutch Constitutional Reform the Dutch East Indies had become part of the territory (*grondgebied*) of the Kingdom of the Netherlands. In her Radio address made on December 6, 1942, Queen Wilhelmina of the Netherlands promised a conference at which a joint consultation would take place after the end of World War II about the structure of the Kingdom of the Netherlands and its parts in order to adapt it to post-war world. The plans of Queen Wilhelmina of the Netherlands comprised the creation of a commonwealth of the Netherlands, Indonesia, Surinam and Curaçao. In any case, any ideas on the constitution of the Kingdom of the Netherlands, including a dominion status for the Dutch East Indies,

a federation between the Netherlands and Indonesia or the regulation of the relations of the Netherlands and Indonesia on the basis of equality of position, excluded any demand for complete independence. Against this background American anticolonialism reached a peak under President Franklin D. Roosevelt. There was in the United States of America a widespread opinion unfavourable to colonialism. America's aversion to colonialism has its origins in the country's colonial background and traditional support for independence movements in the colonies. Post-war economic objectives of the United States of America in Asia contributed to the American anticolonial attitude towards the Dutch. As an alternative system to the colonial empires, President Roosevelt's plans included the establishment of a system of international trusteeships for the colonies with independence as its ultimate goal. The American views were written into the text of the Charter of the United Nations (1945) and an international trusteeship system was established which did not put British colonial interests at risk. Actually, against the background of President Roosevelt's plans for an alternative system to the colonial empires comprising the establishment of a system of international trusteeships for the colonies, the Charter of the United Nations (1945) considers the possibility of an independence only for the "trust territories", not for the so called "non-self-governing territories". Therefore, according to the Charter of the United Nations (1945) the colonial powers can place territories voluntarily under the trusteeship system with the intention of preparing colonial peoples for independence or, at least, self-government. Not long after the Charter of the United Nations (1945) was drafted, a new balance of power unfavourable to colonial powers became evident. This was the beginning of an evolution that would eventually lead to an important transformation of International Law: the decolonization as a new manifestation of the principle of self-determination of peoples adequated to regulate the access of colonial peoples to independence. Beginning in 1945, the Proclamation of the Independence of the Republic of Indonesia (August 17, 1945) can be considered the starting point of this transformation of International Law and praxis. Two days after Japan's surrender, on August 17, 1945, Indonesian nationalist and independence activist Sukarno, in the name of the Indonesian people, proclaimed the independence of the Republic of Indonesia together with Mohammad Hatta. Significantly, nationalist leaders like the above mentioned Sutan Sjahrir favoured a Proclamation of Independence "... militantly anti-Japanese in character...", refusing to participate in the meeting where the text of the Proclamation of the Independence of the Republic of Indonesia was drawn up. On August 18, 1945, or a week later, the "Preparatory Committee for Indonesian Independence" ratified the text of the 1945 Constitution of the Republic of Indonesia. The Preamble to the 1945 Constitution of the Republic of Indonesia condemns colonialism and proclaims Indonesian independence. Doing so the Preamble attacks the Netherlands and the Dutch colonial-

¹⁶² See JIUNN-RONG, Y. – CHANG, W.- C., The Emergence of East Asian Constitutionalism: Features in Comparison. In: *The American Journal of Comparative Law*, Vol. 59, No. 3, 2011, p. 805-839, namely p. 837f.. On Asian values discourse, see ENGLE, K., Culture and Human Rights: The Asian Values Debate in Context. In: *New York University Journal of International Law and Politics*, Vol. 32, No. 2, 2000, p. 291-333.

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