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Equality: the 68 year old fata morgana of the Kingdom of the Netherlands

Ladies and gentlemen: de kogel is door de kerk.....

The 68 year old fata morgana of the Kingdom of the Netherlands is finally disappearing in front of our eyes as we come closer to the truth, closer to the cold and harsh realities of the Dutch Kingdom. This long journey started in 1954, but the end is finally in sight, and a new journey is about to begin.

And I believe we should give credit to my fellow MP from Curacao, Mr. Renox Calmes and State Secretary van Huffelen for giving the final push towards ending this journey of chasing illusions. It is almost poetic justice that the same Government who created the perception of equality within the Kingdom of the Netherlands almost seventy years ago, is now the one who has finally acknowledged it for what it is really is, a fata morgana that the Caribbean islands have been chasing for almost seven decades.

But let me start at the beginning.....

When the Charter for the Kingdom of the Netherlands (“het Statuut voor het Koninkrijk der Nederlanden”) was presented to the General Assembly of the United Nations for vetting and approval in 1954, the Dutch word “gelijkwaardigheid” (equivalence) literally got lost in translation as “equality”.

This led the members of the General Assembly, who communicated solely in the official languages English, French, and Spanish, to believe that the Kingdom Charter created absolute equality between the Netherlands and its colonies in full compliance with UN obligations. As a result of this misuse of the word “equality”, 21 member states voted in favour of the the Kingdom Charter, with 10 voting against and 33 abstaining. (1/3 approval rate)

The academic research and literature on this topic is extensive and clear, and it is safe to say that the majority of UN member states at the time were far from convinced that the Kingdom Charter created absolute equality between the Netherlands and its colonies. The 10 member states who voted against adopting resolution 945 (X) pointed, among other things, to articles 3, 44, 50, and 51 of the Kingdom Charter as proof that it did not create equality between the

Netherlands and its colonies. What's more, the UN representatives of India and Uruguay even went as far as throwing the Dutch colonies a lifeline by adding an amendment that allowed the colonies to directly approach the UNGA in the future "if the need arises". And as I will point out later, that future is today, that future is.... now, ladies and gentlemen.

Since 1955, academic publications have confirmed that the Dutch Parliament is *de facto* the Kingdom Parliament, and that Council of Ministers of the Netherlands dominates the Kingdom Council of Ministers both in a qualitative and quantitative sense. As a result, its representatives from the European part of the Kingdom always overrule their Caribbean counterparts, who have no veto power. This lack of democratic representation is what we euphemistically refer to as the infamous "democratic deficit".

It should come as no surprise that the member states who did not vote in favour of the Kingdom Charter in 1955 have been proven to be right....

The decades following the proclamation of the Kingdom Charter saw many disputes and conflicts between the Netherlands and its colonies, with the people of Suriname deciding to go independent in 1975.

The people of Aruba initially chose a status aparte starting in 1986 in the lead-up to full independence in 1996, with this independence ultimately being taken off the table and the status aparte becoming permanent to this day.

But even after these two drastic changes in the structure of the Dutch Kingdom, the disputes and conflicts continued under the pretense of the so-called "equality" between the European and Caribbean parts of the Kingdom.

Two recent examples are the ongoing discussions about the dispute regulation to address the democratic deficit, and of course....what was supposed to be the infamous Kingdom consensus law establishing the COHO. The most recent one, is the issue about the apology for slavery...

In this regard, it will be interesting to see if and how the Government of Curaçao will respond to the summons by the SAP union. This document, which was served in September 2022, summoned the Government to have the draft COHO law, including the 12.5% salary reduction legally vetted based on the legal "jus cogens" principle as applied in international law by an independent neutral expert within thirty days. And with regards to the COHO, the Dutch Government also still has to respond to the questions posed by the Parliaments of Aruba, Curacao and Sint Maarten regarding this draft law. We are eagerly awaiting the Dutch Gov't response and hopefully a timeline as to how they perceive to move fwd with the apology.

But I digress.

Now, when it comes to the concept of equality, or rather its absence in the constitutional and practical relationships between the Kingdom partners, it is important to look at how this concept is addressed and interpreted by the Caribbean islands on one hand, and the Dutch Government on the other.

The Caribbean Governments have always claimed, and continue to unconditionally claim their (right to) equality in terms of autonomy. The Dutch Government on the other hand, always speaks of equivalence (“gelijkwaardigheid”). This position reminds me of the statement of the ruling class in George Orwell’s book “Animal Farm” (anyone familiar with that book?): “all animals are equal, but some animals are more equal than others.”

Applying the concept of “equivalence” instead of that of “equality” allows the Dutch Government to overrule those in the Caribbean, while at the same time holding the Caribbean Governments to their own responsibilities as autonomous countries when it’s convenient.

Some recent examples of this double standard are the issue with the housing costs and human rights of Venezuelan refugees in Curaçao, and the dispute between the Government of Sint Maarten and that of the Netherlands about payment of legal costs and damages to the plaintiff when the Kingdom Government was convicted in the European court in the “Corallo ruling”.

Let me give you two more of the many glaring examples of the myth of equality within the Kingdom. The first is the fact that Aruba, Curacao, and Sint Maarten are recognized by the Dutch State as OCT’s, or Overseas Counties and Territories. And if they are “overseas”, they have to be “overseas” to another country, meaning that they must “belong” to that other country.

The second example is related to the first one, and that is the fact that Ministers of the Dutch State outrank any of their counterparts in delegations to/at the UN. So for example: a Minister of Foreign Affairs of the Dutch State outranks Caribbean Prime Ministers within the same delegation. It is only when the Dutch State so decides, and choses not to delegate a member of the Dutch Council of Ministers, that a Caribbean Minister may represent the Kingdom and/or be delegation leader.

Ladies and gentlemen, when I came up with the title and content for this presentation, I was aware of the fact that creating equality was never the intention of the Dutch State back in 1954. The word was just used to create an illusion in order to avoid UN scrutiny. Minutes of the Dutch Council of Ministers at that time confirm this, as academic research by Gert Oostindie and Inge Klinkers have shown.

What I never could have imagined though, is that by the time I would speak at this congress, the Dutch State would have formally acknowledged that there is no equality between the Governments and thus citizens within the Kingdom. By doing so, State Secretary van Huffelen has put an end to the equality debate and confirmed that all of us have been chasing an illusion for the past decades.

I'm sure that we all agree that the international rule of law should be guiding the actions of all Governments and Parliaments within the Kingdom of the Netherlands, without any exceptions. That is, if we want to truly have and live in a law-abiding Kingdom.

There are legal scholars who claim that compliance with international law is not "realistic" for geo-political reasons, not "relevant", and therefore not politically feasible because the Dutch political establishment won't cooperate in achieving this objective and can just ignore the islands.

These scholars thus dismiss the rightful legal claims of the islands by basically saying that we should either just accept the current inequality and the Dutch State's non-compliance with international law, try to "work together" with the Dutch State on its terms, or become independent. In other words: "it is what it is, there is nothing you can or should try to do about it, so just take it or leave it." The irony here is that this position actually confirms the inequality within the Kingdom and non-compliance with international law.

In early 2020, former State Secretary Knops dismissed MP Attje Kuiken's concerns about the legality of the proposed Caribbean Reform Entity law by stating that he had no time for "juristerij", or freely translated "legal nitpicking". Mr. Knops' response exemplifies the cynical attitude I mentioned earlier.

I always wonder where this cynicism and reluctance to acknowledge clear violations of international law comes from. Especially seeing that the Dutch State prides itself on upholding human rights at each and every occasion. Why is the Dutch State so reluctant to follow a very simple process of rectifying mistakes of the past, mistakes that it has officially admitted to. Why not just do the right thing?

Could it be bad faith, shame, so-called "benevolent colonialism, or all of the above? We might never find out what the reasons are for the Dutch State's refusal to voluntarily live up to its responsibilities under international law when it comes to its OCT's.

And frankly, those reasons are not really relevant. What's most important is coming to structural solutions as soon as possible.

And this, ladies and gentlemen, brings me to the final part of my presentation.

If nothing else, the ongoing COHO “saga” has proven that the current relationships between the Dutch and Caribbean part of the Kingdom are not working, have not been working, and will never work. What has happened during the last two years cannot be erased. It has proven that the improvement of “cooperation”, “trust”, and “understanding”, no matter how laudable, will not and cannot solve the issues within the Kingdom without drastic structural changes to the Kingdom Charter. “Zachte heelmesters maken stinkende wonden”, ladies and gentlemen.

So what can work, and what should we do next?

Following the confirmation of the inequality by State Secretary van Huffelen, I believe we should all focus on ensuring that the Kingdom Charter is amended to be in full compliance with all relevant international law.

A few steps towards that main goal are the following (in no particular order):

1. Sending a joint delegation with representatives of the Caribbean and Dutch Governments to the United Nations in order to discuss which actions are required by the Dutch State to be discharged from its obligations in article 73 a-d of the United Nations Charter. In the court case filed by Pro Soualiga, the Dutch State already admitted that it has no resolution discharging it from this obligation.
2. Following up on the CERD recommendations as issued on August 25th, 2021.

On page 5 of the CERD report, under observation 29, the CERD states the following:

“The Committee is concerned by a report that economic support provided to Dutch Caribbean countries in the context of the COVID-19 pandemic was linked to conditionalities and was thus less favorable than that provided to the European Netherlands, providing less assistance to alleviate the negative economic impact of the pandemic on the ethnic minorities in the Dutch Caribbean countries. The Committee also notes with concern reports about obstacles for the peoples of the Caribbean part of the Kingdom of the Netherlands to fully realize their right to self-determination. The Committee is further concerned by reports that within the European Netherlands, the Dutch legislature and local governments differentiate between Dutch citizens born in the European Netherlands and those born in or migrating from the Dutch Caribbean, for example in terms of freedom of movement (art. 2, 5).

Observation 30 of the report states: The Committee recommends that the State party evaluate the impact of the economic support provided during the COVID-19 pandemic on the population of the Dutch Caribbean countries, as compared with the impact on the population of the

European part of the Netherlands, and ensure that no discrimination has occurred in the enjoyment of their rights under the Convention. The Committee also recommends that the State party ensure autonomy of the peoples of the Caribbean part of the Kingdom and ensure their participation in decision-making processes in the State party that are of particular concern to them. The Committee further recommends that the State party engage in a dialogue with representatives of the populations of the Caribbean part of the Kingdom who have been discriminated against because of perceived race or ethnic origin, in order to understand and address their concerns. The Committee also recommends that the State party take measures to address any discrimination against, and promote equality between Dutch citizens born in the Dutch Caribbean and those born in the European Netherlands.

3. Expediting the executing the “de Graaf” and “van Raak” motions.
4. A formal Dutch response to-, and follow up on the petition filed at the Special rapporteur and Working Group of the UN.
5. A formal position and follow-up by the Dutch Parliament on the factsheet on article 73.

In light of the statement made by the Dutch State in the Pro Soualiga court case, it is important that the Dutch Parliament takes a formal position on the factsheet and informs the Dutch Government of such. This is important in moving forward with the process of completing the decolonization of the Caribbean island, including the ongoing process of apologies for slavery by the Dutch State.

6. And finally....Making the Kingdom Conference 2023 a priority.

If the Dutch Parliament is serious about executing the Wuite/van Raan motion, the preparations for this conference should be high on the agenda of the first IPKO of 2023.

These steps are partially overlapping, and should be synchronized as much as possible in order to ensure effectively moving forward.

In closing, ladies and gentlemen, I want to issue a challenge by calling on all of us within the Kingdom to face reality and acknowledge the inequalities within the Kingdom that have persisted since the inception of the Kingdom Charter.

And once we do that, we have two options:

The first one is to create absolute equality between the Governments and people within the Kingdom as mandated by the United Nations by ensuring full compliance with article 73 a-d of the UN Charter.

If the Dutch State is not willing to go this route, it should say so now, and stop referring to the Kingdom as this so-called “family with centuries of historic ties and a shared future”. The people of the Kingdom, and in particular those of the Caribbean islands, deserve better than being held hostage and suffering from being in a dysfunctional relationship.

Our second option, and the only realistic alternative to remaining in this dysfunctional Kingdom relationship, is for the relationship to be terminated. This would mean dismantling the entire Kingdom as we know it. Personally and realistically speaking, and looking back at how we got here, I believe it would be best for everybody in the Dutch Kingdom to work towards this second alternative as soon as possible, starting with the steps I outlined earlier.

Lets turn the fata morgana into a oasis of peace and cooperation..... we have now come to the end of our journey....