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The Genesis of the Indonesian Constitution of 1949

Since Independence, Indonesia has had three constitutions.¹ The first one marked the beginning of the conflict with The Netherlands, and at the same time the birth of the new Indonesian state. The nascent Republic of Indonesia formally accepted this constitution on 18 August 1945, one day after its proclamation of Independence (Nasution 1992:461-7). It had been drawn up under the aegis of the Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (Investigative Committee for the Preparation of Indonesian Independence), or BPUPKI, in the final months of Japanese military rule. In keeping with political thinking in Indonesia's colonial past and present, it left ample room for authoritarian practices.

For the Dutch, who were eager to reinstall their government apparatus in Indonesia after 1945, the birth of the Republic represented a *fait accompli* that was difficult to digest. After ample deliberation, however, they went so far as to publicly accept the principle of Indonesian independence (*NIB* III:703-8), although they were definitely not prepared to give up their interests in Indonesia unconditionally, nor did they accept the Republicans' claim that they were speaking on behalf of the whole of the population. They therefore encouraged the creation of separate political entities from the Republic. Thus four years of armed conflict and protracted negotiations were to pass before the conflicting parties finally came to an agreement about the structure of the new state and its relationship to The Netherlands.

On 27 December 1949 the formal transfer of sovereignty from The Netherlands to the Republic of the United States of Indonesia took place. The previously prepared provisional constitution (Nasution 1992:469-504) of this newly created federal state immediately came into force. This

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constitution – Indonesia's second – provided for democratic procedures, the protection of human rights, and, of course, the division of power that was so essential for the functioning of the federation as a whole.

Constitutional change did not stop here. Sovereignty had been transferred not to the Republic that had proclaimed its independence in 1945, but to an Indonesian federation, of which the Republic was the most dominant, though certainly not the only member. At least four other well-defined states, together with eleven political entities with a more fragile structure, formed part of it. With the retreat of the Dutch army, however, the force that had supported this federal construction disappeared from the Indonesian stage. The component states of the federation subsequently crumbled away one after another as the result of a mixture of intimidation and free will.

On 17 August 1950 the unitary Republic of Indonesia rose from the ashes again. This time it was equipped with a constitution which was in essence a revision of the constitution of 1949, with the federalist elements left out. This 1950 constitution (Nasution 1992:505-28), the third in succession since the Proclamation of Independence, remained in force until 1959, when it was replaced with the 1945 constitution as a result of the rather high-handed intervention of the upper army echelons and President Soekarno (Nasution 1992:397-401; Lev 1966). Soekarno's guided democracy clearly needed simpler rules for the wielding of power.

That is how Indonesia came to have three constitutions up until the present day.

This article will focus on the backgrounds of the second of these constitutions, the one whereby the United States of Indonesia gained formal independence in 1949. I shall go into the discussions that led to its final formulation, and give attention to the place occupied by this constitutional debate in the power game between the Dutch and their Indonesian allies and adversaries, as well as to the key factors that helped to bring about the final result. This constitution was drawn up at a time when the Dutch still had a say in the conduct of Indonesian affairs. One might ask, therefore, who were the men who contributed to its formulation. Was it a purely Indonesian affair or was it dictated by Dutch ghost writers acting either openly or behind the scenes? The answers to these questions can help us gain a deeper understanding of the decolonization process in Indonesia, which gained momentum after Japan laid down its arms. They may also serve as a modest contribution to the long-standing debate between so many in the West and East, including persons in positions of power in some Asian countries, about the universality of democratic values.

Before surveying the constitutional debates of the post-1945 period, it would be useful to take a closer look at the main constituent body of the

Republican State of 1945, the BPUPKI. This body was composed of over 60 members chosen by the Japanese military government from among the more senior nationalist leaders and officials. There was no room in it for anyone who had not wholeheartedly cooperated with Japan. The social democrat Sjahrir, for instance, who surely was one of the most prominent pre-war leaders of the nationalist movement, had no seat on this committee. The Islamic Masyumi party was rather meagrely represented on it as well. During the meetings of the committee, strong pro-Japanese voices were often heard pleading for continued cooperation with Japan in its struggle against the invading Allies.² Nevertheless, it seems to have comprised a fair and quite representative sample of the pre-war secular nationalist leaders. Most prominent among them were Soekarno and Hatta. Conspicuous roles were also played by legal experts such as Professor Supomo and Muhamad Yamin. A fundamentally different choice of members probably was not possible for the Japanese authorities. Yet the Dutch, when they returned from abroad or were released from Japanese internment camps, found it especially difficult to accept these men as the true representatives of Indonesia because they had sided with Japan.

It is not easy to present a clear picture of the sentiments prevailing at the meetings of BPUPKI and its short-lived successor, the much smaller Panitia Persiapan Kemerdekaan Indonesia (Preparatory Committee for Indonesian Independence), or PPKI, which passed the first Indonesian constitution on 18 August 1945. Proceedings are only available for part of the discussions. The various committee members played widely different roles, as may be deduced from the very different lengths of the speeches of each, varying from a few minutes to a full hour. It makes sense, therefore, to examine the longer speeches of the more prominent figures, such as Soekarno's still famous exposition of the foundations of the Indonesian state, the Pancasila (Bahar et al. 1995:63-84). Very important also was the related debate about the place of religion in the new state, only in the last round of which it was agreed to leave out a passage explicitly making the rules of the Syariah binding on the followers of Islam. Also worthy of note was Professor Supomo's plea for an 'integrated' state (Bahar et al. 1995:31-43). He rejected individualism and Western liberalism outright as being unfit for Indonesian society. Referring to the German 'Führer-Prinzip' and to Japanese Shintoism, among other things, he staunchly defended the concept of the state as one big family. It was not the interests of any particular individual or class of people that constituted the essence of the state, but the unity between the leaders and the people. Democracy was welcome, but should be interpreted in this light. Not a majority voting system but the principles of *musyawarah* (mutual consultation) and *mufakat* (consensus) were to constitute the *modus procedendi* of Indo-

² For the latest and most complete publication of the minutes of these meetings, see Bahar et al. 1995.

nesian democracy.³ Further worth noting was the discussion about the form the new state was to take. A decided majority of 17 speakers professed itself to favour a unitary state. Nevertheless, there were five speakers who pleaded in favour of some kind of federation to do justice to the enormous variety of the Indonesian insular world.⁴ This plea was to be heard again in later discussions held under Dutch auspices.

The task of committing the actual draft for a constitution to paper was delegated to a small committee chaired by Professor Supomo, who is thus rightly styled 'the father of the Indonesian Constitution'. This draft was passed by the PPKI on 18 August 1945 after a brief discussion (Bahar et al. 1995:423-41; Hatta 1982:458-63). It can be described as a rather rough blueprint of the new state. This was envisaged as a unitary republic based on the principle of sovereignty of the people. Nevertheless, to begin with, all power was placed firmly in the hands of a President, who, assisted by a Vice-President, was to appoint the ministers. In addition, a Dewan Perwakilan Rakyat (People's Representative Council) with rather vaguely defined powers in the fields of legislation and budgeting was provided for. As Supomo explained, the President and the Council should try and work together according to the principle of *musyawarah*. Their respective duties were described in such a way, however, that the President possessed the right of initiative. Even fewer powers were enjoyed by the provisional representative council, the Komite Nasional Indonesia Pusat, or KNIP, which was in operation in the period before elections were held and the Dewan Perwakilan Rakyat and other organs of state convened for the first time. This KNIP was to have only advisory powers. It was expected to 'be of assistance' to the President. No rules were drawn up regarding its composition, but the President, in consequence of the scope of his powers, had the right to appoint its members and to lay down the basic rules of political life. The preference of the first President, Soekarno, was obviously

³ Supomo's remarks, as Bahar rightly points out, were made at a time when Japan was still in power in Indonesia. Even so, there is no justification, in my opinion, for playing up the 'fascist' element in Supomo's thinking at the time. The opposition between priority of the rights of the individual versus those of the state or society as a whole was and still is one of the central issues of political philosophy. It must be borne in mind, moreover, that Supomo, as a professor at the Batavian Law School, had published on the relation between the two in Indonesian customary law, which certainly did not correspond to the concepts of Western liberalism (Supomo 1983). Even in the discussions under the supervision of the Japanese military administration, Supomo did not go so far as to defend the precedence of the will of the leader in so many words. For the present study it is important to note, however, that Supomo gave more prominence to the concept of leadership in the discussions about the 1945 constitution than he proved himself prepared to do in 1948. In both cases he was providing an eloquent example of '*berpikir secara kontekstual*' indeed (Bahar et al. 1995:XVIII; see also Simanjuntak 1994: passim).

⁴ For a summary of the discussions see 'Indonesia Merdeka Selekas-Lekasnja', a copy of which is kept in the Algemeen Rijks Archief (A.R.A.), The Hague, archief Algemene Secretarie van Ned.-Indië 45-50, 5647.

for an outright presidential system combined with a one-party state.

On these two points Soekarno soon met with stiff opposition from the leaders of the various political movements in the young Republic, however. As far as they could see, the one-party system threatened to curb their freedom and smacked too much of the recent fascist past. They seized their opportunity in October and November 1945, when, with the Allied troops in Java, the need for a change of leadership became evident. After something of a palace coup, the idea of democracy was now given prominence: more parties were allowed to organize themselves and the KNIP was to become the first legislative body. A smaller body, the Badan Pekeraja or KNIP Working Committee, was instituted, which would convene more frequently, thus making it easier for it to function permanently as a legislative body (Hatta 1982:472-4). The President's role was reduced to a mainly symbolic one, while real powers of government were placed in the hands of a cabinet chaired by a prime minister. Indeed, in the ensuing years of revolution, the cabinet asked the Badan Pekeraja's assent in most important matters, and it accordingly came to act as a provisional parliament. This had its limits, however. When agreement could not be reached, the President did not hesitate to use his prerogatives as defined in the transitional provisions of the constitution. Thus, the 1945 constitution was an elementary and, consequently, flexible construction, which was well suited to the dangerous times that were to follow. It was a piece of emergency legislation, as Soekarno explicitly stated, which would be replaced by a better one as soon as circumstances permitted (Bahar et al. 1995:426).

The debate about a new constitution was resumed the following year, after the Dutch, with the help of the English, once more gained a foothold in Indonesia. In November 1946 the Linggarjati Agreement between The Netherlands and the Republic was drawn up (*NIB* VI:261-3, 753-8). Here the federal principle was accepted by both parties, and agreement was reached on a rough outline for a Netherlands-Indonesian Union. Hereby the Kingdom of the Netherlands was to cooperate with a newly created sovereign state, the United States of Indonesia. As regards the constitution of this new state, it was agreed that this was something for the Indonesians to decide on; towards this end a constitutional assembly was to be formed as soon as possible. Nevertheless, some reservations were made with respect to the position of the Dutch. It was decided that The Netherlands would have a say in the composition of the constitutional assembly, while the constitution itself would have to be based on the principles of democracy and federalism. In addition, fundamental human rights as formulated in the United Nations Charter would be respected in both parts of the Union. Another important reservation was made with regard to the territorial boundaries of the new federation. Although it was accepted that in principle the territory of the USI would coincide with that of the former Netherlands East Indies, and a rough outline had been made of the compo-

ment states, it remained to be seen whether the populations concerned would accept this arrangement. For this reason special provisions were introduced for populations of particular territories who might refuse to join the USI or the member state to which they had been provisionally assigned.

To the Dutch, these principles of 'self-determination' and 'minority rights' were very important, and not only for moral reasons. There were indications that Christian minorities in Northeast Indonesia had strong reservations about separation from the Dutch Crown (Chauvel 1990:211 ff.). Moreover, the Dutch indulged in the rather Machiavellian speculation that the populations of provinces which were then regarded as forming part of the Republic might opt for a different status once they were free to speak for themselves. In this way the overwhelming dominance of the Republic, which at that time had to be considered as covering Java, Sumatra and Madura, might be reduced to more modest proportions.

Afterthoughts and hidden agendas in the interpretation and implementation of the Linggarjati Agreement certainly were not the exclusive prerogative of the Dutch: this agreement was viewed by many, if not most, Republicans as a first step towards the extension of the Republic throughout Indonesia. When further negotiations failed to make the agreement workable, the Dutch in mid-1947 resorted to force, launching their first military action (usually referred to in Dutch sources as Police Action). The Dutch army overran the most fertile and prosperous parts of Java and Sumatra, considerably reducing the territory of the Republic and facilitating the creation of a number of more or less pro-Dutch federalist states.

As was to be expected, these developments led to a standstill in the negotiations between The Netherlands and the Republic for a considerable time. By early 1948, however, relations had improved so much that it was possible for substantive discussions to resume, this time with the assistance of a Committee of Good Offices provided by the United Nations. In January 1948 an agreement was concluded aboard the American ship *Renville* in which the Republic accepted the territorial *status quo* and agreed to resume substantive negotiations on the basis of the Linggarjati principles (*NIB* XII:556-60, 847-54). The Renville Agreement contained no new elements relating to the content of the constitution.

The ensuing 'post-Renville' negotiations, which started on 12 February 1948, were held alternately in Batavia and Kaliurang. Various committees and subcommittees were appointed to study the different aspects of the vast number of conflicting views. The Dutch on 18 March 1948 presented a working-paper on the constitution (*NIB* XIII:222-3). In it, the earlier Dutch reservations on the subject were reiterated, though this time formulated as much as possible within the terms of the Renville Agreement. Furthermore, some comments on the division of tasks between the central government of the USI and the component states were added. A few days

later the Republican committee, headed once again by Professor Supomo, succeeded in presenting a draft of its own containing the principal outlines of a constitution of the USI (*NIB* XIII:276-9). Here, too, much attention was given to the division of powers between the central government and the component states. Moreover, democracy, the Pancasila, and minority rights were emphasized, while the protection of human rights as referred to in the United Nations Charter was added. In the general principles, much attention was given to the Indonesian national character of the new state.

As regards the governmental structure of the USI, this displayed marked deviations from the 1945 constitution of the Republic. The West European cabinet system was retained and was more clearly defined than before. To enhance the federal character of the state, a bicameral system was proposed. It provided for a senate composed of representatives of the member states on an equal basis and a house of representatives elected by the peoples of the several member states and representing these in proportion to their relative numerical strength. Both houses together were to form the legislative assembly, while the house of representatives by itself would be a parliament, to which the ministers were accountable. This was a mixture, in short, of the North American and Western European systems of government. This was no accident, for during the negotiations leading up to the Renville Agreement the American member of the Committee of Good Offices Frank Graham had strongly advised the Republican delegation to use the Congress of the United States of America as a model capable of dealing with the federal features of the new state (see *NIB* XII:324, 455, 486).

This proposal was almost wholly acceptable to the Netherlands delegation, too, with opinions differing on only a few remaining points (*NIB* XIII:426). Nevertheless, in conformity with the notion that the constitution was first and foremost a matter for the Indonesian people themselves to decide, which had been accepted at Linggarjati, a decision on these points was left to the projected constituent assembly. The points in question included the issue of the position of the Indonesian language vis-à-vis the regional languages and the denial of the right of secession to the member states. This latter point was on an especially uneasy footing with the Linggarjati articles regulating the right of secession of regional groups, so that the Dutch were probably only too pleased to refer this thorny problem to the constituent assembly.

Hence it can safely be stated that by the end of March 1948 the Dutch and Republican delegations had reached almost unanimous agreement on the outline of the constitution of the USI. That is not to say that the constituent assembly was able to meet at once and finish the job, however.

Apart from an outline of the constitution, other matters needed to be settled in the post-Renville negotiations as well. A blueprint for a Netherlands-Indonesian Union had to be drawn up and a more precise method of delimiting the component states of the federation to be found.

One of the most difficult problems to be solved was that of the relationship between the Netherlands Indies Government and the Republic in the interim period preceding the transfer of sovereignty. Both parties were constantly trying to outmanoeuvre each other and settle Indonesian affairs to their own advantage. In this connection the sequence of the various steps that needed to be taken was important.

The Dutch gave priority to an agreement about the Union that would link The Netherlands and Indonesia together in the post-independence period. Though acutely aware that the success of such a Union would depend upon the new rulers' disposition towards them, they tried to safeguard their military pre-eminence for the next few years as well. The most attractive option for the Republicans was to organize the United States of Indonesia as soon as possible and with a dominant position in it for themselves. For this reason they were utterly averse to applying the agreed principle of plebiscites to define the extent of the component states in their own territory. Such a course not only was regarded as an insult, but also was precarious, as the outcome was deemed by no means certain (*NIB XVI:670-98*). According to the Republicans, a plebiscite had only been meant for the Dutch-occupied territories.

These and many other matters prevented agreement being reached, and accordingly the negotiations petered out round about the middle of 1948. In the meantime, The Netherlands stepped up its programme of strengthening its position by pushing non-Republican Indonesian groups into the foreground. This it did in a variety of ways, for instance by appointing as many Indonesians as possible to key positions in Dutch-controlled government bodies. Thus the formal leader of the Dutch delegation which had to negotiate the Renville Agreement was the Indonesian civil servant Abdulkadir Widjojoatmodjo. Much emphasis was placed upon the structure of the federation. Now that some of the newly created member states of the federation were becoming sufficiently strong, the time seemed to have come to use them effectively as a counterbalance to the Republic. In July 1948 a conference of representatives of these federated states was organized in Bandung, which was intended as a forerunner of the projected constituent assembly and as an opportunity for federal politicians to gain political experience. Even if it yielded no concrete results, the lessons in statesmanship would not be wasted, while a greater prominence of leading non-Republican Indonesian statesmen would actually strengthen the position of the Dutch (*NIB XIII:518-21*).

At the same time an Indies Government specialist, Professor K.L.J. Enthoven, set out to prepare a blueprint for an interim government that could take over the tasks of government in the period before the actual transfer of sovereignty. In his opinion, such an interim government might be formed with or without Republican participation. He subsequently drew up a plan whereby Indonesian heads of administrative departments were to function as ministers, assisted by Dutch technical advisers. This

proposed interim government would occupy quite a strong position vis-à-vis The Hague. In it the highest Dutch authority in Indonesia would retain a prominent position, however, enabling him to continue to act as head of government (*NIB XIV:386-95*). Essentially, it was the boyhood dream of any governor-general of the past five decades or so.

In Dutch circles, opinions were divided about the consequences of a policy whereby one would proceed without first consulting the Republic. Some suggested that the Republic might be left out completely, and others that, once an interim government was established without the Republic, the latter would come round for fear of being by-passed. More down-to-earth minds foresaw, however, that a certain amount of force would be needed to get the Republic to accept such a course and join a Dutch-made interim government.

There were yet other options open, as was demonstrated by subsequent developments. Up until that point the Dutch attitude towards the leaders of the component states of the federation had been marked by a tinge of outright paternalism. It was expected that they would ultimately comply with the wishes of the Dutch as a last resort. They were certainly not expected to take the initiative. When they did, this caused a shock, the reverberations of which are still perceptible in the records of the period. Out of the large and rather unwieldy mass of delegates at the Bandung conference, a smaller committee consisting of the leaders of the twelve then existing federalist states had formed. It was styled 'Bijeenkomst Federaal Overleg' (Federal Consultative Committee), abbreviated as B.F.O. Its most prominent member was Ide Anak Agung Gde Agung, the Prime Minister of East Indonesia, which was by far the best organized of these states. The head of the Dutch administration in Indonesia, Lieutenant-Governor-General H.J. Van Mook, received a very unpleasant surprise when in July 1948 a B.F.O. Delegation led by Anak Agung paid him a visit and handed him an alternative proposal for an interim government to that put forward by Professor Enthoven (*NIB XIV:375-83*).

This particular proposal was presented in the form of a resolution, the so-called Bandung Resolution. Hereby the interim government was organized in such a way as to give Indonesians a maximal say in government affairs, although Netherlands sovereignty in the interim period was formally accepted. The remaining powers of the Dutch administration were to be defined as precisely and narrowly as possible, however. For the rest, power was to be vested in an interim government comprising a small body of about three persons. This so-called 'Directorium' would appoint the heads of administrative departments and guide them. In conformity with Supomo's March proposals, the Bandung Resolution also envisaged two representative bodies: a senate, consisting of the heads of the member states, and a representative council, whose members were to be appointed or elected by the populations of the respective states, proportional to their

numerical strength. The Directorium should always try and reach agreement with the senate in matters relating to the federal state and defend its policies vis-à-vis the representative council. The council would not have the power to dismiss the Directorium, however, nor would the latter have the power to dissolve the council. In any conflict, the Directorium might overrule the council, provided it had the support of the senate.

These rather authoritarian features of the interim government conceived at the Bandung conference were defensible in view of the brief life span allotted it. For sovereignty was to be conferred on an independent United States of Indonesia as early as 1 January 1949. One of the interim government's first tasks would be to appoint the constituent assembly that was to frame the definitive constitution. In the eyes of the proponents of the Bandung Resolution, this resolution already contained important elements of such a definitive constitution, however. So the Directorium, for instance, which was preferably to include a representative of the Republic, was envisaged as an instrument for integrating the Republic into the federal organization. As Abdulkadir Widjojoatmodjo explained to a still upset Van Mook, the Bandung Resolution was an original Indonesian piece of work, drawn up by a group of men who no longer believed that the Dutch and the Republicans would be able to come to an agreement without their active intervention. This was, in fact, true, as subsequent events were to demonstrate. Thus a third force had emerged, and from that moment Indonesian politics were more complicated than ever before, although the new situation at the same time offered greater opportunities for a solution of the problem of decolonization.

Van Mook, although upset by this initiative, which threatened to curb his own powers unduly within too short a time span, nevertheless could not do anything but take it seriously. For this reason he sent both Enthoven and a B.F.O. Delegation to Europe to put both proposals to the Dutch Cabinet for discussion. The result did not come up to his expectations. In The Netherlands, Anak Agung and his delegation won much sympathy for their ideas, so that consequently a resolution was drawn up which provided for an interim government roughly similar to that proposed by the Bandung Resolution. It was moreover decided that this resolution, the *Besluit Bestuursvoering Indonesië in Overgangstijd* (Resolution Apropos of the Administration of Indonesia in the Transitional Period), should be passed into law as soon as possible (*NIB* XV:291-4, 346-9).

The more assertive of the Bandung leaders now began to have high hopes that it would be their turn next to take the initiative and enter into negotiations with the Republic. For these leaders, the relationship with the Republic was a very ambivalent one, however. The Republic enjoyed the prestige of having taken the lead in the struggle for Indonesian independence. Moreover, back home in Macassar, Bandung, Surabaya, Palembang or Medan, strong pro-Republican groups were making their

voices heard in the representative councils of their states. The Republic had its own army, what was more, the presence of which was felt daily in many parts of Indonesia. In point of fact, in the latter half of 1948, after the post-Renville negotiations reached an impasse, Republican-inspired guerrilla activities increased sharply in the Dutch-occupied parts of Java. Hence for the Federalists, the Republic was a dangerous negotiating partner, but would be an even more dangerous adversary. If the Dutch army could cut the Republic down to size, then all would be well, provided it did not disappear from the scene altogether. For in that eventuality the Federalists would have to tackle the Dutch by themselves, and they were by no means sure that independence would be achieved soon in that case. On the other hand, the prospect of a Dutch-Republican agreement was equally unattractive to the Federalists, since this would put them at the mercy of both and would further reduce their room for manoeuvre.

So it was with mixed feelings that the Federalists observed the Dutch Cabinet's final attempt in October and November 1948 to negotiate an agreement with the Republic. This rather spoiled things for them. They were certainly not amused, for instance, when the Dutch Minister of Foreign Affairs, D.U. Stikker, made no objections in a discussion with Hatta when the latter rejected the idea of a Directorium out of hand (*NIB* XV:580-3). Hatta subsequently, on 10 November, produced a memorandum proposing a new plan for an interim government (*NIB* XV:631-5). It displayed a number of marked deviations from the Republican March proposals for a definitive constitution and included some procedural details that had been removed from the lengthy proposals presented a few months earlier by the American member of the Committee of Good Offices, Merle Cochran (*NIB* XV:43-56). In Hatta's proposal the interim period was divided into two phases. In the first phase there was to be a council of ministers at the head, which was to be assisted by a Federal council and a provisional representative body. The governments of both the member states of the federation and the Republic were to have a strong hand in the formation of these bodies. In practice, this would boil down to a system whereby the Republic and the B.F.O. would jointly govern the country under formal Dutch supervision. The composition of the Federal council differed greatly from that of the 'senate' envisaged by either Supomo or the Bandung leaders, however. Instead of equal representation of the various member states, Hatta proposed that about a third of the members of this council should be appointed by the Republic. As for the definitive constituent assembly, he suggested that this body convene half a year after the installation of the interim government and that it be given far-reaching powers as a provisional parliament as well. One of its first tasks would be to nominate a President, who at that stage should come into office alongside the representative of the Dutch Crown during his final term.

The Dutch Government, after ample deliberation, rejected this proposal, since Hatta was not able or willing to guarantee a reduction of the

Republican Army (T.N.I. = Tentara Nasional Indonesia) and at the same time accept Dutch military pre-eminence in the interim period. It believed that in such a situation implementation of the scheme would prompt the defection of the Federalists and thus lead to immediate dominance of the Republic. Thereupon the Dutch launched a second large-scale military operation, and in the last days of December 1948 the whole of Java and parts of Sumatra were occupied and most members of the Republican Government were taken prisoner. Temporarily, the Republic seemed to have vanished from the face of earth. Yet it could still count on a great deal of support on both the national and an international level, while its army was able to intensify its guerrilla warfare and rally support from a large section of the population. Consequently, negotiations had to be resumed as early as the beginning of 1949. During the first phase of these negotiations, with Soekarno and Hatta in Dutch custody, the Federalists were in a relatively strong position and could afford to give themselves a considerable degree of leeway. So they voted on 3 March in favour of a resolution for recognition of the Republic as a state (*NIB XVIII:28*). This way they placed the Dutch before a *fait accompli*, thereby forcing them to do the same.

These developments following their second military action were teaching the Dutch that, whatever happened, they had to come to terms with the Republic and that it was up to the Republicans and Federalists themselves to decide upon the niceties of the *modus vivendi* between them. On 7 May 1949 the Dutch and Republican negotiators, J.H. van Roijen and Moh. Roem, made a number of statements that paved the way for more substantive discussions (*NIB XVIII:596-8*). A further agreement of 22 June laid down rules for the termination of the guerrilla warfare and for the return of the Republican Government to Yogyakarta. On the same occasion, definitive arrangements were made concerning the time and the conditions of a Round Table Conference to be held between all parties concerned in The Hague. This was intended 'to bring about a just and lasting settlement of the Indonesian dispute' and to make possible a transfer of sovereignty to Indonesia before the end of the year. One of the items on the agenda for this conference was the drafting of a provisional constitution for the projected United States of Indonesia (*NIB XIX:128-42*).

The qualification 'provisional' needs some explanation. Up till the end of 1948, the implicit idea in all the proposals for a constituent assembly was that this body would have to finish its work in the interim period, that is to say, before the actual transfer of sovereignty took place. When negotiations were tentatively resumed in the first months of 1949, however, all parties concerned were eager to do business as soon as possible. Pressure from the Security Council certainly played a role here. For the Dutch and the Federalists the fact that at that time the Republic was still in a weak position provided an additional stimulus to speed things

up, as it seemed attractive to them to come to an arrangement at this time of relative strength. For the captured Republican leaders, anxiety about being bypassed by the leaders of the on-going guerrilla war made it desirable to hasten a settlement. All parties were prepared to accept, therefore, that the agreements regulating the transfer of sovereignty would contain only some general guarantees with respect to the future state system and that the constituent assembly would convene at a later stage in an independent Indonesia (see *NIB* XVII:255-8, 365-71, 396-9).

For The Netherlands, solid agreements about a Netherlands-Indonesian Union and guarantees with respect to Dutch financial and humanitarian interests in Indonesia were gaining greater priority in this period. The Dutch now began to differentiate more clearly between Dutch and Indonesian interests than before. This gradual change of attitude was stimulated by the questionable results of their second military action. The Dutch in fact had played out most of their hand. For most Dutch politicians 'Restoration of Peace and Order' had been a precondition for any decisive step towards Indonesian independence. By this time, however, the limited possibilities of achieving such a state of 'Peace and Order' of their own making had been felt more fully. Nevertheless, it was easier for them to accept the new reality of an impending decolonization as a result of the experiences of the past few years, which had demonstrated to them that the constitutional notions of the Federalists and the Republicans (Supomo) displayed no insurmountable mutual incompatibilities, and that any differences that remained had to be settled between these two parties themselves anyhow. Moreover, the Federalists, in making overtures to the Republic, were now clearly shouldering responsibilities that had hitherto rested exclusively on The Netherlands. Finally, as a look at the behaviour of the Dutch in this period suggests, their conquest of the Republican capital had given them the compensation they needed for the many humiliations they had suffered since the beginning of the war with Japan.

Whatever the Dutch motives, in March 1949 and after, it was publicly announced that the definitive constituent assembly would be convened after the transfer of sovereignty (see *NIB* XVIII:23-30 ff.). This did not relieve the parties concerned of the task of arranging for a provisional government to assume sovereignty, however. It was to be expected, moreover, that the structure of such a provisional government that was to guide Indonesia into independence would be prejudicial to the definitive structure of the state and its constitution.

Van Roijen and Roem, in their statements of 7 May 1949, stipulated the conditions for the return of the Republic to the core area of its former territory, Yogyakarta. Although the agreement was very vague regarding the extent of the territory of the restored Republic, it did state that the Republic was to occupy one third of the seats in a provisional representative council of the United States of Indonesia as a whole. This was the same proportion as that mentioned in the Cochran Note and in the

Hatta memorandum of November 1948. Thus it is evident from these provisions in the Van Roijen-Roem Agreement that the Republic was making a comeback, or at least was returning to the position it had occupied before the second Dutch military action. Once The Netherlands made it clear that they were going to withdraw anyway, the Republican star began to rise fast in Indonesia. That of the Federalists, which had never risen to a high position in the firmament to begin with, began to decline proportionately.

This development is clearly demonstrated by the final phase of the constitutional debate that took place under colonial rule. In January 1949, at a point when the Republican star was at its palest, Anak Agung urged renewed contact between Federalists and Republicans. In April, when the negotiations between The Netherlands and the Republic had barely resumed, he proposed that a pan-Indonesian conference be held as soon as possible after the conclusion of the negotiations (*NIB XVIII:391-3*). At such a conference, Federalists and Republicans might try to solve the Indonesian conundrum among themselves, without the Dutch dictating the agenda. Indeed, on 7 May – the very same day that Van Roijen and Roem made their statements – a committee was set up by the B.F.O. in Bandung (*NIB XIX:278*, note 4) and charged with the task of preparing the working-papers for the pan-Indonesian conference, which did, in fact, take place at the end of July 1949 (*NIB XIX:267-8, 277-81, 347-53, 356-9, 432-41*).

From the reports of the discussions at this conference⁵ it is obvious that Anak Agung, and with him the majority of the Federalist leaders, were certainly not out after a complete restoration of the Republic. Nevertheless, that was in fact what was happening, and they themselves were instrumental in the process. After the return of Soekarno and Hatta to Yogya, Republican prestige was so high that even the staunchest Federalist supporters, as Anak Agung undoubtedly was, had the greatest of difficulty in holding their ground when confronted with the Republicans' wishes. For instance, whereas Anak Agung had preferred Batavia as the place of the conference, at a mere snap of the fingers of the Republicans the opening ceremonies were held in Yogyakarta, where the Republicans would have the full advantage of their moral superiority. Here the federal visitors were greeted by bands of youths welcoming them at the railway station with the Merdeka slogans of the Republic. Inside the conference room the same mood prevailed. A Republican proposal that the Republic should return to the territory it had possessed before the second Dutch military action was passed without demur. The Sumatran delegates who had earlier advocated the creation of new federalist states on their island in

⁵ See also A.R.A., archief A.S. 2389, and A.R.A., archief Vleer no. 118.

the strongest of terms did not even dare to raise their voices in defence of this. A further example of Republican arrogance and Federalist weakness is furnished by Supomo, at the end of a long discussion on an unrelated subject, flinging a small note on the table with the casual remark that he supposed that the gentlemen would agree with its contents, and their doing so without a word. The note contained the proposal, however, that the projected United States of Indonesia should accept its sovereignty not only from The Netherlands but also from the Republic. With this gesture – or lack of a gesture – the Federalist statesmen recognized a Republican claim to sovereignty which, though until then put forward with great persistence, had not met with acknowledgement in any agreement signed by the Dutch. A third and most decisive victory scored by the Republic at the pan-Indonesian conference was the acceptance of the Republican Army, the *Tentara Nasional Indonesia* (T.N.I.), as the core of the army of the United States of Indonesia. The demand for this had been put forward a year previously by the Republican Army commander, General Sudirman, in a widely publicized statement (*NIB* XIV:10, 11; XVI:667-8) and had blocked Dutch-Indonesian agreement during the post-Renville negotiations. By giving in on this essential point, the Federalists prevented the development of a more evenly balanced army in which the already existing federal troops and the Indonesian members of the Royal Netherlands Indies Army (R.N.I.A.) would occupy a stronger position. Now the door was open to a wholly T.N.I.-dominated federal army. Obviously not all the Federalist statesmen were fully aware of what they were doing at the time. Months later, even as late as after the end of the Round Table Conference, quite a few of them still believed that they would be able to retain segments of the R.N.I.A. as the army of their own state. It was not a self-delusion in which Anak Agung was inclined to indulge, however. After all, in the light of the existing power relations in Indonesia and the explicit intention of the Dutch to withdraw their troops, no other option was open at that time. Giving in wholeheartedly to reality surely was the wisest thing to do.

It was probably these Federalist concessions on the points of prestige and power that increased the possibilities of agreement being reached on the subject of a constitution. To begin with, both parties had prepared themselves thoroughly for this item on the pan-Indonesian conference agenda. As was mentioned above, the B.F.O. had already set up a committee on 7 May 1949 to prepare the necessary drafts. This committee, though chaired by a leading B.F.O. politician, was not a purely Indonesian affair. Four of its six members were Dutch officials, who had obviously been chosen for their technical skills. The results of its activities as recorded in a detailed report were completely in line on all essential points with earlier ventilated B.F.O. ideas, however, and its recommendations were accepted after discussion at a plenary B.F.O. meeting. In these recommendations once again the concept of a 'core cabinet' figured

prominently, which, on the whole, tended to safeguard the strong position of the governments of the component states in the conduct of the affairs of the United States of Indonesia.

The Republic for its part entered the pan-Indonesian conference with rather a lengthy document setting out the newest variant of the 'draft constitution' drawn up by Supomo. It stuck to the idea of the earlier March and November 1948 proposals of vesting the supreme authority in a President as chief of state, who was not personally accountable, while the actual power was wielded by a cabinet accountable to a parliament and a senate. As far as the senate was concerned, these proposals signified a return to the March draft, as the component states would once again have equal representation. In accordance with the provision of the Van Roijen-Roem Agreement, the Republic claimed a third of the seats in the house of representatives.

Most Republican claims were more or less compatible with the B.F.O. proposals, as was to be expected, since the ideas of each side had long been known to the other. Moreover, the Republican leaders, especially Hatta, had discussed the Federalist proposals with an open mind at the pan-Indonesian conference. Though the final draft of the conference document on the constitution retained many of the wordings of the Republican proposal, it also contained Federalist amendments on many trivial and some essential points. As regards the senate, for instance, the respective starting positions had by no means been the same, as the Republic had proposed giving this federal organ 'par excellence' only advisory powers, while the B.F.O. had asked for full legislative powers for it. After much debate a compromise was reached whereby the B.F.O. demands were met in essence: the senate was to have legislative powers in all matters pertaining to the member states of the federation or to the relations between these states and the central government. Moreover, an ingenious set of rules governing the conditions under which the house of representatives could overrule the senate was negotiated.

A compromise was also reached on the core cabinet. Here, too, many elements of the original B.F.O. proposals were retained. As for the formation of a new government, a group of three persons was to be charged with this task by the President. This triumvirate of *formatur* was to be appointed in consultation with the leaders of all the component states, however. Once constituted, a small group of ministers within the cabinet would have final authority under certain circumstances. This group was to include the three original *formatur*. Though not a watertight construction, it nevertheless promised to give the member states a strong hand in the formation of the future central government.

In August 1949, a few weeks after the end of the pan-Indonesian conference, delegations from the Republic and from the B.F.O. travelled to The Netherlands for the Round Table Conference. Here attempts had to be

made to find answers to the many questions regarding relations between Indonesia and The Netherlands which had until then remained unsolved. One of the things that also remained still to be done was the drafting of the provisional constitution, which was to be added to the package of treaties that would make the transfer of sovereignty possible.

The constitution finally agreed on was in close conformity with the agreement that had been reached between Republicans and B.F.O. members at the pan-Indonesian conference. As had been decided at Linggarjati, the discussions on the subject were a purely Indonesian affair. As a result, no records of these discussions are available in Dutch archives. Only on a few occasions were Dutch experts asked for advice. From the scant information that has filtered through it is evident that an active part was taken in the debates by Supomo, Yamin, Hatta and Anak Agung. Only when the complete text of the constitution was ready was it discussed with the Dutch delegation to check its consistency with other elements of the Round Table Agreements. These discussions went quite smoothly, as no flaws could be detected by the sharp eyes of the Dutch delegates on the subjects of democracy and federalism (*NIB XX*: nos 87, 173, 212, 256). It was only with regard to the safeguarding of that other fruit of the Linggarjati Agreement, the right of self-determination for parts of Indonesia, that problems arose. Indonesians of all walks of life were decidedly opposed to granting this right. On the Dutch side feelings were mixed, however. All hope of being able to use this possibility as a means of whittling down the power of the Republic within the federation had been given up by this time. In fact, under the circumstances prevailing in Indonesia at that time it was to be feared that this expedient might easily be turned against the other member states of the federation. Nevertheless, the Dutch delegation had to put on at least a show of support for the idea, as some minority groups in Indonesia were determined to keep the Dutch to their word and had joined hands with rather pronounced right-wing groups in the Dutch Parliament. The end result was an arrangement which made it possible in theory to appeal to the right of self-determination, but on conditions which in practice made success highly unlikely (*NIB XX*: no. 207 ff.).

Thus the constitution whereby the United States of Indonesia gained its independence on 27 December 1949 took shape. Dr. Adnan Buyung Nasution, in his inspiring study on the Indonesian 'Konstituante' between 1956 and 1959, only mentions this 1949 constitution in passing. However, in qualifying it as a constitution 'drafted under the shadow of the Round Table Conference', 'made under foreign pressure', and bearing the stamp of the 'Colonialists' (Nasution 1992:27, 28), he does not do full justice to the facts. Of course, it was the Dutch who stimulated the federalist idea to a point where it was bound to overreach itself. Even so, as is evident already from the discussions of the 1945 PPKI, the federalist idea was not wholly alien to Indonesian political thinking at the time. And the events and

discussions outlined in this paper demonstrate that a small federalist elite, drawn mostly from the outer provinces of Indonesia, between 1945 and 1950 could at least agree to its application to practical politics in a creative way.

The same is true of the approach to the idea of democracy of the Indonesian elite of the time. Since the publication of H. Feith's *Decline of Constitutional Democracy in Indonesia* in 1962, a consensus seems to have grown among historians and politicians that democracy as a Western concept is wholly alien to the Indonesian way of thinking and Indonesian society. Buyung Nasution should certainly be applauded for making a frontal assault on this theory. Nevertheless, his criticism of the 1949 constitution in this respect is unjustified. From the debates leading up to the drafting of this constitution as well it is clear that an unqualified conception of democracy was present in political thinking among both prominent Federalists and Republicans. The Republican Prime Minister Hatta, at least, was quite outspoken in this connection. At the pan-Indonesian conference, for instance, he emphatically argued that only through democratic government could Indonesia achieve steady progress and prosperity. He even went a step further in linking democracy to federalism by describing the latter as an expression of the former.

Though restrained by their respective positions in the power game that was played at the time, Federalists and Republicans alike not only paid lip service to the notion of democracy in all the views they put forward, but also translated the idea into practical proposals. Buyung Nasution seems to be right in saying that the 1949 constitution displayed a marked shortage of democratic principles where it stipulated that 'the government could not be toppled by parliament and parliament could not be dissolved by the President' (Nasution 1992:28). This statement should even so be dismissed as a misrepresentation of the facts, since this stipulation only applied to the first parliament, which had to be appointed in haste because the transfer of sovereignty was imminent. Its elected successor was to have full parliamentary powers. On the whole, the debates and the constitution gave full scope to the idea of democracy, which was no longer qualified in any sense as in the case of the latter's 1945 predecessor. In the discussions about this constitution, Supomo for his part did not fall back on the integralistic ideas advocated by him earlier.⁶

Finally, it is obvious that the atmosphere in which these discussions took place was largely conditioned by the presence of the Dutch and, in a wider sense, by the political and ideological controversies of the Cold War. The position of the Dutch was confused enough, since they now felt

⁶ This observation was corroborated by Dr. Ide Anak Agung Gde Agung in a discussion with the author of the present article in October 1994. In the early fifties Supomo again fell to criticizing what he saw as the Western concept of Democracy, however. See Feith 1962:327.

obliged to promote the same principles of democratic government which they had deemed of only limited relevance for Indonesia in the pre-war period. Even so, their insistence (and that of the Americans) on democratic procedures influenced the thinking of the participants in the post-1945 constitutional debates. Moreover, the leading Indonesian politicians taking part in this debate had studied the Dutch handbooks on constitutional law in their youth as students either in The Netherlands or at the Batavia Law School. They had also been influenced by the presence of the Japanese in 1942-1945. The constitutions of 1945 and 1949/50 were the products of fairly free and open discussions by Indonesians among themselves. Nevertheless, in both cases the context is reflected in the results. This fact reminds us once again of the risks involved in attempts to draw lessons from history. Obviously, World War II Japanese authoritarianism and post-war democratic ideals both appealed to the Indonesian mind, which showed a capacity for handling both. This capacity was moreover evinced by roughly the same persons all the time. It is better not to generalize about any natural propensity of Indonesians, Asians, or anyone else, for any particular system of government, therefore, but rather to look at the political priorities and possibilities. The reinterpretation of the constitution in November 1945 served to widen the circle of those involved in the bid for power in the nascent Republican state and to make this constitution acceptable to the Allies. Much of the constitutional debate of the ensuing four years should be interpreted in the light of the contest for dominance between the Dutch, the mainly Java-based Republicans, and the Federalists from the other parts of Indonesia. From the records of the debates it is clear, however, that for most participants nationalism overrode all other considerations. Both constitutions were regarded as provisional ones by their authors, hence as being open to change according to the needs of times to come. So the short-lived constitution of 1949 marked not the end but only the beginning of a discussion.

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