

Military Justice in the Dutch East-Indies

A Study of the Theory and Practice of the Dutch Military-Legal Apparatus during the War of Indonesian Independence, 1945-1949

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Foreword

This MA thesis is the final product of my study. While I am proud of this achievement, I also regret the fact that this means the end of my study as well, which I have enjoyed thoroughly. In reaching this accomplishment, I owe thanks to two people in particular. First of all, I would like to express my sincere gratitude to historian Rémy Limpach for pointing out relevant literature on the subject of this paper and providing critical insights on the first draft of this thesis. Second and final, I would like to thank my wife and jurist, Nathalie Schinkel, for proof-reading the first draft of this thesis, even though it is not her field of expertise, thereby correcting most critical stylistic errors.

Introduction

“Wanneer iemand een misdrijf heeft begaan moet hij gestraft worden[.]”¹

For several decades, the War of Indonesian Independence, which lasted from 1945 until 1949, has had a severe impact on academic debate in the Netherlands. The most persistent topics relate to notions about the use of excessive force and alleged war crimes committed by Dutch forces.² Thus far, it seems that publications on these topics are regarded as unsatisfying. For example, a collective application of three leading Dutch research institutes for a broad research project on the subject was initiated in 2012.³ Although funding of the project was denied, several political parties embraced the proposal. That is why the same research institutes have started their own, albeit smaller projects, which are basically aimed at a broad and proper investigation of the actual events, including alleged war crimes and the use of excessive force. It is currently unknown when the first results will be published or what aspects of the troublesome topics will be translated into these results. Following this initiative, the Dutch research institute KITLV⁴ (also one of the three research institutes mentioned), organized a symposium in December 2014, where the topic was yet again addressed by several prominent academics familiar with the subject.⁵ It is clear, then, that we are in need of clarification on the matter.

This also becomes evident when taking into consideration the popular debate on the topic. Quite recently the ‘*Excessennota 2015*’⁶ was announced, which is an open-source

¹ J.M. van Bemmelen, *Indonesië en Oorlogsmisdadigers: Wat moet een officier van strafrecht weten?* (Leiden 1947), 6.

² It should be noted that it is debatable whether the term ‘war crimes’ is either appropriate or applicable per se in this conflict, considering its legal conditions. However, from a moral point of view, certain committed acts did not differ from those associated with war crimes, which is what troubles this debate. Further reading: J.C.H. Blom, ‘Ludovico locuto, porta aperta: Enige notities over deel XII en XIII van L. de Jongs Koninkrijk der Nederlanden in de Tweede Wereldoorlog’, *BMGN*, 105 (1990) afl. 2 (244-264), 258-260; Stef Scagliola, *Last van de Oorlog* (Amsterdam 2002), 125-126; Nationaal Archief, *De Oorlogsgids: Wat is een oorlogsmisdadiger en wat een oorlogsmisdrijf* (unknown).

³ Unknown author, ‘Kamer verdeeld over nieuw onderzoek oorlog Indonesië’, (July 2, 2012). (<http://www.historischnieuwsblad.nl/nl/nieuws/19022/kamer-verdeeld-over-nieuw-onderzoek-oorlog-indonesie.html>), (September 18, 2014).

⁴ Koninklijk Instituut voor Talen-, Landen- en Volkerenkunde.

⁵ ‘Symposium: ‘Geweld en Geweten: De Indonesische dekolonisatie en het ongemakkelijke verleden van Nederland’, December 10 2014.

⁶ Taskforce Dutch War Crimes: Research about the Dutch-Indonesian War, 1945-1949 (unknown). (<http://dutchwarcrimes.com/>), (September 18, 2014).

project. The project aims at unraveling Dutch ‘war crimes’ during the colonial war, based on eye-witness reports. While the research methods of the project remain unclear, as well as which researchers will assist in validating the collected information, it is a very clear public message that the publications on this subject have been unsatisfying. Indeed, next to academic interest, people in the public sphere are still quite invested in the subject as well.

In order to contribute to both the academic and public debate, it is first necessary to pinpoint which specific aspects on the subject remain unclear. The notions ‘alleged war crimes’ and ‘the use of excessive force’ remain too vague. In order to do so, I will first pose the relevant literature on the topic, while also addressing the missing elements in these publications that need clarification. Then, I will present my main thesis and underlying research questions, together with the research method that will be applied.

Probably the most debated publication is the ‘*Excessennota*’ presented in 1969, which originated from the Dutch government itself. This report was initiated due to growing political pressure to clarify the events during the war in the former Dutch East-Indies. This pressure can be mainly attributed to a public television broadcast in January 1969, in which a former veteran of the war, Joop Hueting, presented examples of certain events which he termed as ‘war crimes’.⁷ This in turn led many other veterans to respond, thereby increasing the pressure. The polemical nature of the public debate that originated marked the emotions of those involved, for many veterans of the war interpreted the statements of Hueting as slander.⁸ The *Excessennota* that followed was based on official courts-martial reports and newspaper publications. As the title of the publication already revealed, the project presented the misdeeds and crimes of Dutch military personnel during the war as ‘excesses’.⁹ This term implied that certain moral or legal boundaries were crossed, but to what extent remained vague. This broad interpretation was consciously chosen, so that the researchers in the project would integrate all possible findings.¹⁰ The excesses in the publication were based on the crimes in the (Military) Penal Code (1952).¹¹ The main argument for this, according to the research group, was the fact that the insurgents during the conflict were not considered as an

⁷ Scagliola, *Last van de Oorlog*, 109.

⁸ Ibidem, 108; Rémy Limpach, ‘Business as Usual: Dutch mass violence in the Indonesian war of independence 1945-49’, B. Luttikhuis & A.D. Moses (red.), *Colonial Counterinsurgency and Mass Violence: The Dutch Empire in Indonesia* (New York 2014), 65.

⁹ See: Handelingen van de Tweede Kamer, 1968-1969, *Nota betreffende het archievenonderzoek naar gegevens omtrent excessen in Indonesië begaan door Nederlandse militairen in de periode 1945-1950* (The Hague, 1969), 3.

¹⁰ *Excessennota*, Tweede Kamer 1968-1969, 10008, 3.

¹¹ Ibidem, appendix six.

enemy military force, but as terrorists in the Dutch realm.¹² This is important, for their interpretation excludes the possibility that war crimes occurred, which has a limited applicability due to its legal definition. This study will address all inappropriate acts committed by Dutch soldiers as ‘excesses’ as well, for it is well-known in the literature on this topic, that this term is a synonym for ‘atrocities’, ‘war crimes’, ‘barbarities’, et al. Also, the term does not carry any legal obstructions in its use. In the end, the *Excessennota* was criticized for its prudence and shallowness. It considered the excesses as incidents and never connected these with geographical or chronological data. Furthermore, it never critically evaluated the quality of the military judicial system, of which the reports served as the main source for the actual findings. Truly, it was assumed that the military-legal system functioned correctly and that the reports in the archives represented the events. While some researchers affiliated to the project confirmed the need for further research in the essential draft of the *Excessennota*, severe political pressure led to the finalization of their study, even though this was considered premature by some.¹³

Just following the *Excessennota*, the critically acclaimed academic publication ‘*Ontsporing van Geweld*’ by Hendrix and Van Doorn was published in 1970.¹⁴ This work, written by two veterans of the war, introduced a sociological approach to help explain the use of excessive force during the conflict. This approach focused on revealing the scale of the use of excessive force and war crimes, which they differentiated with levels and types of military violence. However, due to the primacy of theoretical structures and the absence of credible sources to further underpin their theories, their study remained inconclusive in some respects. While the work convinced that excesses in various types occurred, and both authors thoroughly explained the processes in which conditions these originated, it remained unclear which types of excesses exactly materialized, what motivated soldiers to engage and justify these acts, and on what scale these developed. This was also the primary criticism of historian P.J. Drooglever when the publication was reviewed.¹⁵ Nevertheless, the study of Hendrix and Van Doorn was reissued twice (1983 and 2012), where it seems that the most recent publication received the most attention. While it is rightfully highly valued in the academic world, it also left many questions to be answered.

¹² Ibidem, 5-6.

¹³ Botje, H.E. & A. Hoek, ‘Indonesië: Onze Vuile Oorlog’, (July 10, 2012).

<http://www.vn.nl/Archief/Politiek/Artikel-Politiek/Onze-vuile-oorlog.htm>, (October 12, 2014).

¹⁴ J.A.A. van Doorn & W.J. Hendrix, *Ontsporing van Geweld. Het Nederlands-Indonesisch conflict* (Zutphen 2012).

¹⁵ P.J. Drooglever, Recensie van *Ontsporing van Geweld*, *BMGN - Low Countries Historical Review*, vol. 86, n.2, (1971), 315-317.

Apart from some interesting case studies that followed in the next two decades, it remained surprisingly quiet on the topic of alleged war crimes and the use of excessive force during the War of Indonesian Independence. This led historian Stef Scagliola to approach the subject from another angle in her *'Last van de Oorlog'*, which was published in 2002. Scagliola discussed the aftermath of the colonial war, especially concerning the processing of the different levels of violence, ranging from 'standard' military encounters to the most excessive types of force. Probably the most interesting aspect of her work was the question if the topic has been evaded on purpose by historians. Moreover, she also valued the methods of historians in terms of professionalism; what exact terms did they present in their research, did they morally judge the past, et al. Scagliola concluded that the topic was not neglected, but that most publications were very cautious in terms of judgment. Finally, she criticized the use of sources in all publications until hers. For example, Scagliola considered the military sources – which were the core of the *Excessennota* – as unreliable. Her analysis of this aspect remains an assumption of course, because her study does not incorporate a serious evaluation of military sources, including the military justice system during the war. She promoted the use of oral sources instead, which she considers as a rich and less unreliable source.¹⁶ Of course, the credibility of such sources is also debatable, because these claims are difficult to verify. This is possibly one of the reasons why the amounts of publications on the subject have been lacking.

So, it appears that the topic of 'excesses' during the War of Indonesian Independence has received at least a decent amount of attention. Still, these publications remain only pieces of the puzzle, not clarifying every aspect. While it is determined that certain inappropriate acts of violence occurred, we know surprisingly little on the scale, both geographical and chronological, the types of alleged war crimes committed by Dutch forces and the conditions which led to such events. These seem as rather big subjects as well, which is why it is certainly impossible to integrate these all into one study. Moreover, it appears that one of the primary difficulties on the subject is the availability of credible sources, which are needed to reveal answers. In order to contribute to academic and public debate, it is essential to be specific.

¹⁶ Scagliola, *Last van de Oorlog*, 245.

Thesis

This study wants to pick up where the *Excessennota* left off. The *Excessennota* of 1969 reported that around twelve thousand cases were managed by the courts-martial combined: around seven thousand by the court-martial for the *Koninklijke Landmacht* (KL), three thousand by the court-martial for the *Koninklijke Nederlands-Indische Leger* (KNIL) and 1.901 cases by the court-martial for navy personnel.¹⁷ Of all these cases combined, around six hundred involved either looting, or violent crimes. In turn, violent crimes comprised twenty-five percent of the six hundred. Based on these reports, the Dutch government concluded that there was no systemic character in the excesses. But these conclusions are based on the assumption that the mentioned military-legal organizations functioned without any serious flaws and difficulties. Therefore, in order to determine the value of the reports of the courts-martial, this study will critically evaluate the Dutch military-legal apparatus during the War of Indonesian Independence. The term ‘military-legal apparatus’ refers to the aforementioned types of courts-martial with the exception of the court-martial for navy personnel, the military police, the relevant legal processes and the *Hoog Militair Gerechtshof* (from now on: High Military Court). The reason why the court-martial for navy personnel is not included is for two practical reasons. First, the sources that are available focus primarily on the other types of court-martial. Second, apart from the Marines, Dutch naval forces did not engage in land warfare, which diminishes their role in the entire process of alleged crimes anyway. Considering that the bulk of the court-martial cases (around eighty-four percent) was managed by the court-martial for the KL and the KNIL, I am of the opinion that findings on these organizations can also be applied more generally. Therefore, the main research question of this study is: how did the Dutch military-legal apparatus function during the War of Indonesian Independence, 1945-1949? In the following paragraphs, I will elaborate on the research method, research questions, structure and goals of this study.

How does one evaluate the military-legal apparatus? Over the course of this study, it became quite clear that there exist very few publications on the practical functioning of the Dutch military-legal organizations and legal procedures during the war. While there are some articles in relevant magazines that outline some of the key legal procedures, these can only be used to explain the theoretical aspects, while the actual legal practice remains undisclosed. In fact, there seems to be only one article regarding this topic, of which the publishing date

¹⁷ *Excessennota*, Tweede Kamer 1968-1969, 10008, appendix 6.

overlaps the writing of this thesis. Historian Rémy Limpach wrote an excellent article about ‘excesses’¹⁸ during the war. Limpach’s analysis focused on a few case studies incorporating a complete reconstruction of events, including the performance of the military justice system. Based on the outcome, he inter alia determined that the military justice system was generally either hesitant or reluctant to prosecute.¹⁹ Moreover, he was of the opinion that the military-legal apparatus was subject to operational priorities. On the other hand, he hinted at the fact that the military justice system had to operate in difficult conditions, although to what extent was only generally described.²⁰

However, I am not convinced that the introduction of case studies will do justice to the subject. In the process of examining the Dutch military-legal organizations and legal procedures, these appeared so complex and differing at times, that a broader scope is needed to ensure that every facet of the military-legal apparatus is properly integrated. The practice of military justice can only be understood when the rules and procedures are known. Indeed, this study basically aims at a combination of theory and practice, which ultimately can be compared and evaluated. It will examine the legal guidelines and will consider its practical effects. The theoretical aspects of military law during this conflict have been topics of discussion, even during the war itself, which will serve as a basis for that respect. Moreover, anecdotal evidence of those involved in the military-legal apparatus will complement the findings of the institute in practice. There are many sources in the National Archives that elucidate on the actual practice of military law, such as the reports of military prosecutors and their opinion on the situation, their notions about workload and manpower over the course of the war, correspondence between military commanders and law-affiliated personnel, and more. It is also worth mentioning what this study will not do. It will not reconsider court-martial verdicts. Considering that this is a historical study, this does not seem appropriate. In fact, some jurists are not fond of this practice either.²¹

On a final note regarding the research method, it seems that it does not differ much from international studies in the field. In similar studies of the military-legal apparatus in

¹⁸ Limpach considers the word ‘excesses’ a euphemism and argues to use the term ‘mass violence’ instead.

¹⁹ Limpach, ‘Business as Usual: Dutch mass violence in the Indonesian war of independence 1945-49’, Luttikhuis & Moses (red.), *Colonial Counterinsurgency and Mass Violence: The Dutch Empire in Indonesia*, 86.
²⁰ Ibidem, 81.

²¹ In late 1949, three Dutch jurists were sent to the Indonesian archipelago to conduct research of ‘excesses’. Their non-judicial enquiry judged some court-martial verdicts, which is why one of the three jurists decided not to sign the outcome. He considered it inappropriate to judge these cases. See: Nationaal Archief, Den Haag, Ministerie van Justitie: Archiefbescheiden Onderzoek naar Excessen in Indonesië, nummer toegang 2.09.95, inv.nr. 77, ‘Overzicht van archief-bestanddelen betreffende excessen in Indonesië’.

foreign armies, such as the United States Army, the functioning has been subject to discussion as well. One example is '*Marines And Military Law In Vietnam: Trial By Fire*' by former military prosecutor Gary D. Solis.²² In this study, Solis offered a chronological overview of the functioning of the court-martial of the Marines during the Vietnam War. As examples he posed certain cases and explained their legal settlements, while explaining the regular legal procedures too. Another example is '*Military Justice in Vietnam: The Rule of Law in an American War*' by William Allison. In this publication, Allison focused on anecdotes and statistical data to support his argument that the military-legal apparatus during the Vietnam War did not function properly. He argued that the law-affiliated personnel was not given the means to fulfill their tasks, faced challenges in gathering evidence and that reduced sentences were the norm, which in turn led to a degradation of the authority of the court-martial.²³ Also relevant is '*Atrocity and American Military Justice in Southeast Asia*' by Louise Barnett. She criticized the role of the American military-legal institute in the Philippines for its bias and racism against the indigenous people in trials. The role of officers, both high and low, was also blamed, for they enabled the conditions that led to atrocities. The hierarchical structure and the nature of force of armies were accountable as well as reasons that influenced these events.²⁴ It seems, then, that a proper explanation of the relevant military-legal organizations, the legal procedures, in combination with the actual practice, is not uncommon in international publications and may thus lead to a proper critical evaluation of the military-legal apparatus. This study will not directly compare its findings with these U.S. Army focused publications, but nevertheless will some aspects be similar compared to these studies: the role of officers will be addressed, punishments will be explained too, as will the workload and experiences of the people involved in the military-legal apparatus.

Structure

The first chapter of this paper will explain the historical context of the conflict. Not only will its origins be explored, which is a necessary aspect to understand the leading up to the war, but it will also take into consideration the major belligerents in terms of (troop) strength, military strategy and tactics. It will present the major strategic and tactical directions both sides adopted and executed, while explaining their effectiveness too. Moreover, the key political events that unfolded during the war will be posed as well. The chapter will lean on

²² Further reading: Gary D. Solis, *Marines And Military Law In Vietnam: Trial By Fire* (Washington D.C. 1989).

²³ Further reading: William T. Allison, *Military Justice in Vietnam: The Rule of Law in an American War* (Kansas 2007).

²⁴ Further reading: L. Barnett, *Atrocity and American Military Justice in Southeast Asia* (New York 2010).

leading academic publications on the subject, while also introducing some soldier experiences. The necessity of the outlining of the conflict in this form lays in the fact that the war progressed into different phases. It appears that these phases had an impact on the functioning of the military-legal apparatus, which will be discussed in the subsequent chapters.

The second chapter will investigate the primary organizations within the military-legal apparatus and will also incorporate all relevant legal processes. As noted earlier, there existed several types of courts-martial during the war. Next to the courts-martial, there were other important organizations as well, such as the High Military Court, the Supreme Court, but also the military police which was sometimes responsible for investigating alleged crimes. The chapter will explain their exact role and outline the organizations in terms of manpower and efficiency. The legal processes present during the war will be explained by the introduction of several publications in military-legal magazines, in which jurists debated about these. Finally, the most important legal guidelines will be presented too. For that matter, one must think of a short military-legal history; what is the function of military justice, how is it composed, how did this come to be, what organizations were involved, what legal procedures were relevant, how were these procedures perceived by those in the field of military law, et al.? The reason for this is twofold. First of all, it explains how the military-legal apparatus was designed and was expected to function. Second, it may hint at the fact if the military-legal apparatus was capable to function at all, based on reports regarding manpower and workload. It is absolutely necessary to outline the military-legal apparatus first, in order to understand the practice.

The third and final chapter of this study determines how the Dutch military-legal apparatus functioned in practice. This does not imply that this study will reconsider certain specific courts-martial verdicts. Instead, it will attempt to evaluate in which way the procedures and theories, as described in the second chapter, were actually implemented in practice. For example, what were the primary reasons for investigating alleged crimes? Which persons in the legal process could influence the outcomes of cases? How were criminal investigations executed? What difficulties were experienced when investigating alleged crimes? Were soldiers properly punished i.e. did they serve their time? Basically, the chapter aims at a critical evaluation of the judicial process from the beginning until end. In order to do so, this paper will focus on the reports and correspondence of those involved in this process, which are primarily the Attorney General, the military prosecutors and military commanders. The Attorney General was at the head of the judicial process in terms of civil law and the

prosecution of Japanese war criminals. Moreover, because the military prosecutors of the KNIL courts-martial were civilians (instead of those in the KL courts-martial), they served a dual role, being active in both civil as military legal organizations. Indeed, they reported to the Attorney General. The military prosecutors were responsible for investigating and building cases against military personnel and thus played a key-role in the handling of alleged war crimes. Finally, the military commanders were responsible for the conduct of their forces. Their relation to the military prosecutor was therefore very important and crucial in the judicial process. Regarding these persons, there appear to be many telegrams and letters in the archives which give useful information about the functioning of the military-legal apparatus, which sometimes is of more use than certain 'dry' and official reports, although those will not be neglected.

In conclusion, I want to present the aims of this study. To my knowledge, this is the first attempt in critically and completely evaluating the Dutch military-legal apparatus during the War of Indonesian Independence. But the fact that something has not been examined makes for a very poor research justification. However, the value of studying the military-legal apparatus can be justified in other terms. First, the outcome of this study will determine the value of the courts-martial reports. In turn this will contribute in answering other historical questions which were posed: considering the function of military law, which basically aims at maintaining discipline in the army so to keep it functional,²⁵ the outcome of this study may serve as an important indicator of certain structural problems that existed during the conflict with regard to 'excesses'. For example, when it is concluded that the military-legal apparatus did not function properly, this could mean that conditions were present that allowed Dutch forces to commit atrocious acts. This may partly help explain why these events unfolded the way they did. On the other hand, if it appears that the military-legal apparatus did function properly, then we must accept the conclusion of the *Excessennota*, while it also raises the importance of the courts-martial reports as a source. Second, this study will provide crucial insights in both the presence as the functioning of the military-legal apparatus per se, which until now actually appears quite confusing and unsatisfying. Probably most important is the outlining of the differences between theory and practice of military law. This may lead to certain insights for military-judicial affiliated personnel, but may also explain why certain events progressed the way they did.

²⁵, J.C. Panthaleon Baron van Eck, 'Hervorming van de rechtspleging in militaire strafzaken', *Militair-Rechtelijk Tijdschrift* Deel XXXIX (1946), 136.

Chapter 1: The War of Indonesian Independence

It was only two days after the capitulation of Japan, which marked the sudden end of the Second World War in the East, when Indonesian nationalists declared independence on August 17, 1945. With an estimated two hundred and fifty thousand Japanese military forces still present in the area,²⁶ Dutch authority was nowhere to be found in the Dutch East-Indies. The Allied high-command wished to restore order in the East and divided certain zones to their members. Due to the absence of a capable military force, the Dutch East-Indies, which at this point was legally considered to be under Dutch control still, was not assigned to the Netherlands. Instead, parts of the Dutch East-Indies became part of a British zone. Indeed, Great Britain received the responsibility to maintain order until the status quo returned i.e. Dutch rule would be re-established.

The Dutch government-in-exile had anticipated on fighting in the East, only it did not expect to fight against Indonesian nationalists. Their preparations focused on fighting Japanese units, which were considered formidable foes. During the latter phase of 1944-1945 in the Second World War, thousands of Dutch men were recruited. The first batch of troops consisted of ‘oorlogsvrijwilligers’²⁷, many of whom had a background in the (armed) resistance during the war in Europe. They served primarily in what would become shock troops and American-inspired Marine units. Due to the capitulation of Japan on August 15, 1945, everything would change. Certainly, when only two days later Indonesian independence was declared, they would fight another war instead. This date would mark the beginning of a new conflict in the period of 1945-1949, in which approximately one hundred and twenty thousand Dutch soldiers served in the KL, alongside sixty thousand KNIL²⁸ and twenty thousand navy personnel, most of them conscripts.²⁹

The new foe of the Dutch military did not suddenly appear out of nowhere, although the power vacuum that was created with the Japanese capitulation probably accelerated the

²⁶ P.M.H. Groen, *Marsroutes en Dwaalsporen: Het Nederlands Militair-Strategisch Beleid in Indonesië, 1945-1950* (Den Haag 1991), 18.

²⁷ Volunteers.

²⁸ *Koninklijk Nederlandsch-Indisch Leger* or Royal Netherlands East Indies Army.

²⁹ M. Elands & J.A. De Moor, *Het Nederlandse militaire optreden in Nederlands-Indië/Indonesië 1945-1950* (Den Haag 2005), 19.

process. The origins of the nationalists can be found long before the outbreak of the Second World War. Especially in the beginning of the twentieth century many nationalist movements arose. For example, the '*Indische Partij*' was already founded in 1912. At first, these political movements embraced most social groups in the Indonesian archipelago, such as the indigenous peoples, the Chinese and those of European descent. However, after several constitutional reforms, the appeal to all social groups disappeared. People of European descent began embracing their social standing from which they received many benefits; if they would support other social groups they would undermine their own position.³⁰ Despite this development, self-determination remained an important issue, especially with the indigenous people. Several political parties were founded in the 1920s and were led by individuals who would play key roles in upcoming times. Indeed, this would not be the last time the Dutch government felt the influence of Mohammad Hatta (future vice-president), Sukarno (future president) and Sutan Sjahrir (future prime-minister).³¹ Although the political parties were repressed most of the times, their focus on Indonesian nationalism – thereby excluding all colonial references and ties – appeared as the opposite of the later Eurasian nationalist movements.

After the surprise attack of Japan on Pearl Harbor in December 1941, an Allied fleet including several Dutch ships was defeated in the Battle of the Java Sea in February 1942. This victory paved the way for Japan to conquer the whole of the Dutch East-Indies. Soon thereafter, in March 1942, the government in the Dutch East-Indies capitulated.³² This quick and total victory probably damaged the prestige of the KNIL as of the Dutch rulers.³³ Some of the key figures in the area, including future army commander Simon Spoor, were evacuated in time to Australia, where they would join the Allied command.³⁴ Meanwhile, Japan fueled both the hatred of the indigenous population as their nationalistic tendencies. Everyone of European descent was sent to labor camps in which they were treated horribly. Most of the indigenous people suffered a similar fate of exploitation and humiliation.

The nationalist movements that were severely repressed under Dutch colonial rule, eventually gained influence with the Japanese. At first, their mass appeal was used to strengthen the Japanese cause, but this was not something that could be controlled for long,

³⁰ Van Doorn & Hendrix, *Ontsporing van Geweld*, 24-25.

³¹ F. Glissenaar, *Indië verloren, rampspoed geboren* (Hilversum 2003), 28-31.

³² Glissenaar, *Indië verloren, rampspoed geboren*, 31-32.

³³ A. van Liempt, *De Oorlog* (Amsterdam 2009), 341.

³⁴ Van Doorn en Hendrix, *Ontsporing van Geweld*, 76.

especially due to the rising discontent because of food shortages and harsh rule; many people were sent to labor camps. But there were also those who were incorporated into the new Japanese ruling system. One of these persons was Sukarno, who would declare independence after the war. Especially the armed forces of the nationalists, which were organized by Japan in the first place, created serious tensions. There was the Heiho, consisting of young Indonesian soldiers. Next, there was the Peta which was a volunteer-based army. These soldiers received training from the Japanese but ultimately turned against their rulers. Nevertheless, the Japanese would rather let the Netherlands East-Indies become independent than fall back into the hands of the Dutch.³⁵

The nationalist wave would engulf the Indonesian archipelago around a month after Sukarno presented his '*proklamasi*'. This period was described as '*Bersiap*'³⁶. Due to the absence of Japanese or Dutch authority, the power vacuum was abused for mass killings and plunder of those of European descent who were just released from the labor camps of the Japanese. The situation was so critical they were advised to actually go back into the labor camps. Also targeted were Chinese and other minorities. Somewhat ironic was that those inside the camps were now dependent on the protection of their former enemy, the Japanese. Meanwhile, British forces tasked to restore order could only do so in small strategic areas.³⁷ The amounts of victims during the Bersiap greatly vary in historical studies.³⁸ In the upcoming months after the event, many Europeans left the archipelago. It was only then when they first encountered Dutch KL soldiers, the first of many to come. The soldiers encountered a boat full of refugees from the Dutch-East Indies, which further strengthened their cause: "*Er ging wat in je om toen je daar zag staan, kinderen, vrouwen en mannen, als vluchtelingen. Ik kneep mijn vuisten samen en dacht daar zullen we voor gaan vechten.*"³⁹

It is a common mistake to picture the war that would ensue as two sides fighting for their opposing interests, although on the other hand it is rather difficult to pinpoint exactly

³⁵ Ibidem, 43-44; Van Doorn & Hendrix, *Ontsporing van Geweld*, 50.

³⁶ Literally meant: 'Be Ready'.

³⁷ Van Doorn & Hendrix, *Ontsporing van Geweld*, 51-52.

³⁸ Historian Loe de Jong estimated the minimal amount of casualties around 3.400, but was convinced that the actual numbers were higher. American historian William H. Frederick approximated 25.000-30.000 victims of European descent (ten percent of the total European population), and estimated the total count, thus including indigenous victims, on a quarter of a million. Further reading: B. Immerzeel, '*Bersiap: de werkelijke cijfers*', (February 7, 2014) <http://javapost.nl/2014/02/07/bersiap-de-werkelijke-cijfers/> (26 October 2014) and M. van der Kaaij, '*De Bersiap: een vergeten golf van etnisch geweld*', (November 18, 2011), <http://www.trouw.nl/tr/nl/5009/Archief/archief/article/detail/3546643/2013/11/18/De-Bersiap-een-vergeten-golf-van-etnisch-geweld.dhtml>, (26 October 2014).

³⁹ Nederlands Instituut voor Militaire Historie, Den Haag, De Kam Toegang 510, inventarisnummer 118. Diary Sergeant M. Wijgergangs d.d. 31-01-1946.

who was fighting whom where and when. First of all, the Indonesian nationalist movement was far from a united force. There existed many different groups who shared their common hatred for the Dutch, the Japanese, but also for certain social groups such as the Chinese. Nationalists, communists and radical Muslims (Darul Islam) all entered the struggle for power. There were many inhabitants who were displeased with the chaotic events after the announcement of independence as well.⁴⁰ Secondly, the political key figures behind the nationalist movement had serious problems in controlling the armed mobs that served as their fighting forces. For example, just prior to the declaration of independence, Sukarno and Hatta, who were seen as important political figures of the movement, were kidnapped by what is believed their own forces in order to speed up the political process.⁴¹

Negotiations

As stated earlier, Great Britain was temporarily responsible for maintaining order in the area. When the first batches of Dutch forces were sent, these were denied access to the strategic islands of Java and Sumatra by the British, for in their opinion, it would disrupt the already chaotic situation even further, which in turn would increase the challenges of their own mission. For example, the British had suffered military losses when thousands of nationalists attempted to conquer the important harbor city of Surabaya in East Java. Dutch forces were then further trained and got involved into securing other regions of the archipelago in which they were free to enter. These missions varied greatly in terms of difficulty. When stationed on the Moluccas in April 1946, an officer of the shock troops wrote: “*Daar ben je dan de tropen nu voor ingetrokken, om hier als een sjeik behandeld te worden. Dachten wij dat we moesten gaan vechten.*”⁴² Most troops until then consisted of volunteers who had entered service for many different motivations, ranging from personal satisfaction to ideological motives. Deployment to Java was their main goal, for it was thought that securing Java would also end the conflict.⁴³

Meanwhile, the British embargo on troop placements was also employed to force the Dutch to negotiate with the nationalists. At first, Dutch Governor-General Hubertus van Mook, the highest representative of the Dutch East-Indies, achieved conformity with the first Indonesian premier Sutan Sjahrir, who was appointed from 1945 until 1947. Contrary to

⁴⁰ Van Doorn & Hendrix, *Ontsporing van Geweld*, 54.

⁴¹ Ibidem, 56.

⁴² Nederlands Instituut voor Militaire Historie, Den Haag, De Kam Toegang 510, inventarisnummer 127. Letter from 2nd Lieutenant P. Hordijk to his wife d.d. 14-04-1946.

⁴³ Nederlands Instituut voor Militaire Historie, Den Haag, De Kam Toegang 510, inventarisnummer 127. Letter from 2nd Lieutenant P. Hordijk to his wife d.d. 27-04-1946.

Sukarno who was considered a collaborator due to his cooperative history with the Japanese, Sjahrir was less suspect due to his proven history of resistance against the Japanese occupation. At first, both parties agreed that the Indonesian Republic was to be an autonomous region within the Dutch Kingdom, but to what extent remained uncertain. From then on, negotiations became more difficult. A serious problem was the limitation of the de facto recognition of the Indonesian Republic's authority on Java only. This excluded their claim on Sumatra, which in the view of the nationalists was unacceptable, because at the time they were the only representative force on the island, with the exclusion of some small Allied areas. Another important issue was the rejection of arbitration by the Dutch, who were not keen on international intervention. These and other complications led to failing negotiations, but talks continued.⁴⁴

In the subsequent months, while Dutch forces were securing the areas surrounding Java and Sumatra, a federal concept known as the Linggadjati Agreement was proposed. Introduced was the United States of Indonesia (USI), consisting of three components: the Indonesian Republic with control over Java, Sumatra and Madura, second Borneo and finally the Great East. All three regions were to be autonomous. Probably just as important was the official de facto recognition by the Dutch government of the Indonesian Republic authority on the respective islands named in the concept. Both sides were to agree to reduce their armed forces too. The USI would remain in a union with the Netherlands, with the Queen of the Netherlands as head of the state. Finally, the USI was to be a member of the United Nations as well. While some of these points were quite clear, others remained open to interpretation, especially in terms of achievability. When the draft was discussed in The Hague, it was therefore criticized for its vagueness. In its then current form, it was impossible to adopt by the Second Chamber, which is why an elucidation was needed to finalize the process. This elucidation differed from the Indonesian interpretation. When the Linggadjati Agreement was officially adopted in December 1946, both sides specifically signed for their own interpretation. This paved the way for future conflicts.⁴⁵ Dutch shock troops, and probably other forces as well who were stationed in the region, felt betrayed because of the continuing negotiations and the eventual outcome: "*Niemand schijnt het eens te zijn met de politiek die*

⁴⁴ A.M. Taylor, *Indonesian Independence and the United Nations* (London 1960), 22-23.

⁴⁵ Taylor, *Indonesian Independence and the United Nations* , 28-31.

momenteel gevoerd wordt. Van Mook is hier de landverrader. Ze schijnen hem niet te kunnen luchten of zien. (...) Het is een groote poppekasterij.”⁴⁶

Relations between the Netherlands and the Indonesian Republic deteriorated soon. Both sides were effectuating their own interpretation of the Linggadjati Agreement, which led to mutual accusations of violation. For example, the Indonesian Republic started diplomatic missions to other states, in the hope that the de facto recognition would eventually change into de jure. This would secure them more international rights and leverage in their negotiations with the Dutch. On the other hand, Dutch forces in the region were still increasing, where a reduction was pre-arranged. A naval blockade was also initialized in order to raise the pressure. In May and June 1947, a series of counter-proposals was discussed, but both sides could not agree upon its terms. Sjahir was even forced to resign as premier due to the dissatisfaction of other Indonesian politicians. This was the eve of the first large-scale military operations.⁴⁷

Operatie Product

The first military operation of the Dutch army was initiated on July 21, 1947. It was euphemistically named the ‘First Police Action’, thereby insinuating that the campaign was meant to restore order, while in fact over one hundred thousand men, divided over three divisions, several brigades, marine units and a small air force, were mobilized.⁴⁸ Until then, it had not been possible to initiate such an operation, due to the lack of manpower. It is even said that the failed negotiations before the start of this military operation, were deliberately stretched in order to build up a strong military force.⁴⁹ Opposing the Dutch army was a force that appeared strong on paper, but its strength was severely doubted. During their temporal reign, the British were unimpressed with the capabilities of the Indonesian revolutionaries, the TRI (*Tentara Repoeblik Indonesia*)⁵⁰. In a 1946 report written by Brigadier I.C.A. Lauder, the following was stated: “(...) but the lack of arms, ammunition, training and senior commanders make it impossible for this ‘army’ to be formidable as anything but a force for guerrilla

⁴⁶ Nederlands Instituut voor Militaire Historie, Den Haag, De Kam Toegang 510, inventarisnummer 127. Letter from 2nd Lieutenant P. Hordijk to his wife d.d. 12-11-1946.

⁴⁷ Taylor, *Indonesian Independence and the United Nations*, 32-38.

⁴⁸ Van Doorn en Hendrix, *Ontsporing van Geweld*, 140.

⁴⁹ C. Fasseur, *De leeuw en de Cheshire kat: Engeland, Nederland en de dekolonisatie van Indonesië 1945-1949*, (Amsterdam 1999), 10.

⁵⁰ In April 1947, the TRI became the TNI (Tentara Nasional Indonesia). It is common to apply either abbreviation.

warfare and small scale raids”.⁵¹ This was also the opinion of Lieutenant-General Spoor, army commander since 1946, who was convinced that the TRI would disintegrate in wartime when confronted by a strong organized foe.⁵²

The goal of the campaign was clear. The islands of Java and Sumatra were considered as the most important in the archipelago in terms of political, military and economic power, so these had to be conquered. Army commander Spoor presented a so-called spearhead strategy, in which he hoped to conquer key positions before the enemy could destroy these, such as bridges, plantations, oil fields, and so on. After these were taken, it was expected that revenues would gradually rise, which in turn could support the motherland and the costs of the army.⁵³ Indeed, the Dutch government was economically pressured during this time. The motherland was ravaged because of the German occupation, so it was thought that the revenues of the colony could support the reconstruction of the Netherlands.⁵⁴ This is partially the reason why the First Police Action was named ‘*Operatie Product*’. Finally, when the key areas were under control, the pacification could begin, meaning securing the conquered area by killing or capturing enemy combatants still in the field.⁵⁵

The military actions of the Dutch army during the First Police Action were a great success at first. One of the strategists of the Indonesian nationalists, Nasution, cynically stated that at this time: “(...) *the Dutch staff was touring through Java.*”⁵⁶ The spearhead strategy of Spoor seemed to work, which led to the capture of many important roads, towns, plantations and bridges. There was little to no resistance and casualties were low, with seventy-six casualties total during the entire campaign. Most damage to the war goals was already done by Indonesian revolutionaries whom had adopted a scorched earth tactic when the first rumors about a big military operation gained weight, in order to disrupt Dutch conquests. However, despite the progress of the Dutch army, the Indonesian Republic still existed, in contrast to the expectations beforehand. So several days after the start of *Operatie Product*, additional military operations were considered that focused on the capturing of Djokjakarta (Yogyakarta) where the political leadership of the Indonesian revolutionaries resided. These operations, named *Operatie Amsterdam* and *Operatie Rotterdam*, were already considered

⁵¹ Officiële bescheiden betreffende de Nederlands-Indonesische betrekkingen, 1945-1950 IV, 31 maart – 16 juli 1946, S.L. van der Wal ed. *Rijks Geschiedkundige Publicatiën*, Kleine serie nr. 39 (Den Haag 1975), p. 261.

⁵² Groen, *Marsroutes en Dwaalsporen*, 82.

⁵³ Van Doorn & Hendrix, *Ontsporing van Geweld*, 99; Groen, *Marsroutes en Dwaalsporen*, 83.

⁵⁴ Van Liempt, *De Oorlog*, 399.

⁵⁵ Groen, *Marsroutes en Dwaalsporen*, 81-82.

⁵⁶ A.H. Nasution, *Fundamentals of Guerrilla Warfare* (London 1965), 19.

before the start of *Operatie Product*, but were eventually rejected by the Dutch government. When it seemed that *Operatie Product* would not pressure the key politicians of the Indonesian Republic in abandoning their cause, Spoor insisted in capturing Djokjakarta, to no avail.⁵⁷ Most of the Dutch political leaders were convinced that it was unnecessary to actually destroy the Indonesian Republic. It would suffice to capture the key economic and strategic areas in Java and Sumatra to send a clear message. Also, the followers of the political parties in the cabinet would not allow such actions, for it shared too many characteristics of an infamous colonial war.⁵⁸ Finally, there were also international interests, for an aggressive military operation would attract the attention of neighboring countries and the United Nations. For example, both Australia and India (the latter of which gained its independence in 1947), lodged complaints against the Netherlands at the United Nations within ten days of *Operatie Product*. In a response, the international organization imposed the first cease-fire so far in its short history, thereby ending *Operatie Product* on August 5, 1947.⁵⁹



*Dutch Marines in action during the war. On the left, a fatally injured Marine is treated by a medic and a vicar.*⁶⁰

⁵⁷ Groen, *Marsroutes en Dwaalsporen*, 103-105.

⁵⁸ Ibidem, 92-93.

⁵⁹ Taylor, *Indonesian Independence and the United Nations*, 50.

⁶⁰ NIMH Beeldbank, 'Een dominee en een ziekenverpleger proberen tijdens een gevechtsactie bij Ploemboengan de dodelijk gewond geraakte marinier Vos te redden.' (November 22, 2014).

Guerrilla Warfare

While the Indonesian nationalists were overrun by Dutch forces during *Operatie Product*, this did not imply they were not prepared at all. At first, the commander-in-chief Sudirman wished to fight a conventional war. Road blocks, bunkers and tank traps were built at strategic locations.⁶¹ When the first great operation commenced, however, the Indonesian army could not compare itself with the Dutch forces, which were better organized, trained and armed. In contrast, the Indonesian soldiers consisted mostly of volunteers. Some had received little military training during the Japanese occupation and had served in the Peta or the Heiho,⁶² but these organizations were essentially dissolved when the Japanese surrendered.⁶³ The Indonesian army was further strengthened by Japanese troops still in the perimeter, who either joined the nationalists and offered their weapons, or were overrun and then forced to surrender their arms. Moreover, there were recruits from the KNIL who had defected. Soldiers of the British army that were sympathetic to their struggle for independence, such as those of Indian origin, defected as well. These forces were molded together after the declaration of independence and from then on formed a new Indonesian army. What the Indonesian army lacked in aforementioned aspects was compensated with its numerical strength, which was estimated at approximately one hundred seventy-five thousand soldiers.⁶⁴

The strategists of the TNI decided that considering the failure of the conventional approach, the only viable option that was left was guerrilla warfare.⁶⁵ Their strategy was strongly influenced by the three-stage theory of insurgency that was propagated by Mao Zedong in the 1930s. The first stage was described as the ‘strategic defensive’, in which pitched battles with the adversary are avoided. One of the important goals during this phase is forcing the enemy to overstretch, so that it can no longer stabilize its gains. Meanwhile, guerrilla forces try to win moral support with the local population and train new recruits. When the second stage is reached, the guerrillas should use their strength to solidify the rural areas, meaning that they increase their control over a larger population. Every attempt of the enemy to increase stability and control should be countered, which justifies actions such as the killing of local officials. Finally, when the third stage is reached, the guerrillas attack the most vulnerable positions of the enemy with great numerical superiority, until the struggle is

⁶¹ P. Heijboer, *De Politonele Acties: De Strijd om ‘Indië’, 1945-1949* (Bussum 1979), 27.

⁶² S.T. van den Bos, ‘De Indonesische Onafhankelijkheidsoorlog’, *Acta Historica* Jaargang 3 Nummer 2 (2014), 27.

⁶³ B. Anderson, *Java in a Time of Revolution: Occupation and Resistance, 1944-1946* (New York 2006), 103.

⁶⁴ Groen, *Marsroutes en Dwaalsporen*, 117.

⁶⁵ Nasution, *Fundamentals of Guerrilla Warfare*, 14-16.

won.⁶⁶ According to one of the key strategists of the Indonesian army, Abdul Haris Nasution, who served in the KNIL until 1942 and was a scholar of the military academy in Bandung, the guerrilla during the war of independence remained in the first phase as described by Mao, although their aim was of course to reach the final phase. Indeed, survival and the establishment of a good organization were the main priorities of the revolutionaries during the conflict.⁶⁷

The methods of guerrilla warfare were immediately felt by the Dutch soldiers when they had to consolidate the territory that was conquered during *Operatie Product*. Attacks and ambushes were initiated on weak spots all over Java, reaching from Bantam in the western parts to Besuki in the eastern parts. Other islands in the archipelago, such as Sumatra, experienced similar events. Scorched earth tactics were applied as well, thereby destroying many plantations and other economic resources.⁶⁸ United Nations observers mentioned unexploded aircraft bombs which were fitted on production equipment.⁶⁹ Guerrilla forces also attempted so-called Wingate actions, named after the British commander in Burma who fought against the Japanese.⁷⁰ In these actions, enemy soldiers or positions were attacked from many different sides at once, which proved effective. Also employed was the method of ‘*Wehrkreise*’. The units of the Indonesian army mostly operated independently and in small groups due to organizational difficulties, mentioned by Nasution. Central command was therefore too challenging. Communication followed either on a divisional level or through the use of couriers.⁷¹ However, just as Mao’s theory prescribed, the cities were mostly neglected by the guerrilla’s, as was engagement in pitched battles.⁷²

Meanwhile, the local population either voluntarily cooperated or was forced to destroy bridges and block or mine roads, so to disrupt the Dutch army operations. They also supplied guerrilla forces with food and intelligence and offered refuge as well.⁷³ This proved to be effective and frustrating for Dutch soldiers. For example, the marine W. van Tilborg served as a truck driver and was thus regularly exposed to mines, buried airplane bombs, and stretched wires that could decapitate a man. Nevertheless, he stated that although he was scared, he did

⁶⁶ James D. Kiras, ‘Terrorism and irregular warfare’, John Baylis (red.) et al., *Strategy in the contemporary world: an introduction to strategic studies* (New York: Oxford University Press 2005), 214.

⁶⁷ Nasution, *Fundamentals of Guerrilla Warfare*, 76-77.

⁶⁸ Ibidem, 182-183.

⁶⁹ Taylor, *Indonesian Independence and the United Nations*, 124.

⁷⁰ Nasution, *Fundamentals of Guerrilla Warfare*, 69.

⁷¹ Ibidem, 132-133.

⁷² Ibidem, 19-20.

⁷³ Groen, *Marsroutes en Dwaalsporen*, 117.

not fail to meet his tasks: “*Door de hinderlagen knijp je hem als een dief in de nacht tijdens het rijden.*”⁷⁴

Spoor acknowledged the increased difficulties for the Dutch army after *Operatie Product*. First of all, the overall operations suffered due to the demobilization of many experienced troops. Although this process was delayed at first, in the summer of 1948 many veterans returned home, while being replaced by fresh recruits, mostly conscripts, who were less suited for the difficult job. In hindsight, a probably huge mistake of Spoor’s spearhead strategy was the delay of the pacification of conquered areas. While he had captured many strategic areas, the nationalists had avoided battle and were still scattered in the perimeter. Spoor chose to capture these areas first instead of securing them, which would follow in a later stage. In turn, this gave the enemy the opportunity to reorganize behind enemy lines. Therefore, the nationalist influence remained strong in many places, either through intimidation or through cooperation of the local population. Furthermore, the Dutch forces, although well-equipped and in great numbers, still remained too small a force to effectively consolidate the most important islands of Java and Sumatra.⁷⁵ That is why Spoor insisted on the elimination of the political leadership of the Indonesian Republic. He was convinced that considering the limited resources he had after the repatriation of many veterans, it was impossible to win this war. The removal of the political leadership of the enemy could surely force them into surrendering.

Operatie Kraai

Before the second major military operation was launched, however, there was officially still a cease-fire in effect. After the United Nations had imposed this cease-fire, both the Dutch as the Indonesian nationalists agreed on a demarcation line, which would serve as the new status quo. As was already pointed out, this did not really affect the combat operations of the Indonesian nationalists, many of whom were still behind enemy lines.

Meanwhile, talks between both parties continued on board of the USS Renville, which harbored a U.N. Commission that negotiated terms between both parties. Eventually, this led to the Renville Agreement in January 1948. Key features of this agreement were the transfer of sovereignty of the Indonesian Republic to the Dutch state, which would be transferred yet

⁷⁴ Nederlands Instituut voor Militaire Historie, Den Haag, Losse Stukken Toegang 57, inventarisnummer 2592, Letter from W. Van Tilborg to his pen pal d.d. 11-02-1948.

⁷⁵ Groen, *Marsroutes en Dwaalsporen*, 120.

again to a United States of Indonesia, when established thereafter.⁷⁶ The United States of Indonesia would become part of the Kingdom of the Netherlands as a sovereign state. Demilitarization was also a topic, but considering the structural breaching of the agreement, this never seriously materialized.⁷⁷ Interestingly, the Indonesian Republic itself was not part of this United States of Indonesia. Eleven states were presented in the Dutch plans, but without the *Republik Indonesia*,⁷⁸ which contradicted earlier Dutch commitments that the Indonesian Republic would be integrated after all. Another breaking point was the disbanding of the nationalist army due to the soon to be established federal army, of which the KNIL would serve as the backbone.⁷⁹ Finally, a High Representative was to be appointed, who was able to veto the new federal government decisions, as well as to exercise emergency powers. He alone could decide if it was necessary when these powers were most needed.⁸⁰ During the peace talks, agreement on these elements remained inconclusive, which ultimately led to the unilateral abrogation of the Renville agreement by the Dutch government.

Following the abrogation, the second large military operation of the war was initiated: ‘*Operatie Kraai*’. This was essentially, however, against the will of Dutch army commander Spoor. He had wished for earlier military action, because delaying this would only serve the enemy. Starting the operation in early December 1948 had his preference, but political reasons, such as the United States threat of cancelling Marshall Aid when negotiations were halted, were the primary cause of the eventual delay.⁸¹ The postponement of the military operation continued several more times, to the point that a final decision had to be made, for the consequences would result in what Spoor called a catastrophe.⁸² He probably stated this as such, so to enforce a definitive decision.

The delay gave the TNI more time to prepare, but the Indonesian army had anticipated an attack anyway, even before large Dutch troop movements indicated this. During the cease-fire, reforms were launched in order to increase the efficiency of the army. The military leaders of the nationalist movement also prepared an alternative headquarters in case their position was overrun.⁸³ The local population received instructions not to cooperate with the

⁷⁶ Taylor, *Indonesian Independence and the United Nations*, 88, 94.

⁷⁷ Ibidem, 104.

⁷⁸ Ibidem, 153.

⁷⁹ Groen, *Marsroutes en Dwaalsporen*, 127.

⁸⁰ Taylor, *Indonesian Independence and the United Nations*, 160-161.

⁸¹ Groen, *Marsroutes en Dwaalsporen*, 157.

⁸² Ibidem, 161.

⁸³ Ibidem, 155.

Dutch, which was seen as a form of treachery.⁸⁴ The army reforms were seriously disturbed, when just prior to the beginning of *Operatie Kraai*, a communist revolt erupted in Madiun (Java) in nationalist controlled territory in September 1948. This event continued for several months and required a serious aggressive response in order to neutralize the threat. However, the political leadership of the nationalist movement benefited from the result, because it proved that – despite Dutch allegations of communist activity – the Indonesian nationalists were no future international threat of enemies of communism.⁸⁵ The international prestige therefore rose, which would strengthen the bargaining position of the Indonesian Republic. In the end, the goals of the reforms were not reached. Nasution stated that the army commanders of the TNI were too fixated on conventional approaches, which had proven to be ineffective.⁸⁶

Operatie Kraai aimed at full control of Java and the elimination of the political and military leadership of the Indonesian Republic. Dutch politicians hoped that after the realization of this, the project of the United States of Indonesia could continue.⁸⁷ Similarly to *Operatie Product*, Spoor executed a spear point strategy, thereby focusing on key targets, such as the capital of the Indonesian Republic, Djokjakarta. He also wished to eliminate several important troop locations of the enemy. If these goals were reached, pacification of the area was planned. Similar to *Operatie Product*, a large arsenal of military means was implemented during this military operation. Commando units were dropped from airplanes above Djokjakarta, where the political leaders of the Indonesian Republic were captured. Airplanes dropped leaflets announcing the fall of the Republic (*‘De Republiek bestaat niet meer’*).⁸⁸ Again, the military goals were met and the greatest challenge would be the pacification of the area, which was even larger than before. Indeed, it would be more problematic to control as well.

Resistance appeared absent during and shortly after *Operatie Kraai* and would reappear in a later stage when enemy units were reorganized behind enemy lines. The growing effectiveness of the guerrilla was not only visible in the body count, which was the highest by far in 1949,⁸⁹ but also in the experience of the Dutch soldiers. Eventually, the enemy ambush tactics severely frustrated them. A Marine wrote that this was no longer a “fair

⁸⁴ Ibidem, 197.

⁸⁵ Glissenaar, *Indië Verloren, Rampspoed Geboren*, 66.

⁸⁶ Nasution, 229.

⁸⁷ Groen, *Marsroutes en Dwaalsporen*, 158.

⁸⁸ Glissenaar, *Indië Verloren, Rampspoed Geboren*, 68.

⁸⁹ Around 160 casualties per month were reported. See: Groen, *Marsroutes en Dwaalsporen*, 259.

war”⁹⁰. Thus, artillery and mortars “smoke things out when there is the least suspicion”⁹¹. Furthermore, he and his fellow Marines could not distinguish innocent from foe anymore, which meant not only the success of the guerrilla campaign of their enemy, but also the increasing chance of killing actual innocent people.⁹² Although the guerrilla grew in effectiveness, it did not lead to great victories or strategic captures by the TNI. Probably their greatest success was the mobilization of the local population, who denied intelligence to the Dutch and provided food and other forms of support for the TNI. The lack of clear political goals and the growing international pressure on the Netherlands fueled this as well.⁹³

It is interesting that the aspect of national and international support played such a key role in the transformation of the war. In most conflicts, there exist at least two parties that attempt to convince the local population that it is in their best interest to join either side.⁹⁴ James D. Kiras, an expert in the field on terrorism and insurgency, substantiated the notion that: “(...) a terrorist or insurgent campaign will almost always fail if it cannot attract internal or international support.”⁹⁵ During the War of Indonesian Independence, primarily the Indonesian nationalists were successful in effectively gathering local support and mobilizing it, albeit sometimes throughout dubious methods. The Dutch presence was not strong enough to convince them that they would benefit by joining their cause. Or as one scholar stated: “The greatest defeat of the Dutch resulted from the fact that they could not win the Indonesian people as their allies.”⁹⁶ While key targets were either captured or preserved before destruction, effective control of the area in Java and Sumatra remained troublesome. Moreover, Dutch forces failed to prevent the organization of a shadow state, which served as an alternative to the captured political leaders of the Indonesian Republic. As a result, guerrilla warfare became more intense.

On the international level, support for the Dutch cause was crippled by *Operatie Kraai*. The Indonesian Republic was not considered a sovereign state and therefore did not benefit from international rights that normally follow through the recognition by other states. Their de facto status during the war was, from a legal point of view, weak and not

⁹⁰ Nederlands Instituut voor Militaire Historie, Den Haag, Losse Stukken Toegang 57, inventarisnummer 2592, Letter from W. Van Tilborg to his pen pal d.d. 28-01-1949.

⁹¹ Ibidem.

⁹² Ibidem.

⁹³ Groen, *Marsroutes en Dwaalsporen*, 200.

⁹⁴ M. Kitzen, ‘Westerse militaire cultuur en counter-insurgency’, *Militaire Spectator* nummer 3 (2008), 128-129.

⁹⁵ Kiras, ‘Terrorism and irregular warfare’, John Baylis (red.) et al., *Strategy in the contemporary world: an introduction to strategic studies*, 209-212.

⁹⁶ Taylor, *Indonesian Independence and the United Nations*, 6.

acknowledged by many nations. However, the weak legal status of the Indonesian Republic did not mean they did not enjoy any international support. The British, for example, were quite reluctant to support the Dutch cause, for they did not tolerate the military interventions. During the conflict, weapon embargos were initiated, thereby hoping to steer the conflict back to the negotiation table. The Dutch were advantageous to be in a better position to gather international support. They received financial (Marshall Aid) and moral support of the United States. The United States also served as the main source for weapons, especially with the British embargo in effect. This proved to be rather controversial when war material was still recognizable as American, with the exemplary stars on the tails of fighter and bomber planes. According to some, this was done on purpose to intimidate the nationalists that the Americans had chosen the Dutch side in the conflict.⁹⁷ Actually, the Americans were divided over the issue. There were those who supported Wilsonian ideas of self-determination, while others tolerated colonial empires of important allies. But when a communist uprising was thwarted by the Indonesian nationalists – thereby proving not to become a future enemy of the United States – and the Dutch initiated *Operatie Kraai*, the choice became easier.⁹⁸ Financial support was withdrawn and the Dutch would have to accept international steering of the conflict; something that was thoroughly avoided since the start of the war. Indeed, the aftermath of *Operatie Kraai* was quite devastating in terms of prestige loss in the international community for the Netherlands and Dutch policy for the future of Indonesia.⁹⁹ In that regard, framing the Dutch military operations as pyrrhic victories seems quite appropriate.¹⁰⁰

The Security Council of the United Nations presented a resolution on January 28, 1949 that would transfer the leadership of the upcoming independence to the United Nations Commission for Indonesia (UNCI). It also called for a ceasefire, the release of the political prisoners and a retreat of Dutch forces from Djokjakarta. Some soldiers hoped against better judgment that the Dutch government would ignore the demands of the international community: “*Laat ze in de Veiligheidsraad maar zwammen. We gaan gewoon door.*”¹⁰¹

⁹⁷ F. Gouda en T.W. Brocades Zaalberg, *American visions of the Netherlands East Indies/Indonesia* (Amsterdam 2002), 191.

⁹⁸ Gouda & Zaalberg, *American visions of the Netherlands East Indies/Indonesia*, 30; Taylor, *Indonesian Independence and the United Nations*, 391.

⁹⁹ Taylor, *Indonesian Independence and the United Nations*, 294.

¹⁰⁰ Ibidem, 194.

¹⁰¹ Nederlands Instituut voor Militaire Historie, Den Haag, Losse Stukken Toegang 57, inventarisnummer 2592, Letter from W. Van Tilborg to his pen pal d.d. 12-02-1949.

Finally, the resolution presented a deadline for the transfer of sovereignty to the United States of Indonesia not later than January 1, 1950.¹⁰²

In the months leading up to the institutionalization of the Indonesian federation, several serious issues remained. The cease-fire appeared ineffective, leading to many more casualties on both sides. Another great struggle was the creation of the federal army and its composition. Dutch officials were convinced that any federal army primarily composed of TNI soldiers would lead to problems in the near future, whereas the Indonesian Republic declined a primary role for KNIL soldiers in this army. Despite the differences between both parties, the UNCI steered the conflict into their preferred direction. In August 1949 a Round Table Conference was organized in The Hague where the final adjustments were approved. After a final meeting in December, the Second and First Chamber of the Dutch government also accepted the specifics of the transfer of sovereignty. On December 27, 1949, just prior to the deadline of the UNCI, this transfer was officially completed, meaning that the conflict was over.¹⁰³

As will become clear in the subsequent chapters, the phases of the war had a severe impact on the functioning of the military-legal apparatus. On the one hand, the increasing of territory under Dutch ‘control’ would severely burden the already struggling legal-affiliated personnel, while on the other hand, the growing effectiveness of the guerrilla tactics of the enemy would progressively frustrate the Dutch forces. Both aspects would lead to conditions which may have been important triggers in the case of ‘excesses’.

¹⁰² Taylor, *Indonesian Independence and the United Nations*, 187-188.

¹⁰³ *Ibidem*, 262-264.

Chapter Two: The Courts-Martial and Legal Procedures

“De militaire rechtspraak is (...) één der onmisbare middelen „om het leger bijeen te houden, om den eerbied „voor de militaire orde en tucht te handhaven, zonder welke een „leger volkomen nutteloos wordt voor zijn doel”.”¹⁰⁴

The emergence of the *krijgsraad te velde*

Military law consists of several components that aim at maintaining discipline in any army, which differs per nation. Dutch military law separates military justice into two spheres: criminal offenses and military conduct. Although both elements are separated, they are also tightly intertwined. Every criminal offense also implies a breach of conduct, which is why there exists such a strong relation between them. The purpose of Dutch military law is aimed at enabling army commanders to discipline their troops.¹⁰⁵ Without discipline, even the best and most organized armies will not function properly, which will render it useless. A swift and steady process of military justice is therefore necessary.¹⁰⁶

The origins of modern military justice and military conduct in the Dutch army can be found just after the Napoleonic era. With France defeated, the Netherlands became a sovereign state again. In preparation of this revival, in the form of the United Kingdom of the Netherlands, a new army was institutionalized, together with new foundations in the field of military law. One of the most profound changes was the introduction of a complete separation of military and civil offenses in 1814. This meant that all soldiery were to be tried by a court-martial. The High Military Court was introduced as the highest military judicial institution. Furthermore, the criminal and disciplinary laws were eventually redesigned, although this process was finalized almost a century later in 1903. The proposals until then were considered unsatisfying and the Code Penal – which was introduced during the Napoleonic era and served as the norm of criminal justice – was withdrawn and revised. Next to the penalty clauses, the procedural elements were also transformed. When both aspects of military justice

¹⁰⁴ A.D. van Leeuwen, ‘Een overzicht van het verband en van het verschil tusschen Militair Straf- en Tuchrecht en een beschrijving van de gevolgen van één en ander’, *Militair-Rechtelijk Tijdschrift* Deel XLIV (1951), 6.

¹⁰⁵ Van Leeuwen, ‘Een overzicht van het verband en van het verschil tusschen Militair Straf- en Tuchrecht’, *Militair-Rechtelijk Tijdschrift* Deel XLIV, 8-9.

¹⁰⁶ Panthaleon Baron van Eck, ‘Hervorming van de rechtspleging in militaire strafzaken’, *Militair-Rechtelijk Tijdschrift* Deel XXXIX, 136.

were finally completed, they came into effect on January 1, 1923 as the ‘*Wetboek van Militair Strafrecht*’ (WvMS) and the ‘*Wet op de Krijgstucht*’ (WK).¹⁰⁷ Next to the institutionalization of military law, the new Penal Code remained applicable to military personnel as well, meaning that the WvMS did not include offenses which were already included in the Penal Code. The WK became relevant in all disputes that were not described in the WvMS, but at the same time were conflicting with official orders. It was thus meant for managing all minor offenses, which became the responsibility of officers.¹⁰⁸ The latter could decide if the case in question qualified as a criminal act, meaning that officers were responsible for instigating the legal process.¹⁰⁹

Similar to other forms of law, military law kept transforming as well. Some of the most profound and relevant changes were effectuated prior and during the Second World War. It appeared that some of the legal procedures were considered vexatious. For example, in case of many minor offenses, suspects had to be transported to a physical court in order to be brought to justice. This was especially troublesome for those stationed on naval units. That is why during the Second World War in 1942, commanders gained more disciplinary rights, although this was only allowed for minor offenses.¹¹⁰ Also, because of the German occupation, the military justice system was forced to reform the court-martial, which were located at permanent whereabouts, into multiple ‘*krijgsraad te velde*’,¹¹¹ of which the differences will be explained further on.¹¹² The court-martial functioned as the primary institute for administering military justice. It was deemed essential that the functioning of the army i.e. maintaining a high discipline was established through the appropriate use of corrections, in which the court-martial played a key role. A fast and smooth resolution of offenses was necessary, because this apparently made a better impression on soldiers than finalizing their penal cases months after the wrongdoing.¹¹³ In that regard, the Second World

¹⁰⁷ G.L. Coolen, *Militair Strafrecht* (Zesde Druk), Deventer 2013, 11-14.

¹⁰⁸ The key role of the officer in military law will be further addressed in the subsequent chapter.

¹⁰⁹ Van Leeuwen, ‘Een overzicht van het verband en van het verschil tusschen Militair Straf- en Tuchtrecht’, *Militair-Rechtelijk Tijdschrift* Deel XLIV, 4.

¹¹⁰ G.L. Coolen, *Militair Tuchtrecht* (Zesde Druk), Deventer 2013, 9-10.

¹¹¹ The addition of ‘*te velde*’ is directed at the non-permanent location of the court-martial. While it appears other nations had similar variants, such as the ‘drumhead court-martial’ in Great Britain and the ‘flying court-martial’ in Germany, in order to avoid confusion I will refer to the Dutch name consistently.

¹¹² H.H.A. de Graaff, *De Militair-Rechterlijke Organisatie en haar verband met de bevelsverhoudingen bij de landmacht, 1795-1955* (The Hague 1957), 283-287.

¹¹³ Panthaleon Baron van Eck, ‘Hervorming van de rechtspleging in militaire strafzaken’, *Militair-Rechtelijk Tijdschrift* Deel XXXIX, 136.

War served as an important educational experience, considering that military justice was not effectuated in times of war since 1830.¹¹⁴

The primary person responsible for military justice was the army commander. In case of the Dutch East-Indies, there existed an exception, however. Before and during the Second World War, the Governor-General of the Dutch East-Indies was not only the highest political entity in the Indonesian archipelago, but was also supreme commander of all armed forces in the region. Since the constitutional reforms in the nineteenth century, he answered to the *Minister van Koloniën*, who represented the King. He was solely responsible for good governance, in accordance with several councils. However, in 1942 the Governor-General was captured by Japanese forces, which led Dutch government-in-exile to reorganize governance in the region. This was when H.J. van Mook, who was already *Minister van Koloniën*, became Lt. Governor-General. When the Second World War ended, he continued to position the latter function, while the position of *Minister van Koloniën* became obsolete. Instead, it was changed into ‘*Overzeese Gebiedsdelen*’ and assigned to someone else. The original Governor-General resigned in the same year, positioning Van Mook as the highest government official of the Dutch East-Indies. He did not, however, inherit all the powers of his predecessor, meaning that the command of the army, together with the responsibility of military justice, was reassigned to the ‘*Bevelhebber der Strijdkrachten in het Oosten*’ (BSO).

When Indonesian nationalists declared independence, which led to an uprising in the Dutch East-Indies, a court-martial was not yet officially assigned to the region. From a legal perspective, no special arrangements were induced for the earliest batches of Dutch soldiers that entered the Indonesian archipelago. These troops, whom were part of ‘*Korps Insulinde*’, fell under the command of the BSO, which was assigned to Lieutenant-Admiral Helfrich at the time. Consequently, any case of misdemeanor would be brought to a ‘*Zeekrijgsraad*’¹¹⁵, while soldiers of the KL were normally brought before a regular court-martial. This was only for a short period, however, because the position of BSO became obsolete in January 1946. From then on, the Dutch Navy would be commanded by the ‘*Commandant der Zeemacht in*

¹¹⁴ L.M. Rollin Couquerque, ‘Militaire rechtspraak in oorlogstijd’, *Militair-Rechtelijk Tijdschrift* Deel XXXIX (1946), 28.

¹¹⁵ Court-martial for navy personnel.

het Oosten’ (CZO), whereas the ‘*Commandant van het leger in Nederlands-Indië*’ (CLN) was responsible for both the KNIL, and the KL units that were deployed from the Netherlands.¹¹⁶

The separation between KL and KNIL army units, although sharing the same army commander, affected their respective legal arrangements. In sum, military justice for the KL and KNIL units differed. Whereas KL units fell under the jurisdiction of the Dutch Penal Code, the WvMS and the WK, KNIL units fell under the jurisdiction of the Penal Code of the Dutch East-Indies (*‘Indische Wetboek van Strafrecht’*) and the WvMS and WK of the KNIL (*‘Indische Wetboek van Militair Strafrecht en Indische Wetboek op de Militaire Krijgstucht’*). It is interesting that it was intended that legislation in the Dutch East-Indies, at least regarding military law, would never differ from that in the Netherlands, but for reasons unknown this never materialized. According to one military legal expert, this was due to a lack of interest of those responsible for military law in the Dutch East-Indies, with the consequence that, military law became dispersed and thus less effective, especially now both army elements were led by the same commander.¹¹⁷ It is argued that many transformations of military law in the Dutch East-Indies that were adopted in the nineteenth century, were not officially announced, thus becoming one of the primary reasons that led to this situation.¹¹⁸ One of the effects was a separate court-martial for the KL and the KNIL, in which their respective members were brought to trial.¹¹⁹ This and other implications will be further explained later.

With the gradual formation of a large army in the Dutch East-Indies, the need for military justice and military conduct became a pressing issue.¹²⁰ Instead of a regular court-martial, it was decided that the *krijgsraad te velde* became the primary legal institution during the War of Indonesian Independence. This decision was actually a continuation of the situation during the Second World War. As stated earlier, the Second World War posed challenges in the military-judicial process, which led to certain developments. One of these was the appearance of the *krijgsraad te velde* instead of a regular court-martial, which was

¹¹⁶ De Graaff, *De Militair-Rechterlijke Organisatie en haar verband met de bevelsverhoudingen bij de landmacht*, 328-332.

¹¹⁷ L.M. Rollin Couquerque, ‘Rechtsmacht van den militairen rechter in Nederlandsch-Indië en gratierecht over zijne veroordeelden’, *Militair-Rechtelijk Tijdschrift* Deel XL (1947), 244-245.

¹¹⁸ A. Dekker & H. van Katwijk, *Recht en Rechtspraak in Nederlands-Indië* (Leiden 1993), 35.

¹¹⁹ Nationaal Archief, Den Haag, Procureur-Generaal bij het Hooggerechtshof van Nederlands-Indië, 1945-1950, nummer toegang 2.10.17, inv.nr. 1350, Van Spoor aan Minister van Oorlog, 27 augustus 1948 ‘Hoger beroep van vonnissen van Krijgsraden te velde bij de KL in Indië; De Graaff, *De Militair-Rechterlijke Organisatie en haar verband met de bevelsverhoudingen bij de landmacht*, 333.

¹²⁰ Nationaal Archief, Den Haag, Algemene Secretarie van de Nederlands-Indische Regering en de daarbij gedeponeerde Archieven, nummer toegang 2.10.14, inv.nr. 3734, Telegram van P. Mourer, Generaal-Majoor, namens de Luitenant-Generaal, aan de Luitenant-Gouverneur-Generaal van Nederlandsch-Indië. Onderwerp: Geene Krijgsraad te velde, d.d. 31-10-1945.

determined by events in 1940, when temporary intended reforms were introduced with the ‘*Organisatiebesluit Rechtspleging*’. This was also the case for the *krijgsraad te velde* of the KNIL, which already existed before the Indonesian declaration of independence and was located in Australia during the Second World War. The *krijgsraad te velde* would eventually continue to exist until 1965, thus serving long even after the War of Indonesian Independence. The phenomenon of the *krijgsraad te velde* by itself was not new, however, because it already existed since the nineteenth century. It basically was intended for military justice for those ‘in the field’, although it appears that it remains debatable to what extent this was applicable. Dutch soldiers stationed in England during the Second World War, for example, were officially considered as ‘in the field’, but this was contested by some because ‘in the field’ must imply an actual combat zone.¹²¹ More importantly, the difference between ‘in the field’ or not, determines which form of court-martial is the norm i.e. requires the military to create a regular court-martial or a *krijgsraad te velde*.

The *krijgsraad te velde* for the KL held court for the first time on January 26, 1946 in Malacca.¹²² Indeed, this meant the first albeit unofficial appearance of the *krijgsraad te velde* for the KL in the Indonesian archipelago. While it was deemed necessary to reinforce military discipline due to the circumstances, the establishment of any court-martial for KL personnel in the area was not yet officially announced or organized. Still, for the moment no longer would the *Zeekrijgsraad* serve as the institution for managing offenses committed by KL soldiers. Because of the unofficial status, the proceedings of the *krijgsraad te velde* in this period were only of a temporary nature, due to serious legal obstructions. In March 1946, the *krijgsraad te velde* was relocated to Java, where the President of the court decided that it was formally inappropriate to continue legal operations; officially the military authority was actually unlawful in the execution of cases. Formally, there was no commanding general appointed to which the *krijgsraad te velde* reported. Dutch government inaction to solve these and other legal issues severely hampered the continuation of *krijgsraad te velde* operations. This is why army commander Spoor decided in May 1946 that, in order to effectively discipline his troops, he should be appointed as commanding general. These and other issues

¹²¹ De Graaff, *De Militair-Rechterlijke Organisatie en haar verband met de bevelsverhoudingen bij de landmacht*, 284.

¹²² Ibidem, 334.

were finally solved in June 1946, meaning that since then, the *krijgsraad te velde* KL officially functioned in the Indonesian archipelago.¹²³

The composition and tasks of the *krijgsraad te velde* during the war

In case when it was necessary to prosecute, the court-martial managed the process. The primary task of the court-martial was, and is, judging alleged criminal cases regarding military personnel. This was no different for the *krijgsraad te velde*. The main differences between regular courts-martial and the *krijgsraad te velde* were to be found in other respects, namely in terms of nominating the members of the *krijgsraad te velde* and in their qualification. First of all, the regular court-martial was headed by a President, who was to be a civil lawyer and was appointed by the Minister of Justice and Minister of War.¹²⁴ In contrast, the President of the *krijgsraad te velde* was to be a superior officer, also with a background in law, whose appointment was dependent on the army commander. Another difference was the amount of officers involved in the actual court. A regular court-martial consisted of four officers, whereas the *krijgsraad te velde* was formed with only two, excluding the President of the court.¹²⁵ The latter thus consisted of three members in total, meaning less of a burden for the army than in case of a regular court-martial.¹²⁶ As it appeared, during the Vietnam War the Americans also felt the burden on the armed forces as a whole whenever officers were needed for courts-martial duty.¹²⁷ Also worth mentioning is the small adjustment that the *krijgsraad te velde* was empowered with managing trials against superior officers, while this was formerly only possible through the High Military Court.¹²⁸

Next to the members of the court-martial, a key role in the military-legal process lay with the ‘*officier-commissaris*’ and the military prosecutor. The first was appointed by the commanding general. The main task of the *officier-commissaris* was gathering crucial information from suspects, which he then presented to the military prosecutor. In a regular court-martial, the military prosecutor was appointed by the Minister of Justice and Minister of

¹²³ Ibidem, 334-335.

¹²⁴ B.C. Mante, *Wetboek van Militair Strafrecht en Wet op de Krijgstucht*, 1947 (Alphen aan den Rijn 1947), Article 121; De Graaff, *De Militair-Rechterlijke Organisatie en haar verband met de bevelsverhoudingen bij de landmacht*, 265.

¹²⁵ Mante, *Wetboek van Militair Strafrecht en Wet op de Krijgstucht*, 1947, Article 244.

¹²⁶ De Graaff, *De Militair-Rechterlijke Organisatie en haar verband met de bevelsverhoudingen bij de landmacht*, 345.

¹²⁷ R.O. Everett, ‘Did Military Justice Fail or Prevail?’, (unknown), <https://web.law.duke.edu/lens/publications/050698>, (December 10, 2014), see footnote 47.

¹²⁸ De Graaff, *De Militair-Rechterlijke Organisatie en haar verband met de bevelsverhoudingen bij de landmacht*, 294-295.

War, and was to be a civilian with an academic background in law.¹²⁹ In the *krijgsraad te velde*, the prosecutor was appointed by the Crown, and was to be a military officer, while the only qualification for exercising this function was the possession of an academic degree in law,¹³⁰ meaning that there was no place for civilian jurists anymore. Moreover, in 1944, the *Organisatiebesluit Rechtspleging* changed the appointment criteria, thereby switching this responsibility from the Crown to the commanding general. Indeed, the latter, who in the Dutch East-Indies was Lieutenant-General Spoor, could now select his own military prosecutors.¹³¹ Moreover, due to the fact that now the commanding general appointed the members of the court-martial, he was able to select the best qualified officers.¹³²

For the entire duration of the war, the *krijgsraad te velde* KL was properly manned with specialists in the field of law, of whom there were many available. The influx of capable individuals was partially due to the large size of the Dutch army that was stationed in the Dutch East-Indies.¹³³ However, this should not be confused with the fact that the knowledge of military law among officers was generally considered quite poor. This issue was actually addressed by an officer in a military-legal magazine based on his experience: “*In de rubriek „Vragenbus (...) van het Militair-Rechtelijk Tijdschrift maakt een officier van de Koninklijke Landmacht de zeer juiste opmerking dat, volgens zijn ervaring (een ervaring die helaas door velen zal zijn opgedaan) de gemiddelde troepenofficier nagenoeg geen kennis bezit van militair straf- en tuchtrecht en zelfs de meest bekende handboeken ter zake niet heeft ingezien.*”¹³⁴ The editor of the magazine replied that it was certainly necessary to continue the education of officers in military law as soon as possible.¹³⁵ The ill preparations i.e. sending Dutch forces without adequate legal preparations what to suspect and how to act, were also determined by others involved in the military judicial process.¹³⁶ Still, these remarks, although worrying, are not surprising, considering the fact that the Netherlands got involved in a war just following the Second World War, meaning that the time to adequately prepare itself was

¹²⁹ Mante, *Wetboek van Militair Strafrecht en Wet op de Krijgstucht*, 1947, Article 126.

¹³⁰ Ibidem, Article 250.

¹³¹ De Graaff, *De Militair-Rechterlijke Organisatie en haar verband met de bevelsverhoudingen bij de landmacht*, 289.

¹³² Ibidem, 346.

¹³³ Ibidem, 334.

¹³⁴ H.H.A. de Graaff, ‘Eenige opmerkingen over de opleiding en de voorlichting op het gebied van het militaire recht, in het bijzonder bij de Koninklijke Landmacht’, *Militair-Rechtelijk Tijdschrift* Deel XL (1947), 458.

¹³⁵ De Graaff, ‘Eenige opmerkingen over de opleiding en de voorlichting op het gebied van het militaire recht, in het bijzonder bij de Koninklijke Landmacht’, *Militair-Rechtelijk Tijdschrift* Deel XL, 461.

¹³⁶ M.P. Plantenga, ‘Krijgsraden bij troepen te velde’, *Militair-Rechtelijk Tijdschrift* Deel XLV (1952), 159.

diminished. But this notion does carry severe implications, which will be further explained in the final chapter of this study, where the role of the officer in military law is presented.

Returning to the composition of the court-martial, there remained one important exception in terms of appointment of members of the military-legal process. As mentioned earlier concerning the *krijgsraad te velde*, both the KL and the KNIL had their own variant, which was not identical in terms of composition and tasks. First of all, contrary to the *krijgsraad te velde* KL, the military prosecutor in the *krijgsraad te velde* KNIL was always a civilian with an academic background in law. He was appointed by the Governor-General, as were his deputies.¹³⁷ Furthermore, the military prosecutor of the KNIL variant was at the same time the public prosecutor, thereby fulfilling a dual role. Due to the chaotic circumstances because of the war, their mandate was expanded, giving them special responsibilities, such as the investigation of alleged offenses and the arrest of suspects. They could even call witnesses and search houses.¹³⁸ These responsibilities were absent for military prosecutors serving the *krijgsraad te velde* KL.¹³⁹ As mentioned earlier, the separate KL and KNIL courts also meant that the respective army members were brought to trial in their corresponding court-martial. This was due to the fact that both institutions had their own criminal and military law which differed in some respects, resulting in the situation that KL soldiers could never be judged by a KNIL court and vice versa. Even if it appeared that both KL and KNIL units were involved in the same crime, there was no deviation from this rule.¹⁴⁰

Interestingly, the role for civilians in military law remains disputed. Some contemporary scholars suggest that military-legal organizations consisting of military personnel exclusively, probably undermines their independence and thus functioning.¹⁴¹ It could indeed be argued that the composition of military personnel in all variants of the courts-martial may lead to biased cases, for it is not in the interest of the military apparatus that certain (embarrassing) affairs become public i.e. can seriously damage the reputation of the army. On the other hand, if military personnel are not punished consequently and adequately

¹³⁷ See: Article 203 of the 'Herziene Rechtspleging Landmacht' KNIL. Nationaal Archief, Den Haag, Collectie 464 C.J. Warners, 1941-1980, nummer toegang 2.21.249, inventarisnummer 35.

¹³⁸ NL-HaNA, Warners, 2.21.249, inv.nr. 35; E. Bonn jr., 'Het Openbaar Ministerie in Indonesië van 15.08.1945 tot 27.12.1949', *Tijdschrift voor Strafrecht* Deel LX (1951), 111.

¹³⁹ The importance of this difference will become clear in the third chapter of this study.

¹⁴⁰ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 1320, Van: OvJ/AM Mr. C. Steevensz aan: Procureur-Generaal Felderhof., d.d. 25 juli 1949.

¹⁴¹ Limpach, 'Business as Usual: Dutch mass violence in the Indonesian war of independence 1945-49', Luttikhuis & Moses (red.), *Colonial Counterinsurgency and Mass Violence: The Dutch Empire in Indonesia*, 81; De Graaff, *De Militair-Rechterlijke Organisatie en haar verband met de bevelsverhoudingen bij de landmacht*, 364-365.

for offenses and crimes, it will lead to a disintegration of discipline and effectiveness of the army. During the war in the Dutch East-Indies, this was also debated, although opinions seemed to favor the absence of civilians in military law. Indeed, there seemed few proponents of this arrangement. In an article about the ‘*Zeekrijgsraad*’ during the Second World War, Officer H. Bakker wrote that the military composition of courts-martial was actually essential. First of all, only military members can empathize with suspects, because of the unique circumstances and situations that revolve around the military spectrum. Consequently, only military experienced men can effectively judge and determine the appropriate punishments. Second, it will damage the reputation of the courts-martial if outsiders, who have not experienced war at all, will judge those who have. As a solution, Bakker suggested that both the army as the navy should invest more in the education of officers, so this would become a certainty for the future.¹⁴² Harsher criticism was found in an article about the ‘*Herziene Rechtspleging Landmacht*’ (HRL) by L.M. Rollin Couquerque, which was published in 1946. The HRL altered the jurisdiction for KNIL units, thereby capturing the role for civilians as military prosecutors in the military-legal process. He criticized the fact that the local commander was effectively ignored in his crucial role of disciplining his troops. Instead, this responsibility was now in the hands of the military prosecutor, thus transforming the military-legal process as: “*totaal verknoeid*”. What soldiers needed were experienced officers who could relate to the difficult conditions. In turn, officers could discipline soldiers accordingly in case of offenses and crimes. This was necessary more than ever; young people were morally deprived because of the German example.¹⁴³ Next, Couquerque stated that: “*Blijkbaar heeft de steller van de ordonnantie deze grondgedachte van de militaire positie niet gekend; hij heeft de militaire maatschappij beschouwd als de burgerlijke in uniform en heeft niet vermoed, dat dit evenmin juist is als dat een burger-rechtsgeleerde, die tot openbaar aanklager gebombardeerd, van wege de oorlogsomstandigheden in uniform gestoken en van militaire rangsdistinctieven voorzien is, een militair jurist wordt[.]*”¹⁴⁴ Finally, he was very concerned with the lack of experience in the civil legal departments; considering that civilian prosecutors were accountable to the Attorney General, this became a responsibility of the latter. Then there was J.C. van Panthaleon, who served as officer-commissioner in the *krijgsraad te velde* during the beginning of the war. He also explicitly stated that he did not

¹⁴² H. Bakker, ‘Militair Straf- en Tucht recht bij onze Zeemacht in het Vereenigd Koninkrijk van Groot-Brittannië en Noord-Ierland’, *Militair-Rechtelijk Tijdschrift* Deel XXXIX (1946), 96-97.

¹⁴³ L.M. Rollin Couquerque, ‘De herziene Rechtspleging bij de Landmacht in Nederlandsch-Indië: Op den verkeerden weg’, *Militair-Rechtelijk Tijdschrift* Deel XXXIX (1946), 54.

¹⁴⁴ Couquerque, ‘De herziene Rechtspleging bij de Landmacht in Nederlandsch-Indië’, *Militair-Rechtelijk Tijdschrift* Deel XXXIX, 49-54.

understand why a civilian was regarded as better suited for the position of prosecutor than a military counterpart in a regular court-martial. He argued that the latter was far more aware of the background in which certain events could unfold, while also reckoning with the troop sentiments regarding these cases. If it were up to him, he would exchange these criteria immediately.¹⁴⁵ Interestingly, verdicts in the KNIL *krijgsraden te velde*, in which civilians operated as prosecutor, seemed far higher compared to the KL counterpart,¹⁴⁶ meaning that they either indeed were unable to relate to the circumstances, or were more objectively instead. This notion will be further addressed in the subsequent chapter, when punishments are presented.



*Above is a picture of two officers in Java in 1946. The officer on the right is supreme commander Spoor.*¹⁴⁷

¹⁴⁵ Panthaleon Baron van Eck, 'Hervorming van de rechtspleging in militaire strafzaken', *Militair-Rechtelijk Tijdschrift* Deel XXXIX, 136.

¹⁴⁶ Excessennota, Tweede Kamer 1968-1969, 10008, appendix 6.

¹⁴⁷ Nationaal Archief, 'Twee officieren bij een bivak op Java, rechts generaal S.H. Spoor', (December 22, 2014).

The remaining elements in the military-legal apparatus

Next to the *krijgsraad te velde*, there existed several other military-legal organizations in the Dutch East-Indies that served a role in the military-judicial process. In order to comprehend the relation between the *krijgsraad te velde* and other institutes, a brief presentation and explanation of the latter is important. For instance, as was explained earlier, jurists who served the civil prosecution in the Dutch East-Indies also filled key positions in the *krijgsraad te velde* KNIL. Due to the difficult circumstances i.e. the ongoing war in which they operated, some of the legal organizations became even more intertwined, meaning that staff had multiple roles within and between several associations.

2.1 Supreme Court and High Military Court

At the top of the chain was the *Hooggerechtshof* (from now on: Supreme Court), which was institutionalized in 1819. Probably the most important person in the Supreme Court was the Attorney General. Rulings of the Supreme Court were called ‘*arresten*’ (judgments), and were binding. The Attorney General had several important responsibilities. First of all, the Attorney General headed the investigation and prosecution of war crimes committed by Japanese soldiers during the Second World War. The creation of Temporal courts-martial, in which military prosecutors led the actual investigation, was meant just for this purpose. This type of court-martial focused specifically on managing trials against Japanese war criminals, but also served as an alternative in case a *krijgsraad te velde* KNIL was absent. Eventually, by organizing sufficient *krijgsraden te velde* KNIL, this did not become their main task.¹⁴⁸ The Attorney General was responsible for all the military prosecutors. Next, the Attorney General was solely accountable for the functioning of the police in the entire archipelago. Finally, as of 1948, the Attorney General was appointed as ‘*exceptional*’ member of the federal government.¹⁴⁹

The position of Attorney General was thus very important, even in terms of military justice. It was assigned to H.W. Felderhof in early 1946. Felderhof had substantial experience in the field of military law. He served as a military prosecutor in the 1930s in the Dutch East-Indies.¹⁵⁰ Furthermore, he was considered a specialist in the field of military law. He received

¹⁴⁸ Excessennota, Bijlage 8.

¹⁴⁹ Bonn jr., ‘Het Openbaar Ministerie in Indonesië van 15.08.1945 tot 27.12.1949’, *Tijdschrift voor Strafrecht* Deel LX, 117.

¹⁵⁰ L.M. Rollin Couquerque & E.G. de Wijs, ‘Krijgsraad te Timahi, Vonnis van 30 December 1936’, *Militair-Rechtelijk Tijdschrift* Deel XXXIII (1937), 68.

his education in Breda. It appears that he held a different position in the late 1930s, because he was eventually captured by the Germans and imprisoned in concentration camp Vught, from which he managed to escape in 1944. When the position of Attorney General in the Dutch East-Indies became vacant, he was described as following: “*Felderhof is objectief van inslag, heeft een gezonde zin voor de werkelijkheid en is volhardend in de arbeid die hij op zich neemt. (...) Geen der Parket-juristen, die op de ranglijst boven hem staan, evenaart hem.*”¹⁵¹ Based on his experience and expertise, the positioning of Felderhof as Attorney General appeared logical. He would become responsible for administering justice in the Dutch East-Indies, together with army commander Spoor, meaning that both had to cooperate closely, especially because of their overlapping jurisdiction.

One of the main challenges of Felderhof was managing the structural staff shortage in his legal departments. After the Second World War, there were only sixteen jurists available.¹⁵² It was impossible to effectuate civil law, so the primary focus became criminal law. The right to appeal was temporarily postponed, at least until the end of the war.¹⁵³ On top of these problems, he now had to manage his jurists in the Temporal courts-martial, the *krijgsraad te velde* KNIL, the public prosecution and as we will see, the “*bijzondere krijgsgerechten*” as well. While many of these jurists served dual roles, the amount of work soon became impossible to manage. In Borneo in 1946 it was reported that: “*(...) de afdoening van strafzaken uitermate langzaam. De militaire auditie is overkropt met zaken en kan zijn taak niet meer aan.*”¹⁵⁴ The military annex public prosecutor L. Th. Vervloet complained about the allocation of criminal cases, which his parquet, consisting of him and four deputies, could hardly manage because of their obligations in the *krijgsraad te velde* and the Temporal courts-martial. He stressed the amount of ‘many’ cases.¹⁵⁵ Yet another indicator of troubling manpower was the refusal of occupying the judiciary in Madura in 1947, which was deemed impossible due to the “*nijpende personeelstekort*”¹⁵⁶. Moreover, in early 1949 it

¹⁵¹ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4634. Van: Proc.Gen. Mr. J.E. Jonkers, Aan: Lt.Gov.Gen. Batavia, d.d. 20 Februari 1946.

¹⁵² NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4756, Telegram van A.H.C. Gieben, Directeur van Justitie, aan den Lt. Gouverneur-Generaal. Batavia, d.d. 15 Februari 1946.

¹⁵³ Ibidem.

¹⁵⁴ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 1276, van: w.g. F.P. Heckman, 16 Oktober 1946. ‘Politiek Verslag over de Maand September 1946, Betreffende de Residentie Oost Borneo’.

¹⁵⁵ ¹⁵⁵ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4643, van: Mr. L. Th. Vervloet, Aan: Proc-Gen. Batavia. D.d. 17 September 1947.

¹⁵⁶ ¹⁵⁶ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4621. 7 July 1948. Van Secretaris van de Staat aan Zijne Excellentie de Wali Negara van Madoera.

was noted that the deputies of the military prosecutors could not keep up anymore.¹⁵⁷ Following these problems was an ‘exodus’ of law-involved personnel. Most of them were temporarily appointed in 1945 and their contracts were terminated in 1948.¹⁵⁸ In some cases the personnel of less burdened courts-martial were temporarily appointed elsewhere, but this was not a permanent solution to the problem.¹⁵⁹

Next to the Supreme Court, there was the High Military Court, which existed both in the Netherlands as in the Dutch East-Indies because of their separate jurisdiction. By law, the High Military Court had several primary functions. These ranged from managing all trials of offenses committed by flag and superior officers, to offering advice in cases of pardon.¹⁶⁰ However, there were serious issues with its operations. During the occupation in the Second World War it was not possible to fulfill these obligations. Due to practical reasons, cases of officers, whom were normally brought for the High Military Court, were managed by the *krijgsraad te velde*. This was only applicable to the KL variant, however, because the High Military Court in the Dutch East-Indies still served as the main institution for court-martialing staff officers above the rank of captain regarding KNIL forces.¹⁶¹ Also, considering that the possibility of appeal was restricted, this was yet another task of which the High Military Court was stripped, although there were exceptions in cases where fiat execution by the commanding general was refused.¹⁶² So formally, the High Military Court was still the practitioner in cases of appeal, although in practice, this was rarely the case.

2.2 Bijzondere Krijgsgerechten

In the course of 1948, problems occurred due to the consequences of the Police Actions, in which much territory was gained over the enemy. This meant a severe expansion of jurisdiction, for which manpower was not available. Candidates with a background in law that applied in these territories to serve the Dutch cause, risked their lives because of terror

¹⁵⁷ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4660, Rapport tijdvak 24 januari tot 1 februari 1949. Van: vertegenwoordiger Departement Justitie Oost-Java. Aan: Secretariaat van Staat.

¹⁵⁸ Bonn Jr., ‘Het Openbaar Ministerie in Indonesië van 15.08.1945 tot 27.12.1949’, *Tijdschrift voor Strafrecht* Deel LX, 123.

¹⁵⁹ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4644, Van: Temporaire Krijgsraad Semarang, Mr. I.C. de Regt Res. Luit. Kol. Inf. President van Temp. Krijgsr. in Semarang d.d. 11 augustus 1947. Aan: Directeur van Justitie.

¹⁶⁰ It is not necessary to enlist all obligations, because most are irrelevant to the aim of this study. See: Bakker, ‘Militair Straf- en Tucht recht bij onze Zeemacht in het Vereenigd Koninkrijk van Groot-Brittannië en Noord-Ierland’, *Militair-Rechtelijk Tijdschrift* Deel XXXIX, 61-62.

¹⁶¹ Excessennota, Bijlage 8.

¹⁶² De Graaff, *De Militair-Rechterlijke Organisatie en haar verband met de bevelsverhoudingen bij de landmacht*, 348.

campaigns of the enemy in which collaborators with the Dutch were kidnapped, killed or both. Consequently, applicants became fewer due to threats and successful actions of the enemy.

That is why the special court-martial (*bijzondere krijgsgerechten*) was imposed with a specified jurisdiction assigned to the newly conquered territories after the Police Actions. Indeed, this form of court-martial only originated in Java and Sumatra. The special courts-martial focused primarily on political enemies. Emphasis was placed on a speedy settlement of all incoming cases regarding specific enemy political crimes. For example, if someone endangered the lives of Dutch soldiers, civilians or damaged the Dutch cause in general, they could then enter the accelerated trial of this institution. If the case in question appeared too complicated, it was sent forward to the regular military or civil court for further investigation.¹⁶³ The composition of this form of court-martial and the role of those involved did not differ much from others mentioned. One obvious difference was that it consisted of one person only, who was the judge and thus was responsible for the daily administration of justice. Moreover, it seemed that their range of sentences were strict: it was in their power to impose life imprisonment, prison sentences up to twenty years, and in the most extreme cases, the death penalty as well.¹⁶⁴ Next to the judge a secretary and a prosecutor were assigned. The position of the latter was occupied by the military prosecutor that was already appointed to the Temporal court-martial in the region, but in case there was no Temporal court-martial, superior officers of the KNIL had the right to assign magistrates as replacements of the public prosecutors.¹⁶⁵ All suspects that were brought to trial had the opportunity to defend themselves, formally with the help of an officer of the Dutch army, although it is not clear if this was always the case. Also, it was aimed for that the judgment of cases would be settled in the capital of the district where the crime was committed.¹⁶⁶

Next to the special courts-martial, there was also the phenomenon of the *bijzondere rechter*. This ‘traveling judge’ managed civil cases in newly conquered territory, where the

¹⁶³ L. de Jong, ‘*Het Koninkrijk der Nederlanden in de Tweede Wereldoorlog*’ - Deel 12 – Epiloog (2e band) (Leiden 1988), 928; Bonn Jr., ‘Het Openbaar Ministerie in Indonesië van 15.08.1945 tot 27.12.1949’, Tijdschrift voor Strafrecht Deel LX, 121.

¹⁶⁴ Bonn Jr., ‘Het Openbaar Ministerie in Indonesië van 15.08.1945 tot 27.12.1949’, Tijdschrift voor Strafrecht Deel LX; J.W.G. Cornet, ‘Het bijzonder krijgsgerecht’, *Militair-Rechtelijk Tijdschrift* Deel XLII (1949), 489.

¹⁶⁵ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4623, van: Mr. J.M.L. Hosselet, Secretaris van Staat, Hoofd Departement Justitie, aan: Legercommandant, d.d. 25 oktober 1949.

¹⁶⁶ This was mentioned in the Javaanse Courant 1948, no. 27 (Militair Gezag no. 522).

law-affiliated personnel seemed loyal to the Indonesian nationalists.¹⁶⁷ He too acted alone and traveled in designated areas on behalf of the Attorney General. The people were selected from a pool of public prosecutors and their deputies.¹⁶⁸ For example, jurist W.R. Weisfelt during his travels stumbled upon a military prison. In the prison were sixty-eight suspects, while there was only room for twenty people. The local commander stated that there were too few men available to interview the suspects, so that their trials were postponed indefinitely. Weisfelt suggested imposing a court-martial in this area, with him appointed as judge, so to manage the backlog.¹⁶⁹ Indeed, the synonym of a '*militaire rechter te velde*' seems appropriate.¹⁷⁰ Yet, some further clarification is needed in respect to the prisons in the Dutch East-Indies during the war. While there were some exceptions in regard to the overcrowding in prisons,¹⁷¹ it is generally considered that most prisons were indeed bursting with people. It is argued that one of the primary reasons for this was because of the different goals of the military leadership and the judiciary: prisoners were mostly suspects of consorting with the enemy, so keeping these people inside prisons would result in safer conditions for Dutch forces.¹⁷² However, the main goal of the judiciary was handling as many criminal cases as possible, even though this could result into acquittal of future enemy combatants due to the lack of evidence for example.¹⁷³ The Dutch forces regularly swept areas in which thousands of suspects were arrested. For instance, it appeared that during and after *Operatie Kraai*, around forty thousand enemy soldiers were jailed.¹⁷⁴ This resulted in questionable conditions in which the suspects had to manage themselves. One of the worst cases was the prison in Surabaya, which could manage six hundred inmates, but was severely overcrowded with four thousand captives. Indeed, prosecuting all of these and other suspects was impossible for the judiciary to manage and drastically increased their already challenging workload.

¹⁶⁷ L.A.E. Suermondt, 'Vergeten rechtspleging, de bijzondere krijgsgerechten in het voormalige Nederlands Oost-Indië 1948-1949', *Militair-Rechtelijk Tijdschrift* XCIII (2000), 121.

¹⁶⁸ Bonn Jr., 'Het Openbaar Ministerie in Indonesië van 15.08.1945 tot 27.12.1949', *Tijdschrift voor Strafrecht* Deel LX, 123.

¹⁶⁹ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4661, Verslag dienstreis naar Indragiri van 18 t/m 24 maart, 1949. Vertegenwoordiger van Dep. Justitie, Mr. W.R. Weisfelt.

¹⁷⁰ Cornet, 'Het bijzonder krijgsgerecht', *Militair-Rechtelijk Tijdschrift* Deel XLII, 483.

¹⁷¹ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4661, Verslag dienstreis 16 juni tot 4 juli 1949, Riouw, Bengkalis en Selatpandjang. Mr. W.H. Gallas.

¹⁷² Suermondt, 'Vergeten rechtspleging, de bijzondere krijgsgerechten in het voormalige Nederlands Oost-Indië 1948-1949', *Militair-Rechtelijk Tijdschrift* XCIII, 124.

¹⁷³ Ibidem.

¹⁷⁴ R. Raben, 'Indonesiërs in Nederlandse kampen', (October 2014), <http://www.historischnieuwsblad.nl/nl/artikel/41614/indonesiers-in-nederlandse-kampen.html> (January 17, 2015).

Although the relation between the *bijzondere krijgsgerecht*, the *bijzondere rechter* and other military courts-martial appears vague at first glance, the creation of these new institutions surely affected the scarce amount of jurists, especially when considering that the pool of capable jurists was already limited because of their obligations in the military courts-martial for the KNIL and the civil courts. Indeed, the prosecutors or magistrates that were assigned to the special courts-martial were yet again burdened with even more responsibilities. In that regard, the creation of the *bijzondere krijgsgerechten* was actually reactionary to this problem in the first place.¹⁷⁵ Contrary to the expectations, the essence of the organization and legal process eventually failed, because there were simply too many cases for the judicial system to manage. Even the help of military prosecutors of the KL did not change this, meaning that the burden spread to that institute as well.¹⁷⁶

2.3 Military Police

The *Korps Militaire Politie* (KMP)¹⁷⁷ in the Dutch East-Indies was an important tool regarding the investigation of alleged crimes, both military as civil. At the beginning of the conflict, there were already several members operating in the area, although in very small numbers and thus not very effective. For example, the people involved were assigned to investigate crimes committed by soldiers, but were also temporarily replacing duties of the normal police. Other tasks involved ‘maintaining discipline and order among the troops, locating and holding unauthorized absentees (including deserters), investigating complaints against soldiers, the monitoring and removal of prisoners, arranging military traffic and guiding military convoys.’¹⁷⁸

¹⁷⁵ Bonn Jr., ‘Het Openbaar Ministerie in Indonesië van 15.08.1945 tot 27.12.1949’, *Tijdschrift voor Strafrecht* Deel LX, 121-122.

¹⁷⁶ Ibidem, 122.

¹⁷⁷ Military Police.

¹⁷⁸ H. Roozenbeek, J. Van Woensel & F. Bethlehem, *Een Krachting Instrument: De Koninklijke Marechaussee, 1814-2014* (The Hague 2014) 146.



*A member of the KMP in action.*¹⁷⁹

In late 1946, it was decided that the KMP would operate together with the Dutch equivalent of ‘*marechausseés*’ (KMar), bringing the total amount of manpower to two thousand five hundred people. The Dutch police forces were adequately trained in the motherland, while the indigenous assignees were considered talents and had important knowledge of the local areas and customs.¹⁸⁰ Most of the members of the KMP would receive special investigative powers (‘*nasporing*’) in order to fulfill their tasks.¹⁸¹ Special arrangements were introduced as well, which increased the cooperation between the military and civil police departments; the latter was the responsibility of the Attorney General.¹⁸²

Despite the influx of trained police forces combined with local talents, it appeared that their task was very challenging, which led to a dubious quality of work. For example, when asked why there were so many reports of soldiers looting and stealing in the area, Lieutenant-Colonel H. Sjouke responded that the alleged robberies of Dutch soldiers were partly untrue and were also due to the ineffectiveness of the KMP, whose members were not fully trained and thus not capable for their tasks. He also noted that the KMP operated much on low strength, which did not benefit the handling of criminal cases. The attachment of his

¹⁷⁹ Roozenbeek et al., *Een Krachting Instrument: De Koninklijke Marechaussee, 1814-2014*, 145.

¹⁸⁰ Ibidem, 145.

¹⁸¹ Bonn Jr., ‘Het Openbaar Ministerie in Indonesië van 15.08.1945 tot 27.12.1949’, *Tijdschrift voor Strafrecht* Deel LX, 124. See footnote 1.

¹⁸² Ibidem, 116-117, 124.

response consisted of all known criminal cases investigated by the KMP in the period of 21 July to 21 October in 1947, which revealed that the KMP indeed managed civil cases.¹⁸³ Another indication of their shifting performance was revealed when leading military prosecutors held a meeting in January 1949. On the agenda was the ‘addition and expansion of capable detectives in the KMP’. This surely hinted at the fact that the KMP was in desperate need of capable personnel to fulfill their tasks. Minuted was the fact that the influx of forces for the KMP from the Netherlands was no longer an option. It was then suggested to transfer such people from the regular military forces, which was seriously doubted, because basically – and especially after the Second Police Action – the army was in dire need of personnel as well.¹⁸⁴

The complaints continued until the official transfer of sovereignty in 1949. The commander of the KMP was criticized for his performance in a case in which Special Forces of the KST (*Korps Speciale Troepen*) had allegedly killed a civil servant. The KMP investigated the events, but was unable to locate witnesses, which was probably even more difficult due to the unsafe enemy territory in which they resided. In defense of the KMP, commander H.E.M. Bakhuis stated that a serious lack of manpower, the ongoing demobilization, repatriation and a huge backlog, basically diminished all progress in this case.¹⁸⁵ This surely affected all other cases as well.

The quality of the work of the KMP, however, was of crucial importance in the military-judicial process during the War of Indonesian Independence. The KMP had special investigative rights which were referred to as “*nasporing*”. For example, members of the KMP were able to arrest suspects or to perform house searches. Their findings were then used in the trials. In case of alleged crimes concerning troops of the KL, the commanding general could order an investigation, which was normally executed by the KMP. In return, the KMP transferred its findings to the military prosecutor of the KL, who offered legal advice to the commanding general. At that moment, it was decided if a case was brought for trial. However, in case of an alleged crime committed by a member of the KNIL, the rules were different. The military prosecutor of the KNIL was also granted these special investigative rights. Moreover,

¹⁸³ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 3775, van: TTC Noord-Sumatra, aan: Legercommandant in Batavia, d.d.: 25-10-1947.

¹⁸⁴ Nationaal Archief, Den Haag, Ministerie van Defensie: Hoog Militair Gerechtshof en Advocaat-Fiscaal bij het Hoog Militair Gerechtshof, nummer toegang 2.09.79, inventarisnummer 1747, 25, 26 en 27 Januari, 1949. Agenda voor de Auditeurs-Vergadering.

¹⁸⁵ NL-HaNA, Proc.-Gen. Hooggerechtshof Ned.-Ind., 2.10.17, inv.nr.1296, 23 November 1949. Van: Kol. Der Inf. H.E.M. Bakhuis commandant KMP, aan: Proc.Gen. Felderhof.

he was able to start and prosecute his own investigations, thus bypassing the commanding general. Indeed, contrary to the military prosecutor of the KNIL, the military prosecutor of the KL was entirely dependent on the quality of the work of the KMP. This was one of the consequences of the separation of military law between both army units.

Legal procedures

The final part of this chapter will take into consideration the relevant remaining legal procedures during the war. It will also incorporate notions about these procedures, which were debated at the time by jurists in the field of military law. Some elements may have been presented earlier, but in case of those that only scrapped the surface, a more thorough explanation is in order to fully comprehend the consequences. When it is clear which legal protocols were applied, it will certainly help with evaluating the practice of military law, which will be the topic of the third and final chapter of this study.

In terms of legal procedures there were some profound changes with the appearance of the *krijgsraad te velde*, compared to the situation before the Second World War. First of all, contrary to the regular court-martial where judicial authority lay with the garrison commander, the *krijgsraad te velde* positioned the commanding general as the head of military justice. At the top of the hierarchy, he received all criminal cases which needed his judgment i.e. only after his approval cases were actually managed by the *krijgsraad te velde*.¹⁸⁶ This change was initiated because in the former situation, the garrison commander could initiate the court-martial process, which led to a serious lack of supervision on the judicial process. Indeed, this was objectionable.¹⁸⁷ Of course, this did not apply for the *krijgsraad te velde* KNIL, because in that case the military prosecutor, who was a civilian, decided if a case was necessary for prosecution.¹⁸⁸ Considering the cases managed by the KL, this meant that army commander Spoor was responsible for the whole legal process from the investigation of an alleged crime to the execution of the verdict. If the legal procedure was executed fairly, he delegated the first task to the local commander or the KMP. In turn, the

¹⁸⁶ Mante, *Wetboek van Militair Strafrecht en Wet op de Krijgstucht*, 1947, Article 254: “De Commanderende Generaal, of de gene, welken hij, in zijne plaats, daartoe mogt hebben benoemd, zal beoordelen, of de zaak door den Krijgsraad te velde behoort te worden onderzocht, en, in dit geval, zullen de stukken, daartoe behoordende, worden gesteld in handen van den Auditeur-Militair te velde, ten einde, daaromtrent, te procederen ingevolge de Wet.”

¹⁸⁷ De Graaff, *De Militair-Rechterlijke Organisatie en haar verband met de bevelsverhoudingen bij de landmacht*, 345.

¹⁸⁸ Bonn Jr., ‘Het Openbaar Ministerie in Indonesië van 15.08.1945 tot 27.12.1949’, *Tijdschrift voor Strafrecht* Deel LX, 114; Rollin Couquerque, ‘De herziene Rechtspleging bij de Landmacht in Nederlandsch-Indië: Op den verkeerden weg’, *Militair-Rechtelijk Tijdschrift* Deel XXXIX, 52.

KMP transferred their findings to the military prosecutor, who would then advise Spoor how to proceed. While it was expected that Spoor would follow the advice of the military prosecutor, who was an expert in law after all, he was not obliged to do so.¹⁸⁹ Indeed, it is fair to assume that this is a rather dubious position for someone without a background in law. It is worth mentioning that the position of the army commander as head of the military legal process was already criticized in an article in 1946 by someone who obtained experience in a *krijgsraad te velde* in the Dutch East-Indies: “*Ik betwist in het bijzonder, dat de garnizoenscommandant (...), of de commandeerend generaal (...), of zijn plaatsvervanger, in staat zouden zijn te beoordeelen, of de generale of speciale preventie de behandeling van een zaak door den krijgsraad eischt. Deze beoordeling hoort niet tot het eigenlijke werk van die officieren, zij zijn er niet voor benoemd, zij zijn er niet voor opgeleid en zij hebben heus wel ander werk te doen.*”¹⁹⁰ In that regard, the military prosecutor of the KNIL certainly had more space to maneuver, for he was in the position to independently bring a case to trial in the *krijgsraad te velde* KNIL.

Another important legal procedure for which Lieutenant-General Spoor was responsible was the execution of court-martial cases. Regardless of the KNIL or KL court-martial type, every verdict was sent to him, or his appointed replacement, either of which then officially had to give Spoor’s permission for execution. This meant that the office of Spoor received thousands of sentences over the years, which needed reviewing. In case of objection by Spoor, and the dispute being a KL case, the matter was presented to the Crown (Dutch government) who then had to decide what form of execution was appropriate. Generally, there existed four scenarios from this point. First, the Crown could decide that Spoor had yet to execute the case. Second, it was possible that a case was presented at the High Military Court in the Netherlands, but only if the verdict was acquittal. Third, the High Military Court could handle appeals, but this form of legal procedure was temporarily suspended during the war for trials managed by the *krijgsraad te velde* (both KL and KNIL). Finally, the case could return to the court-martial, with the intention of repeating the trial, although this was highly exceptional.¹⁹¹ Regarding KNIL cases, where appeal was temporarily suspended as well, the execution of verdicts also was the responsibility of Spoor. When he disagreed, verdicts of

¹⁸⁹ Centrale Archief Selectiedienst, *Inventaris van het archief van het Hoog Militair Gerechtshof, 1946-1990* (The Hague 2006), 9.

¹⁹⁰ Panthaleon Baron van Eck, ‘Hervorming van de rechtspleging in militaire strafzaken’, *Militair-Rechtelijk Tijdschrift* Deel XXXIX, 138.

¹⁹¹ De Graaff, *De Militair-Rechterlijke Organisatie en haar verband met de bevelsverhoudingen bij de landmacht*, 338.

certain cases were sent to the Governor-General instead of the Crown, who acted as the highest political authority in the region after all.¹⁹² This whole arrangement meant two things. First, there was an alternative for the absence of appeal, albeit a very meager one. Second, on top of investigating alleged crimes and determining which cases should be handled by a *krijgsraad te velde* KL and KNIL, supreme commander Spoor was also the executioner of the verdict.

The fact that the ability to appeal remained absent during the war was both remarkable and troublesome. The possibility of appeal in cases of judgment by courts-martial, including those of the *krijgsraad te velde*, was temporarily suspended during the Second World War due to practical reasons i.e. the lack of both sufficient educated personnel and a permanent location in which the High Military Court resided. But this procedure remained unchanged even after the capitulation of Germany and Japan.¹⁹³ It seemed that the right to appeal already returned on July 3, 1947, when it was formally reinstituted, with the only restriction that the Crown had the right to withdraw this procedure in case of actual war. But following this decision, the Crown decided on July 16, 1947, indeed only two weeks later, that the reinstitution of appeal in cases managed by the *krijgsraad te velde* KL in the Dutch East-Indies was impractical and thus revoked. Only when sovereignty of the Indonesian archipelago was transferred to Indonesia on December 27, 1949, appeal was made possible again.¹⁹⁴ The KNIL units shared a similar fate. While a trial by a regular court-martial included the right to appeal,¹⁹⁵ it was immediately suspended for both the *krijgsraad te velde* and the Temporal courts-martial.¹⁹⁶ Considering that the High Military Court in the Dutch East-Indies was active, this is actually remarkable, because it shows just how alarming the lack of adequate law-educated personnel was.

Now, in the field of law, the right to appeal is considered a very important civil procedure. It is also seen as one of the most natural rights.¹⁹⁷ It was not until 1926 when the

¹⁹² See: Article 205 and Article 208 of the 'Herziene Rechtspleging Landmacht' KNIL. NL-HaNA, Warners, 2.21.249, inv.nr. 35.

¹⁹³ De Graaff, *De Militair-Rechterlijke Organisatie en haar verband met de bevelsverhoudingen bij de landmacht*, 340.

¹⁹⁴ Ibidem, 341.

¹⁹⁵ See: Article 169 of the 'Herziene Rechtspleging Landmacht' KNIL. NL-HaNA, Warners, 2.21.249, inv.nr. 35.

¹⁹⁶ See: Article 170 of the 'Herziene Rechtspleging Landmacht' KNIL: "Van de bepaling van het voorgaande artikel zijn echter uitgezonderd de vonnissen, welke door de krijgsraden TE VELDE en door de Temporaire krijgsraden zijn gewezen". NL-HaNA, Warners, 2.21.249, inv.nr. 35.

¹⁹⁷ T. Blom, 'Grondslagen van het hoger beroep', in: R.E. de Winter & P.G. Wiewel (red.), *Stroomlijning van het hoger beroep in strafzaken* (Amsterdam 2007), 61.

right to appeal was institutionalized in the Dutch penal code, based on “*een eisch van praktische noodzakelijkheid*.”¹⁹⁸ Appealing a case is primarily applied in situations where probable unjust decisions are in need of correction. It offers another opportunity to uncover the truth.¹⁹⁹ This right is not limited to the defendant; the prosecutor could also decide to appeal a case if the verdict is considered too weak, or in case of acquittal.²⁰⁰ However, the right to appeal serves other important purposes as well. Next to correcting judgments, a second function is that the right to appeal protects against the arbitrariness of the judge. In practice, this means that both the defendant as the prosecutor share a guarantee that their case is not restricted to the possible bigotry of a single judge. Of course, it could be possible that the higher court that manages the appeal positions an arbitrary judge as well, but it certainly reduces the number of errors possible.²⁰¹ Third, the right to appeal contributes in cases where new developments may lead to new insights as well. For example, it could be that certain new-found evidence transforms the perception of a case. Fourth, the right to appeal increases both legal uniformity and legal development. A renewed treatment of past verdicts may lead to standardized directions in terms of punishments. Finally, it promotes authority and judicial judgment in general, because the quality of the work is monitored, it leads to new insights or it simply offers another opportunity to settle a case.²⁰²

The absence of the right to appeal in both the Dutch KL as the KNIL army during the War of Indonesian Independence, surely affected the quality of the work of the military legal system. The notion that there existed an alternative for this procedure is true, but this was a very weak substitute. The alternative was dependent on either army commander Spoor, whose role as head of the military legal system during this period was already criticized, or the Governor-General. This becomes even clearer when taking into account the actual numbers. The amount of cases that received no fiat from Spoor was only eighty-eight, on a total of 5.732 verdicts.²⁰³ This is less than one percent of all cases. Of the eighty-eight cases refused, the Crown decided that a fiat by Spoor was necessary after all for seventy-two verdicts. This leaves sixteen cases, of which fifteen were managed by the High Military Court in the Netherlands. In eight of those, the verdict of the High Military Court differed from that of the

¹⁹⁸ Blom, ‘Grondslagen van het hoger beroep’, in: R.E. de Winter & P.G. Wiewel (red.), *Stroomlijning van het hoger beroep in strafzaken*, 62.

¹⁹⁹ G.J.M. Corstens, *Het Nederlands Strafprocesrecht* (Deventer 2014), 894.

²⁰⁰ Blom, ‘Grondslagen van het hoger beroep’, in: R.E. de Winter & P.G. Wiewel (red.), *Stroomlijning van het hoger beroep in strafzaken*, 62.

²⁰¹ Ibidem, 64.

²⁰² Ibidem, 64.

²⁰³ Plantenga, ‘Krijgsraden bij troepen te velde’, *Militair-Rechtelijk Tijdschrift* Deel XLV, 182.

krijgsraad te velde. While the amount of cases handled in this matter was little, it shows that judgment by a higher judge did differ and thus mattered as well. However, the cases are too few to determine if the important functions of appeal increased the quality of the military legal system in general. Instead, there were almost no cases considered by a higher judge, meaning that there was little to no supervision on the quality of the work of the *krijgsraad te velde*.

Furthermore, it would also be safe to state that the absence of appeal negatively affected legal uniformity. For example, jurist M.W.A. Damme wrote to head official B.J. Lambers (Department of Justice in Batavia), that he was worried about the differences in verdicts between the *krijgsraad te velde* KL, *krijgsraad te velde* KNIL and the Temporal courts-martial. He based this argument on the verdicts he forwarded, for which he was responsible. He mentioned a duty officer who had abandoned his post, receiving three weeks of solitary confinement, while another soldier was sentenced to three months of prison and discharge from the army for only stealing a pair of pants. At his proposal, a meeting was held between several military prosecutors, who discussed these and other cases. Their final judgment was that it was not realistic to compare verdicts this way. In their view, without taking into consideration the background in which the offenses were committed, the differences could never be adequately interpreted. On top of the meeting, it appeared that verdicts were not shared, so that the different military-legal organizations could not learn from each other.²⁰⁴ It seems that its importance was recognized only when the conflict was almost over, because on June 14, 1949 a more official meeting between military prosecutors was held. In the minutes of this meeting it was stated that: “*De Kolonel spreekt zijn verheugenis uit over deze tweede Auditeursvergadering, nu een dergelijk overleg reeds in vele onderdelen van het leger plaats vindt.*”²⁰⁵ Indeed, it appears that there was a serious lack of legal uniformity, of which the disparities in verdicts was the result of lack of supervision on the legal system, resulting in a decrease of the quality of the work in general.

²⁰⁴ NL-HaNA, Proc.-Gen. Hooggerechtshof Ned.-Ind., 2.10.17, inv.nr. 1283, van: w.g. MWA Damme, aan: Mr. B.J. Lambers, Batavia, d.d. 24 februari 1947.

²⁰⁵ NL-HaNA, Hoog Militair Gerechtshof, 2.09.79, inv.nr. 1747, d.d. vergadering 14-06-1949.

Chapter Three: The Practice of Military Justice

“Waar mij bekend is dat de Legercommandant uitermate zeer gesteld is op een deugdelijk onderzoek naar excessen [...]”²⁰⁶

“Hier ligt een taak voor de militaire justitie. In vele gevallen zal zij de pas moeten markeren. Waar het recht uit zijn voegen dreigt te geraken, moet zij met vaste hand leiding geven.”²⁰⁷

Whereas the previous chapter examined the military legal apparatus in terms of organizations and legal procedures, this part will consider the practice of military justice during the War of Indonesian Independence. Every facet of the military legal process that has not been explored yet, such as the causes for and practices of investigations, the experiences of those affiliated in the legal structure and the eventual punishments that followed through verdicts will be explained with the use of practical examples, which will be compared with the legal guidelines of the previous chapter. It will focus especially on the context in which the jurists operated, which will show the challenges and difficulties that were encountered before a case was ready to be managed by the *krijgsraad te velde*. This chapter should contribute in evaluating how effective the respective military legal departments and procedures actually were. Comparing theory and practice will allow coming to conclusions.

Media-driven investigations

As explained earlier, the investigation of alleged crimes committed by Dutch military personnel was a special right given only to several specific elements of the military legal system. Lieutenant-General Spoor, as head of the Dutch army, had the right to order an investigation at any time, which he then officially had to outsource to the KMP or the military prosecutor of the KNIL. Meanwhile, both the KMP and the military prosecutor of the KNIL could initiate their own investigations as well. The rulings were very clear, so that local commanders, theoretically, were capable of investigating military conduct, which was their responsibility, but were unable to either investigate alleged crimes, or use the KMP as their

²⁰⁶ NL-HaNA, Proc.-Gen. Hooggerechtshof Ned.-Ind., 2.10.17, inv.nr. 1328, telegram van: Proc.Gen. Felderhof aan: Commandant KMP Kol. H.E.M. Bakhuys, d.d. 12 april 1949.

²⁰⁷ Plantenga, ‘Krijgsraden bij troepen te velde’, *Militair-Rechtelijk Tijdschrift* Deel XLV, 146.

(private) detectives. Instead, members of the KMP: “(...) *behooren slechts verplicht te zijn de bevelen van hun eigen officieren op te volgen en, voorzoover opsporingsonderzoeken betreffende, bovendien van den A.-M., en van niemand anders.*”²⁰⁸ Finally, the military prosecutor of the KL, lacking special investigative rights, was dependent on the KMP as well.

Whenever army commander Spoor personally ordered an investigation, it was mostly due to in- or external pressure. The media were one important cause that led to such events, but political pressure was an important factor too. Publications in newspapers and magazines about (alleged) committed atrocities appeared regularly and were then escalated by politicians, in many cases the Minister, to the military leadership. Following the request, army commander Spoor himself ordered the military police, the local commander or a military prosecutor of the KNIL to examine certain events. For example, in the communist newspaper ‘*De Waarheid*’, a letter from a soldier was printed, in which the burning of villages in combination with “*meedogenloze slachtingen*” was announced in the western part of Java. It was also written that prisoners of war were shot in a remote place and others were apparently tortured with electrostatic generators.²⁰⁹ This publication led the *Minister of Overzeese Gebiedsdelen* to order an investigation of these events. Commanding general Spoor soon executed the request, although he was skeptical beforehand, because the newspaper in question was known for its dubious articles and communist links.

During the investigation, it appeared that the letter was genuine i.e. it was a letter from an actual soldier, but it was published without his knowledge. The village that was mentioned in the letter did not exist, however. Due to the author of the letter being revealed, it was possible for the investigators to track down the village that was probably meant in the letter. Their conclusion was that everything was fictional, except for the burning of several houses, which was justified as a necessity, for these houses apparently served as hide-outs for the enemy. Colonel H.M.G.J. Lentz who was responsible for examining the events, wrote to Spoor that: “(...) *het ons op heden nog nimmer is mogen gelukken om grotere gewapende terreurbenden volledig te omsingelen en te vernietigen.*”²¹⁰ Indeed, he basically stated that he wished it was true, for his troops seldom captured large enemy forces. While it is true that Dutch forces seldom encountered large enemy troops, there seems to be some questionable aspects in the process of military justice. First if all, it was not clear if the charges were

²⁰⁸ Emphasis added by the author of this paper. Ibidem, 142.

²⁰⁹ NL-HaNA, Proc.-Gen. Hooggerechtshof Ned.-Ind., 2.10.17, inv.nr. 1289. Reported in January 1949.

²¹⁰ Ibidem.

actually investigated by the KMP or a military prosecutor, either of which was normally responsible for that matter. Second, it appeared that the investigation was based on only questioning the subordinate commanders who were stationed in the area.²¹¹ Therefore, it seems that the investigation was not taken seriously, because it originated throughout an unreliable source and was executed by the wrong party.

Another example was an article titled ‘*Zuivering van Pesing*’, which was described in socialist magazine ‘*De Baanbreker*’ by author Beb Vuyk in May 1946. According to Vuyk, when the town of Pesing²¹² was conquered by Dutch forces, certain captives were transferred to the military police of the KNIL, consisting of Ambonese soldiers only. Afterwards, it was said that the captives were slaughtered by the latter. When Dutch forces took notice of this, quarrels and brawls arose between both parties.²¹³ Vuyk stated that everywhere the military police presented itself, it left behind many murders and tortured victims, which was apparently openly communicated by members of this force. When this article was passed to army commander Spoor, he expressed his doubts to the Director of Justice. First of all, the KNIL had no military police forces. This is true, because at this time (May 1946) of the conflict, the KMP was yet non-existing and the military police that was available, consisted of a hodgepodge that was not officially assigned to either the KL or the KNIL. Moreover, Spoor had visited the town after it was conquered and he was confident that nothing of the sort had happened. According to Spoor, there were twenty-seven prisoners taken when Pesing was conquered, of which three were sent to the hospital in Batavia, where one of them died. In his conclusion, Spoor wrote that: “*De aantijging, als zoude de M.P. van het K.N.I.L. ‘Kempetai en Gestapo-methoden’ toepassen, moet met verontwaardiging van de hand worden gewezen*”[.]²¹⁴ However, the explanation of Spoor was insufficient, because it was both biased and did not prove anything, which was why an independent investigation was ordered. The Department of Justice formed a commission that led the inspection. Following the inquiry, it seemed that two witnesses – a chaplain and a captain – explained that it seemed that at least two prisoners were illegally killed. But considering that it could not be proven that these victims no longer participated in hostilities when they were shot, the commission was convinced that no atrocities had taken place when Pesing was conquered; the article on which

²¹¹ Ibidem.

²¹² Pesing was located near Batavia.

²¹³ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4716. Van: E.O. van Boetzelaer, Gouvernment-Secretaris. Aan: Luitenant-Generaal Nederlands-Indië. Gebaseerd op artikel Bep Vuyk in de ‘*Baanbreker*’. D.d. 13 Mei 1946.

²¹⁴ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4716, van: Spoor, aan: Directeur van Justitie.

the atrocities were based, was thus, in their eyes, of a very dubious nature.²¹⁵ The commission concluded with the notion that excesses should be interpreted in the context of the immediate preceding battle state.²¹⁶ It appears then, that in the worst case scenario, two innocent men were killed, while the article mentioned far worse atrocities. At least a proper investigation followed, through the forming of a commission.

In February 1949, roughly one month after *Operatie Kraai*, the town of Peniwen in East Java was visited by Dutch forces through a cleansing operation by the KNIL. Afterwards, a newspaper published a story about this military operation, based on eye-witness reports.²¹⁷ It was said that women were raped and civilians were killed, when a school that served as a local hospital was raided by these forces. As it appears, this recently became a news story again during the writing of this thesis.²¹⁸ When the news of the events reached Lieutenant-General Spoor, he insisted that the military prosecutor in the area be notified immediately: “[Aangezien] het hier troepen van het KNIL betreft zal ik [Procureur-Generaal Felderhof] verzoeken zijn vertegenwoordiger te Soerabaya voor dit onderzoek beschikbaar te stellen”.²¹⁹ Also, a research commission was formed consisting of several officers and jurists. During their investigation, a premature conclusion was suddenly published in a newspaper, which led to complaints of the military prosecutors.²²⁰ The commission interrogated dozens of people, both civilians and soldiers. Their conclusion was that at least four, at most five people were killed under unclear circumstances. One of the main difficulties was identifying the perpetrator(s). It was believed that some of the Ambonese soldiers that were involved, had acted inappropriately, but it remained unclear who exactly shot the civilians. Based on the eye-witness reports, there was not enough evidence to build a case. Furthermore, proving rape was deemed difficult as well. This topic was once addressed in one of the few meetings between military prosecutors which clarified on the difficulty: “*De kapt.v.Heemstra meent dat er een lacune in de wet is op het punt van verkrachting. Het bewijs daartoe is n.l. moeilijk te*

²¹⁵ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4716, Verslag van de Commissie in verband met de militaire bezetting van Pesing, 15-04-1946.

²¹⁶ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4716, van: mr. A.H.C. Gieben, Directeur van Justitie, d.d. 17 augustus 1946.

²¹⁷ Nationaal Archief, Den Haag, Ministerie van Defensie: Strijdkrachten in Nederlands-Indië, nummer toegang 2.13.132, inventarisnummer 1332.

²¹⁸ Unknown author, ‘Staat aangeklaagd om marteling en verkrachting in Nederlands-Indië’, December 11, 2014. <http://www.volkskrant.nl/binnenland/staat-aangeklaagd-om-marteling-en-verkrachting-in-nederlands-indie~a3808768/>, (December 22, 2014).

²¹⁹ Nationaal Archief, Den Haag, Ministerie van Defensie: Strijdkrachten in Nederlands-Indië, nummer toegang 2.13.132, inventarisnummer 1332.

²²⁰ NL-HaNA, Defensie / Strijdkrachten Ned.-Indië, 2.13.132, inv.nr. 1332. Van: mr. E. Bonn jr. namens mr. Koomans, aan: Proc Gen. Felderhof, d.d. 24 mei 1949.

leveren omdat de Indonesische vrouwen veelal weinig of geen verzet plegen. De voorzitter meent dat de oplossing gevonden moet worden in art. 248 ter. W.V.S., doch niet dan nadat Mr. Bonn [KNIL] heeft gevraagd dit punt met gesloten deuren te mogen behandelen.”²²¹ After the presentation of the report, the conclusion of the commission was yet again reviewed by two other military prosecutors who were not affiliated with the original delegation. They especially paid attention to the details of the hearings, but in the end drew the same conclusion.²²² Prosecution, therefore, did not follow through, although the Attorney General, together with the prosecutors, were convinced that crimes were committed and regretted the fact that these could not be proved.²²³

Because the involvement of the local commander in the military judicial process seems to be a recurring aspect, it needs to be addressed. According to a former President of one of the *krijgsraden te velde* during the war, in many cases where the KMP or prosecutor was not present or unavailable, local commanders appeared responsible for the investigation of certain events.²²⁴ It seemed that there were several commanders that deliberately ignored the *krijgsraad te velde*, meaning that they punished their own forces in the case of criminal offenses. If certain violations only involved infringements instead of crimes, this would be normal. As we shall see further on, the ignoring of the *krijgsraad te velde* was also noticed by the military prosecutors, of whom some escalated such notions.

In conclusion it is worth mentioning that, next to media-driven investigations, Spoor also ordered investigations based on requests from local rulers who cooperated with the Dutch, or external parties that represented minorities in the Dutch East-Indies, such as the Chinese. In a case of alleged rapes, murders and looting by KNIL paratroopers in the area of Soekaboemi, Spoor ordered an investigation due to complaints of the regent of the area.²²⁵

Independent investigations

While events that appeared in the media most of the times were sent to supreme commander Spoor for further investigation, the KMP and the military prosecutor of the KNIL had special rights to start their own inspections. Although in some cases the investigation of alleged crimes followed through regular legal procedures, there also appear examples that either point

²²¹ NL-HaNA, Hoog Militair Gerechtshof, 2.09.79, inv.nr. 1747.

²²² NL-HaNA, Defensie / Strijdkrachten Ned.-Indië, 2.13.132, inv.nr. 1332.

²²³ Ibidem, van: Proc.Gen. Felderhof, aan: Hoge Vertegenwoordiger van de Kroon, d.d. 25-10-1949.

²²⁴ Plantenga, ‘Krijgsraden bij troepen te velde’, *Militair-Rechtelijk Tijdschrift* Deel XLV, 149.

²²⁵ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 1314, April 1949.

to the difficulties of police work, or show exactly the opposite i.e. that no investigation took place at all. I will pose examples of all scenarios, from which it will become clear that the context of these events explain more than the sheer quantity of examples can.



One of the krijgsraden te velde of the KNIL during the war. The person on the left is military prosecutor E. Bonn, whose experiences are integrated into this study.²²⁶

One of the military prosecutors of the KNIL reported to the Attorney General in early 1949 that he was extremely worried about the excesses committed by Dutch military personnel on Java. He referred to a list of verdicts concerning manslaughter, rape, murder and plunder. He stated that he knew that these acts were committed in the field, but that he experienced difficulties when investigating these crimes. In many cases, there were no witnesses so that the investigators could not continue their work. Instead, soldiers either reported nothing or claimed that they killed some enemy combatants who were ‘on the run’: *“Het is voor mij zeer lastig te beoordelen wat er precies te Velde gebeurt. Dat e.e.a. niet mals is, staat voor mij vast. Het is echter onmogelijk om tot vervolging over te gaan, omdat na [acties] of niets wordt gerapporteerd dan wel alleen wordt vermeld: “tijdens de actie cq op de vlucht gedood”. De diverse eenheden zijn op dit punt solidair. En verraden elkaar niet. Ik meen de*

²²⁶ NIMH Beeldbank, ‘De krijgsraad te velde van het KNIL. V.l.n.r. de auditeur militair mr. E. Bonn, kapitein secretaris mr. J.A. Nijbakker, de president luitenant-kolonel mr. P.A. Tak-Labrijn, en de leden majoor D.M. Rosbach en kapitein A.J.R.A.M. van Heijst. Staande de provoost geweldige sergeant E.L.A. Orval.’ (unknown), (December 24, 2014).

*vraag of juist zou zijn hierin te gaan roeren, pertinent ontkennend te moeten beantwoorden.*²²⁷ Basically, the military prosecutor admitted defeat, while also indirectly stating that such events unfolded without the consequence of prosecutions. It is interesting that he wrote this experience in the aftermath of *Operatie Kraai*, which was the most active and effective phase of guerrilla warfare, meaning that these events could share a relation.

In a similar report, another military prosecutor experienced identical problems in building a case. He investigated an alleged crime of a petty officer whom he suspected of illegal detention and mistreatment of a civilian in the town of Tjililitan. At some point, he was unable to find the victim, whom he needed for a testimony. In his typewritten report, in a part referring to the missing victim, either he or the receiving party (the High Military Court) had added with pencil: ‘to the grave!’²²⁸ The sudden disappearance of the victim forced him to drop the case, which frustrated him. The remark of the whereabouts of the victim indicates that this was too convenient. A comparable event applied in a case where a Chinese child was killed by three Dutch soldiers. The prosecutors were unable to locate the perpetrators, due to the many troop movements and reorganizations at the time.²²⁹ These examples, which originated just prior or after *Operatie Product*, show that the work of the military prosecutor was challenged by military operations.

Another example of difficulties in managing alleged crimes was a report of mass killings near Balikpapan in December 1946. The head of the MID (*Militaire Inlichtingendienst*) intercepted a report that described such events, although it remained unclear who was the perpetrator. Because of the fact that the actual place of the alleged killings was very near enemy territory, the investigation was held by Dutch soldiers, who heard witnesses in the village nearby. This was uncommon, but at the end the soldiers reported to the military prosecutor of the KNIL, who, due to his role also operated as civil prosecutor. It appeared that nine civilians were killed in an attack committed by forces without uniforms. It was assumed that these were part of one of the many mobs of nationalists, but in theory it could have been anyone. The local population was reluctant to

²²⁷ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 1287, ‘Inzake wandaden bedreven door militairen van het KNIL’ 9 maart 1949, van: mr. E. Bonn, auditeur-militair bij de Krijgsraad te Velde, aan: Proc.Gen. Felderhof.

²²⁸ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 1307, ‘onwettige vrijheidsberoving en mishandeling te Tjililitan’, 6 mei 1947, van: auditeur-militair mr. J.G. Reyers, aan: Advocaat-Fiscaal Hoog Militair Gerechtshof, Batavia.

²²⁹ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 1294, d.d. Juli 1947.

share information, because they feared reprisals. When the report was eventually sent to the Attorney General, he took notice of the case and that was the end of it.²³⁰

In other cases, criminal offenses remained uninvestigated, or even tolerated, though it was clear that such events materialized. This was the case in the South Celebes campaign of Westerling and its aftermath. Considering that this event is already covered by other publications,²³¹ it will suffice to present the remarkable aspects in terms of military justice that are relevant to this study. In the period of December 1946 until early March 1947, forces of the DST (*Depot Speciale Troepen*)²³², the KNIL and the KL, were involved in military actions meant to restore order in the area of South Celebes, which was troubled by a growing enemy presence that terrorized both the local inhabitants as the Dutch forces. The commander of the DST, Westerling, was granted special rights by the military leaders, including Spoor, to engage in all means necessary to restore order. Methods of public trial and extrajudicial killings were then introduced, meant to convince the civilian population, which was suffering from the situation, to support the Dutch cause.²³³

Interestingly, there was a military prosecutor (A.G. Veldhuis) present in the region, who wrote to the Attorney General that he supported the extreme methods.²³⁴ He argued that the death of innocents was collateral damage, which was acceptable if peace and order returned. This, of course, was a remarkable statement of someone responsible for the prosecution of crimes committed by military personnel. Moreover, he found it 'equitable' that KNIL forces had impunity, so to boost the weak image compared to the DST forces.²³⁵ This statement was related to the fact that the regular KNIL forces in the area did not share the same rights as the DST, which apparently presented them as weak. Surprisingly, he granted the rights of Westerling to Captain H. of the KNIL as well, who was then qualified to impose similar methods without legal consequences. Finally, he mentioned that in case of excesses, he would of course prosecute.²³⁶ This is a contradiction in terms: if he did not interpret the extrajudicial killings of probable innocent men as excesses, then what did qualify as such?

²³⁰ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 1319, december 1946., 'Kampong 'DAM'.

²³¹ Further reading: W. IJzereef, *De Zuid-Celebes Affaire: Kapitein Westerling en de standrechtelijke executies*.

²³² These were Special Forces and part of the KNIL.

²³³ W.IJzereef, *De Zuid-Celebes Affaire: Kapitein Westerling en de standrechtelijke executies* (Dieren 1984), 95.

²³⁴ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 1325, van: mr. A.G. Veldhuis, aan: Proc.Gen. Felderhof, d.d. 20 December 1946.

²³⁵ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 1325, 17 januari 1947.

²³⁶ Ibidem.

It eventually led to the situation that not only the DST but also all KNIL officers received such rights,²³⁷ for which the military prosecutor had shaped the precedent. This escalated the amount and circumstances of extrajudicial killings, from which reports were labeled by the Governor-General as “(...) *Duitsche en Japansche methodes (...) die alleen in de meest dringende omstandigheid toegepast kunnen worden, waar hier geen sprake van is.*”²³⁸ Ultimately, the methods were discontinued.²³⁹

Another alarming case concerns the Rawagede massacre of 1947. Rawagede was a village in Java that was conquered during the First Police Action. It was believed that enemy elements were present in the village, which is why Dutch forces surrounded it on 9 December 1947. Following the sweep, hundreds of civilians – some of whom were prisoners – were executed, without any form of legal process.²⁴⁰ Indeed, this was quite similar to the extrajudicial methods applied in the South Sulawesi campaign of Westerling. According to the files in the archives, army commander Spoor was aware of the events in Rawagede. It appeared that Major Wijnen was responsible for the execution of at least twenty persons. Spoor hesitated: should Wijnen be brought before the *krijgsraad te velde* or would a disciplinary punishment suffice? Because Major Wijnen was a member of the KL, Spoor received legal advice from his military prosecutor of the *krijgsraad te velde* KL, who could not initiate prosecution independently, contrary to his colleagues of the KNIL. Indeed, the prosecutor needed Spoor's approval to start the legal process. Apparently, the military prosecutor hesitated to prosecute Major Wijnen, which is why Spoor hesitated as well. He decided to ask advice from Attorney General Felderhof: “*Het betreft hier de executiezaken van den Majoor Wijnen. Ik zit er nogal mee in in de maag, want strafrechtelijk is de man aansprakelijk en volgt er bij behandeling voor de Krijgsraad onherroepelijk een veroordeling, welke hem zijn verdere carrière kost. Aan de andere kant is men van de Krijgsraadzijde geneigd de zaak maar liever niet te vervolgen, omdat de omstandigheden waaronder een en ander is geschied deze vervolging ‘achteraf’ betrokkene wel in een veel ongunstiger daglicht stellen, dan de feitelijke toestand. (...) Ik verkeer zelf in twijfel en ben eveneens geneigd tot deponeren, uiteraard met toepassing van bepaalde correctieve*

²³⁷ IJzereef, *De Zuid-Celebes Affaire: Kapitein Westerling en de standrechtelijke executies*, 118.

²³⁸ NL-HaNA, Proc.-Gen. Hooggerechtshof Ned.-Ind., 2.10.17, inv.nr. 1325, d.d. 30 januari 1947.

²³⁹ NL-HaNA, Proc.-Gen. Hooggerechtshof Ned.-Ind., 2.10.17, inv.nr. 1325, ‘Actie Zuid-Celebes’.

²⁴⁰ Unknown author, ‘Dutch Government apologises for 1947 Indonesia massacre’, December 9, 2011. <http://www.bbc.co.uk/news/world-asia-pacific-16114789> (January 17, 2015).

maatregelen.”²⁴¹ This is where the case becomes more troublesome. Instead of applying the regular judicial protocols, and advising supreme commander Spoor that the case should be managed by the *krijgsraad te velde*, Attorney General Felderhof was of a different opinion. Due to the fact that the extrajudicial killings were not preceded by any form of torture, he did not acknowledge the necessity for prosecution. Moreover, he stated that: “(...) *arrestatie en afvoering van deze lieden geen ander resultaat zou hebben dan dat zij binnen korte tijd weer vrij zouden rondlopen en zich vermoedelijk opnieuw aan terreur-daden zouden schuldig maken.*”²⁴² Felderhof thus concluded that the persons executed definitely were members of a terror organization, which justified the killings. Indeed, the Attorney General, who in this case was the main person responsible for civil justice in the Dutch East-Indies and several important branches of military justice as well, and in case of Felderhof had many years of practical experience as a military prosecutor too, still managed to shape a dubious precedent which could only have increased the arbitrariness of the military justice system.

On a final note concerning this event, it is interesting that the *Excessennota* mentioned the events at Rawagede, stating that: “(...) *overleg tussen de Legercommandant en de Procureur- Generaal uit overwegingen van opportuniteit niet vervolgd.*”²⁴³ This remark is based on the Dutch discretionary principle (*‘opportuiniteitsbeginsel’*). This basically means that prosecution can be renounced if that outcome serves more important purposes than prosecution. But, as the correspondence between Spoor and Felderhof shows, they only considered the career of the officer involved. Moreover, Felderhof even justified the killings. Any convincing notion that not prosecuting this officer would serve the general interest remained absent. So, as must have become clear by now, the considerations not to prosecute surely seem suspicious and hint at the abuse of the discretionary principle. Not one and a half year earlier, the same Attorney General argued that a disciplinary punishment did not necessarily imply the absence of any criminal investigation, especially not in cases where very serious crimes were committed.²⁴⁴ Moreover, the case of Rawagede is exemplary concerning the criticism of the position of the commander-in-chief in the military legal process during this war, which was posed in the previous chapter.

²⁴¹ NL-HaNA, Proc.-Gen. Hooggerechtshof Ned.-Ind., 2.10.17, inv.nr. 1304, van: Spoor, aan: Felderhof en vice versa, d.d. 22-28 juli 1948.

²⁴² Ibidem.

²⁴³ Excessennota, Tweede Kamer 1968-1969, 10008, 22.

²⁴⁴ NL-HaNA, Proc.-Gen. Hooggerechtshof Ned.-Ind., 2.10.17, inv.nr 1324, ‘Betreffende door militairen gepleegde misdragingen t.a.v. gevangenen’, 1 november 1946, van: Proc.Gen. Felderhof, aan: Legercommandant Batavia.

In some cases, military prosecutors informed staff officers, including Spoor himself, of known issues in the army, although this was not always appreciated. For instance, after managing many cases in the *krijgsraad te velde*, one of the military prosecutors of the KL decided to escalate some structural problems he had noticed. He was especially worried about the quality of the officers in the Dutch army. He stated that officers increasingly got involved in punishable affairs. As examples, he pointed at the ‘many cases’ still in progress regarding looting and other property crimes involving officers of the army. Some of the officers did not even disapprove of such crimes; it was justified as long one did not get caught. According to the military prosecutor, this mindset created precedents for other officers, but soldiers as well, to commit such crimes.²⁴⁵ Probably the worst accusation was that some commanders instructed their officers to minimize the handling of offenses by the *krijgsraad te velde*. This meant that offenses should always be disciplinary punished, without outsiders knowing. Commanders that imposed these measures were actually punishable by law, so the worries of the military prosecutor were legitimate. Officers not only set examples for those lower in rank, during war they regularly came into contact with the boundaries of the law. In that regard, they were obliged to know the law, so they would know how to behave. An officer should have been able to analyze commands i.e. be aware that some orders were not be followed, for they would imply serious criminal offenses.²⁴⁶ While the preparations for the military campaign in the Dutch East-Indies at first led to a structural shortage of law-educated officers, the government supported such education as of 1947, which was probably too late to see the practical effect during this conflict.²⁴⁷ The military prosecutor also argued that improper and careless handling of firearms, with the consequence of death and serious injury, including friendly fire, raised his concerns. This was also aimed at the quality of the officers, because weapon inspections were seldom executed.²⁴⁸ The intention of the military prosecutor was to inform commanding general Spoor, who could then inform his officers of punishable offenses, convincing them of the severity of it, in order to minimize the amount of cases.²⁴⁹

²⁴⁵ NL-HaNA, Proc.-Gen. Hooggerechtshof Ned.-Ind., 2.10.17, inv.nr. 64, telegram van: de auditeur-militair w.g. Mr. F.H. van Leeuwen bij de KL in Batavia, aan: de Excellentie de Legercommandant in NL-Indië te Batavia, d.d. 31 December 1947.

²⁴⁶ Van Bemmelen, *Indonesië en Oorlogsmisdadigers: Wat moet een officier van strafrecht weten?*, 16-17.

²⁴⁷ H.H.A. de Graaff, ‘Eenige opmerkingen over de opleiding en de voorlichting op het gebied van het militaire recht, in het bijzonder bij de Koninklijke Landmacht’, *Militair-Rechtelijk Tijdschrift* Deel XL, 461-462.

²⁴⁸ NL-HaNA, Proc.-Gen. Hooggerechtshof Ned.-Ind., 2.10.17, inv.nr. 64, telegram van: de auditeur-militair w.g. Mr. F.H. van Leeuwen bij de KL in Batavia, aan: de Excellentie de Legercommandant in NL-Indië te Batavia, d.d. 31 December 1947.

²⁴⁹ Ibidem.

Instead, his complaints did not only reach Spoor, but the *Minister of Overzeese Gebiedsdelen* as well. This in turn escalated the accusations, because it now appeared as if the entire officer corps of the Dutch army was engaged in looting on a grand scale. In order to understand just how serious the accusations were, Spoor requested more information in the form of examples from the military prosecutor. When additional statistical data was sent to Spoor, he remained unconvinced and concluded that the military prosecutor had generalized, which in turn slandered the officer corps. Spoor included data from the President of the *krijgsraad te velde* in Batavia, which showed an increase from six cases in 1946 to eight cases in 1947, on a detachment of three thousand men. The military prosecutor, who at this point was probably intimidated by the army commander, accepted the conclusion of Spoor.²⁵⁰ Unfortunately, Spoor completely evaded the subject of the morality of his officers. While the military prosecutor was not in the position to instruct Spoor how to educate his officers, he probably acted because of sincere worries. More importantly, the signal he presented was alarming and did not appear to be incidental or small in nature.

It seemed that Spoor was aware of this. First of all, just prior to the letter of the military prosecutor, Spoor sent a circular which addressed the topics of looting, theft and embezzlement, meaning that these crimes were actually quite serious and thus not of small scale.²⁵¹ It seemed that property crimes were already a problem in the beginning of the conflict. The concept of *'plundering tijdens actie'* was a known issue among officers, including the higher ranked. Most elements of the military legal apparatus, consisting of the military prosecutors, the Attorney General and the commanders of the KMP, were requested to pay special attention to these acts, especially in terms of informing the soldiers.²⁵² However, either the soldiers remained unaware of the consequences, or the punishments for property crimes were unconvincing, because the offenses did not stop. Moreover, officers of all levels remained involved: *"Met alle waardeering voor hetgeen onze militairen hebben gepresteerd, moet helaas toch worden gewezen op de bedenkelijke mentaliteit, die onder nog te velen onder hen heeft post gevat, dat alles, wat zij in nieuw bezet gebied aantreffen, als prive krijgsbuit kan worden beschouwd. (...) van de zijde van de officieren [wordt] vaak niet of nauwelijks opgetreden, integendeel, er zijn mij verschillende gevallen bekend waarin de officieren, zelfs hoofd officieren, het voorbeeld geven aan hun manschappen en rustig –*

²⁵⁰ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 64, telegram van: Luitenant-Generaal Spoor, aan: Lt. Gouverneur-Generaal van NL-Indië van Mook.

²⁵¹ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 1293, d.d. 13-10-1947.

²⁵² NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 1286, van: Kolonel P. Alons, 'Plunderingen gepleegd door Nederlandsche militairen', d.d. 25 November 1946.

zoals dat heet – mee organiseren.”²⁵³ The military prosecutor, who reported this to the Attorney General, also mentioned that he wished to address the matter to General-Major de Waal, who was in command in the area. In a response, the general stated that he instructed his prosecutors to demand harsher punishments.²⁵⁴

The custom of torture and maltreatment of enemy combatants and civilians by members of the intelligence services was also reported by travelling military prosecutors. The following notion that was written in April 1948 by a prosecutor who reported to the Attorney General seems quite clear in that regard: “*Zoals ik in mijn vorig rapport vermeldde, (...) dat bij verschillende I.D.'s ongeoorloofd en **systematisch** wordt mishandeld.*”²⁵⁵ He also described warning one member of the intelligence services still enforcing electronic current on prisoners. At some point, the prosecutor ascertained that this member kept continuing this method, which is why he decided to finally prosecute him.²⁵⁶ Not long following this report, a circular from army commander Spoor appeared which implied that all Territorial Commanders should thoroughly ensure that no longer impermissible interrogation methods would be applied in primary interrogations.²⁵⁷ This does not entail that the mentioned report led to Spoor intervening, but at some point he was confronted with them, which is why he was forced to take measures. It remains unclear, however, at which point it was decided that torture should no longer be applied. As noted with the Rawagede case of December 1947, the Attorney General then decided not to prosecute the officer involved, mainly because torture was absent in the alleged crimes. So this means that the strong rejection of such practices probably originated in late 1947.

Indications that prosecutors expressed their worries about inappropriate military behavior were even apparent in the field of civil prosecution. The failure to solve cases in civil prosecutions also affected the behavior of soldiers. For instance, when a group of nationalists murdered an inspector of the police, two of them got caught. Both confessed at first, but retracted their confession at a later stage. Due to the lack of evidence, the prosecution could no longer continue. This irritated the prosecutors: “*Het is om er hopeloos*

²⁵³ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4644, van: de Officier van Justitie te Semarang betreffende ‘7^e Weekoverzicht’, aan: de Directeur van Justitie.

²⁵⁴ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4650, van: Gen-Maj. S. De Waal, Semarang, 12 september 1947, ‘Commandementsorder nr. 15 ‘bestrijding van plundering door miln.’

²⁵⁵ Bold text emphasized by the author of this paper. NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4644, rapport van mr. K.S. Bieger, 29 april 1948, aan: Directeur van Justitie, Batavia.

²⁵⁶ Ibidem.

²⁵⁷ NL-HaNA, Proc.-Gen. Hooggerechtshof Ned.-Ind., 2.10.17, inv.nr. 1285, van: legercommandant Spoor, Batavia 11 mei 1948, ‘Arrestaties en Verhoren’.

van te worden, verdachten, die stuk voor stuk de kogel verdienen, kunnen nu niet worden veroordeeld[.]”²⁵⁸ Considering this remark, this was obviously not the first time that their investigation was halted. The consequences of such events was quite clearly described by the prosecutor: “De militairen “nemen” vrijspraken in deze zaken trouwens niet en wekken den indruk, dat zij in de toekomst dan wel zullen zorgen voor een bevredigender oplossing.”²⁵⁹ Indeed, the failure to solve cases, even if this was not due to personal or procedural obstructions, may have triggered illegal killings.



Attorney General H.W. Felderhof. This picture was taken on February 5, 1947.²⁶⁰

On a final note regarding independent investigations, it is important to demonstrate that the overstretched civil and military legal apparatus did not only spent time on

²⁵⁸ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 4644, rapport van mr. K.S. Bieger, 29 april 1948, aan: Directeur van Justitie, Batavia.

²⁵⁹ Ibidem.

²⁶⁰ Nationaal Archief, ‘Mr. H. A. Felderhof. Procureur-generaal bij het Hooggerechtshof van Nederlands-Indië’, (23 December 2014).

investigations concerning what would be known as ‘excesses’, but also wasted valuable time on false leads and claims. Of course, the dividing line between tall tales and actual events appeared troublesome and time consuming, in which only a proper investigation could separate fact from fiction. This meant an increasing burden on the military and civil legal organizations, which were already struggling with the structural shortage of manpower, capable individuals and the difficulties of the war. Indeed, this was the case when the military police inquired the alleged execution of one hundred civilians in Djatibarang (Indramajoe). They received this assignment from the Department of Justice, which reported to the Attorney General.²⁶¹ The military police questioned several people, based on troop locations in the area. Then they also visited the alleged town. During their inspection, they could not locate any bodies, nor find any indications of mass graves. As it turned out, one soldier ‘bragged’ about the event, which in turn became a persistent rumor. Indeed, due to the lack of evidence and new leads, it was concluded that this crime could not have taken place. It is not improbable to suggest that this was not a unique event.

Punishments

The final aspect in the military legal process is punishment. Not all elements of punishment are interesting for this study. For example, the total amount of prison time of Dutch forces was already calculated by the *Excessennota*.²⁶² Nor does this study evaluate the proportionality of the punishments by law and in practice, because it seems more appropriate to leave such judgments to experts in the field of military and criminal law. The main interesting aspect for this study regarding punishments is if these were actually imposed i.e. did soldiers serve their time? Second, the following part will also address the total amount of ‘excesses’ and the comparison between KL and KNIL punishments.

If soldiers of the KL or KNIL were found guilty for their crimes by their respective *krijgsraad te velde*, punishment followed. The penalties ranged from disciplinary punishments to prolonged prison sentences. In unique cases, even the death sentence could be imposed, although this was only effectuated at least once during the whole war. Because of their different jurisdiction, not only did crimes and punishments differ slightly between KL and KNIL units, also the additional measures that were applied during their punishment showed differences. For instance, detained KNIL soldiers still received salary, while detained KL

²⁶¹ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 3743, geheim rapport over gebeurtenissen Djatibarang.

²⁶² Excessennota, Tweede Kamer 1968-1969, 10008, appendix 6.

units did not.²⁶³ When military detainees had to serve prison time, they were placed into special military prisons. Just to give an indication of the punishments, some statistics will be presented. In a report that encompassed all statistics from criminal cases in the first quarter of 1949, thus following the events after *Operatie Kraai*, 122 verdicts were imposed for 186 offenses. Of the verdicts, there was one death penalty (which was probably the only death penalty as well), twelve times a prison sentence longer than three years, and most of the punishments were for prison sentences in the range of three to six months or six to twelve months, both of which 39 cases. The *krijgsraad te velde* in Bandung appeared most busy, with 51 cases, whereas the *krijgsraad te velde* in Semarang was least busy with only twelve cases.²⁶⁴

These cases were only a fraction of the total amount managed during the war. When the verdicts of all courts-martial are combined, around twelve thousand cases were handled over the course of four years. It is remarkable, and rightfully questioned, that only 141 cases were related to violent crimes. When considering other types of crimes as well, such as property crimes, this number raises to five hundred, which is still marginal.²⁶⁵ As argued earlier, the military-legal apparatus coped with serious problems in terms of understaffing, the quality of its personnel and the challenges during their investigations. These serve as possible – though not the only – reasons why the amount of verdicts appeared so low. Following these numbers, it is interesting that jurist C.F. Rüter directly compared the verdicts of the *krijgsraad te velde* KL and KNIL regarding murder and manslaughter. Based on the numbers, the punishment of KNIL soldiers was around 4.5 times higher in terms of months of imprisonment, compared to KL verdicts.²⁶⁶ How can we explain this difference? It is tempting to draw conclusions, but we should not forget that, as was mentioned earlier in this paper, this matter was actually addressed during the war. The military prosecutors stated that comparing sentences is not representable to the actual events that materialized. Indeed, only when the exact details are compared, can we finally judge if these sentences were (dis)proportional. The difference certainly deserves further investigation, but it seems as a matter for jurists who are

²⁶³ NL-HaNA, Hoog Militair Gerechtshof, 2.09.79, inv.nr. 1747.

²⁶⁴ Nationaal Archief, Den Haag, Ministerie van Justitie: Archiefbescheiden Onderzoek naar Excessen in Indonesië, nummer toegang 2.09.95, inventarisnummer 91.

²⁶⁵ Rüten, 162.

²⁶⁶ C.F. Rüter, *Enkele aspecten van de strafrechtelijke reactie op oorlogsmisdrijven en misdrijven tegen de menselijkheid* (Amsterdam 1973), 163.

specialized in these sorts of cases.²⁶⁷ One reason may have been the role of civilians as military prosecutor in the KNIL forces. As we have seen, this role was heavily criticized by specialists of military law during the war, because civilians were considered unable to account for the unique situations that soldiers experience. Following that argument, they may have demanded higher sentences.

Over the course of the war, the need for manpower steadily became more important. Because of this, the military prosecutors received authority to postpone or temporarily suspend verdicts for several sorts of crimes. This applied for the less serious military offenses, civil crimes, and infringements, with the exception of property crimes.²⁶⁸ Prior to the First Police Action, many soldiers were released from prison so they could participate in the military operation: *“Voorts was mij bekend, dat kort voor de eerste politionele actie met het oog op die actie een groot aantal militaire veroordeelden in opdracht van de toenmalige Territoriaal- tevens Troepencommandant te Semarang in vrijheid waren gesteld, wegens het ontstellend tekort aan mankracht.”*²⁶⁹ However, after the First Police Action, this practice of suspension and postponements of verdicts remained common practice. In one case, the commanding officers of Sergeant M. of the KNIL requested his release in September 1948, because of the upcoming military campaign (Second Police Action), which would eventually be initiated in late December. Sergeant M. served a prison sentence of one year and four months since August 3, 1948, because of two times committed manslaughter. He had killed two other soldiers that befell threatening, defending himself that ‘it was me or them’. According to his commanders, Sergeant M. was a valued soldier, with much experience and a role model for others. His involvement in upcoming military campaigns was therefore desirable. The military prosecutor was convinced: *“De bovengeschetse redenen hebben mij er toe gebracht [sergeant M.] op vrije voeten te stellen.”*²⁷⁰ Next to these conditions, it was also possible for the Governor-General to pardon cases. The request to pardon originated from the detainee himself.²⁷¹

²⁶⁷ Even then, it is not always considered appropriate to reconsider such cases, as was the case in late 1949, when three Dutch jurists were sent to the Indonesian archipelago to conduct research of ‘excesses’. One of them decided not to sign the eventual report, because of this.

²⁶⁸ NL-HaNA, Alg. Secretarie Ned.-Ind. Regering, 2.10.14, inv.nr. 3737, telegram van: A.H.C. Gieben, Directeur van Justitie, d.d. 9 juli 1947, aan: Z.E. Luitenant-Gouverneur-Generaal. Onderwerp: Invrijheidstelling militairen KNIL en KL.

²⁶⁹ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 85, van: auditeur militair mr. Th. L. Vervloet, aan: Proc.Gen Felderhof, d.d. 13 December 1948 Semarang.

²⁷⁰ Ibidem.

²⁷¹ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 90, ‘Bundel Processtukken inzake ‘Anoniem’.

From a more contemporary viewpoint, these practices are also known as ‘strategic legalism’. At the one hand, justice seems served with a verdict, but afterwards and out of the public sphere: “(...) non-judicial legal devices like pardons [and] clemency (...) are used to mitigate the original public sentence.”²⁷² Indeed, the process then becomes symbolic justice. Other examples of strategic legalism involve events in the Second World War and the Vietnam War.²⁷³ Elements of strategic legalism again surfaced in preparation of the transfer of sovereignty. On November 3, 1949 amnesty was prepared for: “*Zij, die worden vervolgd of die reeds zijn veroordeeld voor misdaden, die duidelijk een uitvloeisel zijn van het politieke conflict tussen het Koninkrijk der Nederlanden en de Republiek zullen van verdere vervolging worden ontslagen of ontheven van hun straf, overeenkomstig zo spoedig mogelijk uit te vaardigen wettelijke of andere regelingen.*”²⁷⁴ This arrangement was meant for both the Dutch forces as the Indonesian nationalists. While there were some exceptions enlisted for amnesty that aimed for all crimes not associated with the political conflict, these remained rather vague.²⁷⁵

Strategic legalism remained active, even just after the war, when the Malang killings (also known as the Lowokwaroe case), was managed by the military legal apparatus. According to rumors, several prisoners were killed by the IVG (*Inlichtingen- en Veiligheidsdienst*) in the eastern parts of Java. The KMP led the investigation. As it turned out, employees of the Red Cross determined that sixteen prisoners were missing from the Lowokwaroe prison, which raised their alarm.²⁷⁶ When the KMP finished their investigation, their findings were transferred to the military prosecutor. It appeared that two staff officers, one of the KL and one of the KNIL, were involved.²⁷⁷ The officers in question were worried about the security of their forces in the area. In order to repel the enemy, they let the IVG take several men from the Lowokwaroe prison, which were then killed by soldiers on patrol. The bodies were intended to deter the enemy. In their statements, it was noted that the prisoners tried to escape,²⁷⁸ proving yet to be another example of what one military prosecutor posed earlier. When new proof surfaced that contradicted the statements of the soldiers and officers involved, the truth came out. The consequences became part of a heated debate between

²⁷² P.H. Maguire, *Law and War: An American Story* (New York 2000), 368.

²⁷³ Further reading: Maguire, *Law and War: An American Story*.

²⁷⁴ Excessennota, Tweede Kamer 1968-1969, 10008, 6.

²⁷⁵ Scagliola, *Last van de Oorlog*, 127.

²⁷⁶ NL-HaNA, Justitie / Excessen, 2.09.95, inv.nr. 120.

²⁷⁷ NL-HaNA, Proc.-Gen. Hoogerechtshof Ned.-Ind., 2.10.17, inv.nr. 1297.

²⁷⁸ Limpach, ‘Business as Usual: Dutch mass violence in the Indonesian war of independence 1945-49’, Luttikhuis & Moses (red.), *Colonial Counterinsurgency and Mass Violence: The Dutch Empire in Indonesia*, 73.

jurists in the military legal apparatus. One interesting element was the fact that the assistant to the military prosecutor suggested to drop the case: *“Ik moge hier-wellicht ten overvloede- als mijn persoonlijke mening en die van kpt. Den H. aan toevoegen, dat de handelswijze van meergenoemde hoofd-officieren, hoe laakbaar wellicht ook, in het licht der omstandigheden zeer wel te begrijpen is.”*²⁷⁹ But the military prosecutor himself disagreed; this case was meant for trial, so he would not shelve the case. This implied a decision of the Attorney General in the former Dutch East-Indies, who prepared his colleagues in the Netherlands that due to the transfer of sovereignty, this case was to be managed elsewhere. But the military prosecutor in The Hague disagreed. His advice was to actually drop the case.²⁸⁰ His main issue was that because of the transfer of sovereignty, the KNIL had ceased to exist. So legally, the staff officer of the KNIL was then to be judged by a civil court. According to Attorney General in The Hague, J. Versteeg, no civil judge was capable of managing such cases, for they would never understand the unique circumstances in which the mentioned events originated.²⁸¹ In the end, both staff officers, whom would no longer be in service as of 1952, remained unpunished. Again, the term strategic legalism applies here, although a trial remained absent.²⁸² There was a sheer reluctance to prosecute these staff officers in the wake of the decolonization war. By keeping the case out of the public, trials were not necessary in the first place. Especially because demands for justice were weak i.e. it did no longer serve the interest of the Dutch military to prosecute these officers.

²⁷⁹ NL-HaNA, Justitie / Excessen, 2.09.95, inv.nr. 119, Soerabaja 3 Oktober 1949, ‘Excessen te Malang’, van: Officier-Commandant mr. W. den. H. en substituut-auditeur-militair mr. L.J.H. K., aan: auditeur-militair KNIL Batavia..

²⁸⁰ NL-HaNA, Justitie / Excessen, 2.09.95, inv.nr. 120.

²⁸¹ NL-HaNA, Justitie / Excessen, 2.09.95, inv.nr. 120, telegram van: Proc. Gen. Versteeg, aan: Hoofdverwijzingsofficier van de Chef van de Generale Staf in Den Haag, d.d.16 maart 1950.

²⁸² D.P. Forsythe, *Human Rights in International Relations* (Cambridge 2012), 121.

Conclusion

The Dutch government faced an enormous challenge. With the Second World War just left behind, a new conflict arose which required their immediate attention. The German occupation left the Netherlands in critical condition; practically everything needed reconstruction, including the army and the military-legal apparatus. Impressively, in a relative short time, a well-armed army appeared in the Dutch East-Indies, although every facet remained either undermanned or overburdened for the entire duration of the conflict. In order to maintain discipline in this army, legal procedures were altered, not always resulting in the best outcome. As the war progressed into different phases, the challenge to cope with the situation demanded the best out of everyone. Soldiers became frustrated with the guerrilla tactics of the enemy, whereas the jurisdiction and thus workload for the prosecutors and military police steadily grew with each military operation in which new territory was conquered. Overall, the Dutch military-legal apparatus did not function properly during the War of Indonesian Independence. There are a multitude of reasons responsible for this.

Because of the differences between the *krijgsraad te velde* KL and *krijgsraad te velde* KNIL, I will separate the judgment on their functioning, starting with the first. The military prosecutor of the *krijgsraad te velde* KL was less burdened than his counterpart of the KNIL. While the influx of capable law-educated personnel occurred without problems, the workload still proved too much at times, especially when in some cases, the responsibilities of the other organizations in the military-legal apparatus were shared, because of structural manpower shortages in other departments. One obvious flaw for the military prosecutor of the KL was his lack of ‘*nasporing*’ i.e. special investigative rights. This shaped the condition that he was completely dependent on the quality of the work of the military police, which as we have seen, appeared structurally inadequate. Also troublesome was the fact that the military prosecutor of the KL legally advised Spoor what to do with a case, and had to receive his permission to court-martial a case. In that regard, he was dependent on the judgment of Spoor, or his appointed replacements. This was contrary to the military prosecutors of the KNIL, who could manage their own cases.

The KMP, which was responsible for the investigation of alleged crimes, was of crucial importance in the military-legal process involving all KL units. As with all other elements of the military-legal apparatus, the KMP became overburdened as well, leading to

structural complaints about their performance. One of the reasons for this was their role in both the military as their support to civil police work. Their commander, H.E.M. Bakhuis, even acknowledged the fact that his police forces were facing serious challenges, which negatively affected the quality of their work. Consequently, it is safe to state that, because of the dependence of the military prosecutor of the KL on the work of the KMP, the cases that were eventually managed by the *krijgsraad te velde* KL were not representable in any way for what truly materialized during the war in terms of crimes.

Probably the most burdened were the military prosecutors of the KNIL. Not only were they responsible for the investigation of alleged crimes, they also practiced multiple roles within several legal organizations, such as the *krijgsraad te velde* KNIL, the Temporal courts-martial and the *bijzondere krijgsgerechten*. Indeed, they were responsible for both military and civil justice. Unfortunately, their representation was extremely low, especially in the beginning of the war. Complicating their manpower shortage was their expanding jurisdiction with each military operation, leading to an even higher workload. It is interesting that, due to the fact that KNIL prosecutors were always civilians, verdicts were harsher than their KL counterparts. While it is debatable if the role of civilians in military justice is justifiable, they were constantly involved in the war, meaning that while lacking the actual war experience of a soldier, they were confronted by the events on a daily basis. It seems that their strictness was due to a greater independence in the legal process. They were not dependent on the army commander to prosecute, which could serve as an obstacle in embarrassing criminal cases, such as with the events at Rawagede and the escalated extrajudicial killings that were not even brought before the court-martial KL.

Both the KMP and the military prosecutors of the KNIL faced serious difficulties while investigating (alleged) crimes during the war. Soldiers were unwilling to share crucial information, the ongoing war troubled the search for or access to witnesses and it was extremely hard to find evidence in order to prosecute. Also, it appears that valuable time was lost with investigating false leads, based on rumors instead of facts. Because the military prosecutors of the KNIL were also responsible for civil law, they spent much time on prosecuting political and criminal offenses by Indonesian nationalists. Similarly to military prosecution, the gathering of evidence was difficult, which sometimes led to the release of suspects, which in turn frustrated the soldiers of the Dutch army, because the release of such suspects risked their security, from which they felt the need the right to take preventive action.

Also important was that in general, the entire army, consisting of both the KL as the KNIL, was ill-prepared in terms of the education of both military as criminal law. Officers were mostly unaware of the boundaries of the law, which in turn affected the behavior of soldiers. While this did not lead to an outburst of the most violent types of crimes, it does appear that looting and stealing were structural issues, in which the officer corps was actively engaged as well. Officers, who normally set examples for their soldiers, were in this case partly responsible for giving the wrong example and thus shaping infamous precedents. It was also reported that many local commanders evaded the courts-martial, which may have been triggered because of a lack of knowledge of the law, or respect for the institution. Of course, it could also have been due to operational conditions, which need to be examined in their specific context.

It does seem that a certain legal arbitrariness existed, ranging from the Attorney General and army commander Spoor to the military prosecutors. Especially in the case of the Attorney General, this seemed troublesome, because he was at the head of the entire judicial process, with the exception of the KL units. Although Felderhof was an experienced jurist, he too had difficulties coping with the situation of the war. The different perceptions become clear when taking into account a report of a traveling prosecutor: although there was enough evidence, he sometimes only warned not to continue torturing prisoners, instead of immediately prosecuting the perpetrators. Meanwhile, others became frustrated with the fact that they regularly could not gather enough evidence to prosecute soldiers for murder, rape and other serious offenses. In some cases, some military prosecutors felt the need to express their worries to army commander Spoor, who sometimes took action when notified, as was clear when considering his circulars. In others, the prosecutors expanded the rights for extrajudicial killings to officers, thereby increasing lawlessness. As we shall see when taking into account the legal procedures, this was due to a lack of legal uniformity, for which several causes existed.

Next to the military-legal organizations, there existed some serious flaws in the legal procedures, which negatively affected the quality of the work of the Dutch military-legal apparatus. First of all, the fact that the right to appeal was absent had several serious consequences. There existed no correction to decisions and no protection against the arbitrariness of judges, which in turn negatively affected the legal uniformity and legal development in general. The gap in legal uniformity became even worse due to the different laws for KL and KNIL units and the fact that verdicts were not shared. It was not until the last

phase of the war, when military prosecutors held meetings to discuss their experiences. This was not due to their lack of interest, but the overwhelming amount of work, the great distances between the different courts-martial and the ongoing war which made everything even more difficult. The standardization of punishments also remained absent. This is clear when considering the differences between the KL and KNIL verdicts, but even more because it was addressed during the war. Finally, because there was no right to appeal, the judicial authority probably also degraded, but this remains theoretical, because this depends on the mindset of the soldiers who experienced the military-legal processes. On a final note considering this subject, the fact that the right to appeal was absent, was due to the burden on the military-legal apparatus, which was already too heavy. It was simply impossible to implement it, because of a lack of law-affiliated personnel. Indeed, it was yet another indicator of structural understaffing.

Second, the fact that the supreme commander was made responsible for the entire military-legal process appears dubious. Not only did he exercise the power to start investigations, he could also decide which cases of the KL were to be managed by the *krijgsraad te velde*. While he was advised by the military prosecutor of the KL, he was not forced to adopt his council. Moreover, army commander Spoor (and his appointed replacements) was also responsible for the execution of verdicts, which he alone could decide not to enforce. But he was not educated in the field of law, which is what makes this aspect worrying. Also, this seemed as a substantial burden for Spoor as well, because he may have literally worked himself to death.²⁸³ Although there existed arbitrariness, the importance of military justice and military conduct was certainly recognized by Spoor. He realized that without boundaries, an army can become a loose cannon, which was not in his interest as commander of the army. Troubling was the fact that Spoor sometimes delegated investigations to local commanders, who were incapable to execute such request. They were no military police, nor did they share any investigative rights. Instead, their investigations were based on questioning several officers who participated in alleged events. Luckily, there are also many examples in which the opposite was true. These cases sometimes even received his special attention, probably because of the political pressure, with the forming of unique research committees, manned by a diverse range of persons, including military prosecutors. Considering the very small amount of verdicts that he disagreed with, supervision from the

²⁸³ J.A. de Moor, *Generaal Spoor: Triomfen en tragiek van een legercommandant* (The Hague 2011), 14-15.

High Military Court remained almost meaningless. The position of the commanding general as head of the military-legal process was also criticized at the time by military jurists.

Third, the punishments for crimes seemed inconsistent. Where we have already pinpointed the fact that legal uniformity was nowhere to be found, the concept of strategic legalism seems to be applicable to this conflict as well. Due to the shortages of manpower in the army, requests to release soldiers from prison appeared incidental leading up to the First Police Action, but appeared to have become common practice thereafter. This may have sent a message to the soldiers of the army that punishments were not taken seriously. On top of that, when the transfer of sovereignty was imminent in late 1949, it was decided that amnesty was applicable to practically everyone.²⁸⁴ From this point on, interest in the prosecution of military personnel faded away, which was clear when considering the scenario with the staff officers involved in the Malang killings. Finally, because some officers were not keen on the *krijgsraden te velde*, they illegally managed criminal offenses without involving the military prosecutors who were responsible. These cases thus remained unknown to those responsible for managing criminal offenses.

The fact that the Dutch military-legal institute did not function properly during the war, has several consequences. First of all, it created conditions in which soldiers of the KL and KNIL were allowed to commit atrocities that are discussed until this day. This is not to say that this was the primary reason such events occurred, but it certainly contributed to it. Second, because of the malfunctioning of the military-legal apparatus, the value of the court-martial reports diminishes. It does not seem to represent the actual events, thereby degrading the *Excessennota* as well. While this was already assumed by many academics, the evidence for that statement was not yet convincing, until now. Also, this study tends to supplement the outcome of the case studies of Limpach. Although the outcome of this paper does not entirely support the structural element of hesitance or reluctance of the military-legal apparatus to prosecute, these factors were certainly applicable in some cases. In fact, there existed a multitude of reasons why the entire military-legal apparatus was dysfunctional, such as the arbitrariness of the people involved, the lack of legal uniformity, lack of supervision, severe staff shortages, expanding jurisdictions, impossible workloads and flawed legal procedures; combined these led to a serious decrease in the quality of the work of all law-affiliated

²⁸⁴ It seems that the only exception to this rule was applied on those found guilty for sexual assault or rape. See: De Jong, 'Het Koninkrijk der Nederlanden in de Tweede Wereldoorlog' - Deel 12 – Epiloog (2e band), 1049-1050.

personnel and thus an ineffective military-legal apparatus. The latter being subject to operational priorities, as stated by Limpach, seems plausible, but seemed to differ throughout the apparatus and the progress of the war. It appeared true in case of the legal affiliations of the KL, with Spoor as the head and in an influential position. The only ‘independent’ aspect that sometimes managed to evade these priorities seemed to be the military prosecutors of the KNIL, who were civilians and enjoyed more options, but the way this was managed varied per person and was seldom appreciated by people such as Spoor.

In conclusion, it is interesting when the results of this study are compared with similar studies which considered the military-legal apparatus of the U.S. Army during their army presence in the Philippines and Vietnam. Even though the military-legal apparatus differed in the United States and the Netherlands, there seem to be some shared characteristics. It seems that the concept of strategic legalism was applicable to this war as well, although it remains unclear if this undermined the authority of the military-legal apparatus. Also, the role of the officers i.e. their negative influence, is confirmed in both cases. Another similar aspect was the difficulty in gathering evidence. On a final note, while racism was a factor in the U.S. Army studies, it did not appear in the findings of this paper, although this does not mean that racism was absent. It may be of use to implement more specific case studies in order to find out the outcome. In any case, these findings hint at the possibility to compare international studies and military-legal foundations.

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