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# The Hypocrisy of Dutch Actions in Indonesia

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## **Author's contribution**

*The sole author designed, analysed, interpreted and prepared the manuscript.*

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## **ABSTRACT**

At the end of World War 2 the Netherlands, through its own military tribunals, tried and convicted several members of the Japanese and German militaries for their participation in the war crime of extra judicial executions in Indonesia and the Netherlands. Several of the convicted men were executed by the Netherlands while others sentenced to lengthy prison terms. From 1946-1949 the Netherlands, primarily through commando Raymond Westerling, engaged in the same actions they accused the Japanese of having committed. While no specific order was ever revealed showing that Westerling's actions were ordered by the military, the Netherlands tacitly approved his actions by failing to control him and his men and by their unwillingness to take responsibility for his actions before or after the Netherlands withdrew its forces from Indonesia in 1949. This research paper explores the extrajudicial executions conducted by Westerling, his men, other Dutch military and the Dutch government in order to provide a better and more thorough understanding of these events and the lack of national or international action against war crimes committed after World War 2. It concludes that the Netherlands has failed to try or even accuse Westerling and others of war crimes or take actions to discipline them, and in fact has covered up his actions and failed to make public those war crimes. Further that the reason for this continued hypocritical refusal is a concern for the reputation of the Netherlands in the world and a belief that high levels of government would be found complicit.

*Keywords: War crimes; Indonesia; colonization; summary execution; mass murder.*

## 1. INTRODUCTION

At the end of World War 2 the world had watched in horror as concentration camps in both Europe and Asia were liberated and the savage treatment of the prisoners in those camps was revealed. The mistreatment, neglect and murder of millions of men, women and children was revealed and the heart wrenching scenes of mass graves, starving survivors and victims of medical experiments were revealed to the world. The extent of man's inhumanity to man was seen and trials such as the Nuremberg and Tokyo war crimes trials were held to hold the perpetrators responsible, punish them and hopefully deter them from similar actions in future conflicts.

Somewhat lost in the cataloging and trying of leaders for war crimes at the end of the war was another type of crime—that of extrajudicial killings. Such crimes were typically committed by lower ranking officers and enlisted men although often prompted by higher ranking military officers in an effort to control potential outbreaks of violence that might hurt war efforts. Aceves [1] describes the importance of extrajudicial killings as:

They are inhumane, unnecessary, and illegitimate. They fail to comply with the most basic principles of humanity and offer no due process to victims—no opportunity to defend themselves through the rule of law. Because of this, extrajudicial killings represent an arbitrary deprivation of life. They constitute the *raison d'être* for the human rights framework established after the Second World War (118).

Many war crimes trials were held in countries where these killings occurred, primarily by the individual countries with their own judicial systems and punishments, but extrajudicial killing was seldom mentioned. It was difficult to prove, with witnesses often dying or being repatriated to their home countries before they could tell their stories and with physical evidence usually consisting of uncovered graves or hearsay statements based on stories told, rather than sworn or recorded statements.

Despite these practical and emotional limitations, a number of war crimes tribunals were held and luckily the records of some of these tribunals were preserved by the United Nations and individual states and are available for review by researchers. According to those records, punishments at these war crimes tribunals were

often severe, with execution a standard sentence for offenses involving murder, but standard due process procedures were given to the accused, including the right to have an attorney. Like the more famous Nuremberg and Tokyo war crimes trials, there were contentions regarding the rights of the military to charge individuals with crimes that were not clearly crimes at the time of the war but those were for the most part resolved by resort to the Geneva and Hague Conventions which included provisions detailing treatment of the military and civilians and were considered customary international law at the time of the war.

The Netherlands was one of the countries that conducted their own war crimes tribunals in both Europe and in the Netherlands East Indies (NEI), now Indonesia. Those tribunals charged primarily German and Japanese members of the military for war crimes committed against members of the Dutch military, Dutch civilians and in the case of the NEI against Indonesian and immigrant civilians.

This might be a topic of fleeting interest in the mass of war crimes trials held around the world after World War 2 (WW2) but becomes more interesting when compared with the lack of prosecution or any official recognition of the similar war crimes the Dutch military committed in the (NEI) after the end of WW2 and until the independence of that colony from the Netherlands in 1949. The Dutch attempted to regain control over the NEI from the Indonesian revolutionaries after the end of the war until and in the process committed many of the same crimes, including both mass murder and extrajudicial executions, as the Germans and Japanese were convicted.

The question arises as to why the Dutch refused to hold their military responsible for extrajudicial executions, when they held the Germans and Japanese responsible for those same actions after WW2. There are a number of possible explanations for the lack of prosecution or taking of responsibility: the fact international treaties did not specifically regulate actions in civil wars prior to the end of the war in the NEI, a belief the deaths of Indonesians were of lesser importance than those of Europeans, an amnesty signed by the parties at the time of independence<sup>1</sup>, a belief

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<sup>1</sup> An amnesty was included in the Round Table Conference treaty between Indonesia and the Netherlands, although

that the war crimes complained of were exceptional or unusual, a belief that they had the right to retain their colony and the vast sums they received from that colony, making any actions taken to maintain control acceptable, or a concern for the reputation of the Netherlands and its highest ranking military and government officials.

The reality is that even if international treaties on war crimes in domestic conflicts were enacted after the war for independence or if the Netherlands had the right to retain their colony and its resources, the events described as occurring in the NEI constituted, at minimum the common law crime of murder of thousands of Indonesians and the facts were well known to the Dutch government as early as 1949 [2]. This paper argues that although there were many reasons for the failure to prosecute, concerns for the reputation of the Netherlands and concerns that high-ranking military and government officials could be implicated in the crimes resulted in a failure to prosecute. It is critically important that states take responsibility for their actions, even actions that occurred over seventy years ago, to insure that impunity is no longer excused for war crimes or crimes against humanity.

### 1.1 Literature Review

To better understand these issues, a review of the existing literature is necessary. While there is considerable literature on war crimes during and after WW2, there is a limited amount of literature regarding these events and actions by the Netherlands and most focus on the Rawagede where a mass murder of Indonesians occurred, rather than extrajudicial killings by the Dutch military. However, there are many articles and books discussing the concept of extra judicial killings as violations of international law as well as a number of international treaties forbidding them.

As international law has developed extrajudicial executions have become clearly a war crime if committed during an armed conflict. Aceves [1] discusses both the United States Torture Victim Protection Act's (TVPA) treatment of extrajudicial killings as well as existing international laws regarding them. According to Aceves "The right to life and the corollary right to be free from the

arbitrary deprivation of life constitute *the* defining human right" (126). He notes that human rights treaties such as the Universal Declaration of Human Rights (UDHR), adopted in 1948 provided that every person had the right to life, liberty, and the security of person (UDHR, Article 3). The International Covenant on Civil and Political Rights (ICCPR) similarly prohibits the arbitrary deprivation of life (ICCPR, Article 4). The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) contains a similar provision although it does allow for an exception for "(c) in action lawfully taken for the purpose of quelling a riot or insurrection (European Convention, Article 2(2)). The Netherlands is a signatory all three of these treaties. The UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989 UN Principles) requires states to prohibit such executions and to follow criminal laws and procedures for any execution and to have a clear chain of command that prohibits officers from demanding extrajudicial executions. Wars and political instability are not exceptions to these principles (1989 UN Principles, Article 3).

One of the problems with holding a state responsible for its violation of human rights through a state crime is that the state creates and enforces the rules. Green and Ward [3] define "state crime" as "state organizational deviance involving the violation of human rights". There are three elements: the state, organizational deviance, and human rights (2). According to Green and Ward

Apart from sheer scale, the other obvious difference between 'robber bands' and 'states without justice' is that states claim the power to determine what is 'just', who is a robber and who is the tax collector. How then can we speak of 'state crime'? If states control what is criminal, a state can only be criminal on those rare occasions when it denounces itself for breaking its own laws (1).

This problem is exacerbated in colonies where the government is created by the colonizing power for the purpose of keeping that colonizing power in control of the colony, its people, its government, and its economic resources. In colonies such as the Dutch East Indies no real power is held by the colonial subjects, not even an ephemeral right to vote for its own choice of government or rulers.

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*Indonesia withdrew from that provision in the treaty in 1954 (Lorenz, 2015, 226).*

Other scholars on the topic of violations of human rights, including Paulose and Rogo [4] looked at the issue of state violations of human rights in the colonies. They reviewed the British actions in Kenya and the German actions against the Herero in what is now Namibia and the possible remedies for the actions of Great Britain and Germany. According to Paulose and Rogo reparations in the form of monetary compensation, apologies, or memorials should be given to the victims as a minimum of reparation. Interestingly, objections to these kinds of reparations come from both the victims and the perpetrators. The victims are that with reparations the actual perpetrators for war crimes will not be held responsible for their actions in a court and punished and the victims who would be entitled to reparations are, for the vast majority of them, dead and unable to benefit from the reparations. From the viewpoint of the perpetrators the laws regarding war crimes were not present at the time of colonization and no reparations should be provided for things that were not crimes when committed (380-1).

Paulson and Rogo [4] assert that in spite of these objections, reparations should still be made. They assert that the perpetrator in colonial cases is actually the state, not the individuals, since the state either ordered them to commit the crimes, failed to stop them from committing the crimes, and in any event failed to punish them for actions like murder, rape, and robbery which are crimes in any country. They also point out that although the people that were killed, raped, or robbed may be dead, their heirs, family and community lost their presence. They also note that one of the major crimes committed by the colonizers is the taking of land which destroyed not only lives but a way of life for many of the victims and the current generation. Lastly, they note that the Nuremberg and Tokyo war crimes trials, and the trials by the various countries such as Great Britain and the Netherlands, accused and convicted Germans and Japanese for the precisely the same crimes that were committed in the colonies. They argue that:

There were no set criminal conventions at that time [WW1 and WW2], and in most cases, the laws which prosecuted the Ottoman Empire, and the Nazis were created after the fact [5]. Yet, these objections regarding what crimes existed then versus now appear to be selectively applied in certain cases and not in others (381).

This is a clear case of victor's justice; the victors of World War 2 were able to prosecute the losers for the same crimes they had committed before the war and continued to commit after the war.

This paper looks the victor's justice in Indonesia and the difference in standards between the Dutch treatment of the Japanese in terms of war crimes, and their own military for their actions during the post WW2 war for independence.

## 2. METHODOLOGY

This article uses existing data from the United Nations, the United Nations War Crimes Commission (UNWCC) and records of verdicts in trials held by the Netherlands in Indonesia after WW2. No surveys or other quantitative methods were used because of the large time between the events and the paper (most participants are dead or otherwise unavailable). Because many records were in Dutch secondary sources such as a book by Borch, who had read and translated many of the details of Japanese trials, were used instead of the primary source. The autobiography by Raymond Westerling regarding his actions in Indonesia from 1945-1949 as a primary source regarding his actions in Indonesia. The methods of using that data and information are detailed below

Noted above, a number of war crimes trials other than the well-known Nuremberg and Tokyo War Crimes Tribunals were held around the world. Most of the records of the other war crimes tribunals are difficult to find or were lost or destroyed after the trials ended but records from some of the key other prosecutions, like the Dachau and Mauthausen trials, have survived. The UNWCC compiled reports of these and various other "minor" war crimes trials and published volumes containing those reports in 1947. They are called minor war crimes trials because they covered cases other than the ones covered in the Nuremberg major trial and Tokyo and cases which did not have a specific geographic location or had more than one location. The latter distinction is important because the Nuremberg International Military Tribunal (IMT) which tried 24 Germans, and the Tokyo International Military Tribunal for the Far East (IMTFE) which tried 28 Japanese, were limited in their geographic and temporal jurisdiction while the national commissions published in the UNWCC books did not. Also, the UNWCC cases were all conducted by military courts, using their individual national procedures

and codes of military conduct while Nuremberg and Tokyo had an international charter created by the participating allied countries just for those tribunals. Not all, or even a large percentage, of the trials held by military courts during the 1940s are included in these volumes but the UNWCC notes that they included representative cases that involved both municipal and international laws that were raised and settled during the trials and the cases involved were ones that would be of particular legal interest [6].

Fifteen volumes were published and included cases tried by the British military courts, the United States (US) Military Commissions, the Supreme Court of Norway, the Permanent Military Tribunal at Strasbourg (France), the Canadian Military Court, the Supreme National Tribunal of Poland, the Netherlands Temporary Court-Martial in the NEI, the Special Court in Amsterdam, the Chinese War Crimes Military Tribunal, and the Netherlands Special Court. These various courts met often in the country where the crimes were committed and were separate from any international war crimes tribunal charter. Judges were from the country which court was hearing the cases and all were judge, not jury trials. In all cases the accused were entitled to, and had, the services of an attorney and the right to call witnesses on their behalf, making these trials ones that complied generally with international due process requirements.

The records contained in those fifteen volumes were reviewed and all cases referring to extra-judicial killings or executions involving the Netherlands were included in this study. Trials involving allegations of the use of at least some form of due process were not included since the actions by the Dutch in Indonesia did not involve trials with any due process rights. Where possible, cases have been included referring to the killing of not just military personnel but also civilians, prisoners of war and commandos. The case involving commandos is included because the Dutch killed people in Indonesia that were described as terrorists; these people were not in the government, military and were not innocent civilians, but were instead civilians who committed acts of sabotage which would be similar to the charges brought against commandos in the LRTW reports. Although this sample is small, it is estimated the Netherlands held 448 war crimes trials regarding 1,038 defendants. A total of 236 people were executed for their actions in Indonesia. The Netherlands

had much higher conviction and execution rates of the Japanese than Great Britain, Australia, China, and the Philippines [7].

An additional source of information regarding Dutch trials in the Netherlands is the trials chronicled by Fred Borch [8] in his book *Military Trials of War Crimes in the Netherlands East Indies, 1945-1949*. Borch was able to obtain records from Dutch sources called "Vonnis", or verdicts in English, and detailed the trials of several Japanese military personnel. Borch's descriptions are used as written in his book. The one case that is available in both his book and in the UN, Military Records, Motosuke Susuki, has virtually identical information, making Borch's book appear reliable.

The official records regarding the Dutch actions in Indonesia after World War 2 are even more sparse than the WW2 tribunal records despite the evidence of mass killings and extra-judicial killings committed by the Dutch military. No one from the Netherlands has ever faced charges for war crimes or crimes against humanity for their actions in Indonesia between 1945 and 1949 when Indonesia gained its independence from the Netherlands. There are three good records—the Challenge to Terror [9], the UN report of the Rawagede massacre from January of 1948 [10], and an extensive document reported on by Oostindie, Hoogenboom, and Verwey [11].

## **2.1 War Crimes Trials Conducted by the Netherlands for German and Japanese Military**

Despite all of the pressing concerns regarding rebuilding the Netherlands and regaining control over its colonies so they could fund an economic recovery, the Netherlands also joined the larger movement at the end of WW2, along with Great Britain, France, the US, Russia, the Philippines, China, and several other countries to conduct trials regarding German and Japanese war crimes. The Netherlands conducted trials both in the Netherlands regarding Dutch citizens and in the NEI regarding Japanese war crimes committed by members of the Japanese military against Dutch and Indonesian civilians. The trials were based on three sources of law—international law, common law and NEI public laws. A few illustrative cases are discussed below with one case conducted in the Netherlands and the remainder in Indonesia. All were conducted by military tribunals and all involved allegations of extrajudicial executions along with other crimes.

## 2.2 Illustrative Dutch Cases on Extrajudicial Executions by Germany

### 2.2.1 Sandrock, schweinberger, hegemann, and wieger case

This trial occurred in Almelo, Netherlands in November of 1945 under the authority of Great Britain. Four German soldiers were charged with executing, without a trial, a British airman and a Dutch civilian hiding in the house of a Dutch woman. The trial was conducted by the British but Colonel Brauw of the Royal Netherland Army was one of the judges since the allegations involved a Dutch civilian and occurred in Dutch territory. The British airman had been shot down in the Netherlands and the Dutch civilian was hiding from compulsory military service with the Germans. Both were interrogated, then shot by the Defendant Germans. No trial was held of the two men prior to the execution. The Defendants admitted to the killings but argued they were not aware that the killings were illegal since they felt the two men had committed crimes and could be executed. The court found that even if the offenses called for the death penalty the two men were entitled to a trial and should not have been simply shot (Law Reports of Trials of War Criminals, Volume XII).<sup>2</sup>

## 2.3 Japanese War Crimes in Indonesia<sup>3</sup>

### 2.3.1 Susuki case

This trial occurred in Amboina, Indonesia in January of 1948. The Defendant was charged with having executed three Indonesian civilians who were subjects of the NEI and one Dutch man who had joined the Japanese army. The case of the Dutch man is complicated and not relevant to this paper since it involves the question of whether he was executed by a Japanese officer while he was enlisted in the Japanese army. There is no question the three Indonesians were truly civilians accused of anti-Japanese actions. Susuki was convicted of

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<sup>2</sup> The case regarding the airman was tried using the British Municipal Law. The case regarding the civilian was tried universal international law that allows the anyone to be tried for war crimes or piracy and the right of any country to punish defendants who commit a crime against an ally (Law Reports of Trials of War Criminals, Volume XII, 35-45).

<sup>3</sup> Other than the Susuki case the information regarding the cases is derived from *Military Trials of War Criminals in the Netherlands East Indies 1946-1949* by Fred Borch (2017). Borch used the Dutch records of verdicts for his explanation of the cases.

executing the three civilians and sentenced to death.

The case regarding the civilians was heard under the terms of the 1919 Commission on the Responsibility of the Authors of the War and Enforcement of Penalties and under the Netherlands East Indies statute on war crimes under Article 1 of the Statute Book Decree No. 44 of 1946. The court determined that the executions constituted murder and violated both provisions because they were done without any real form of due process [6].

### 2.3.2 Daigo case

This trial occurred in Pontianak, Indonesia in 1947. The Defendant was charged with the deaths by execution of 1,054 people in groups of 100 by troops under his command either by an express order or by his failure to control the killings by his men. The Defendant claimed that he had executed the individuals because they were involved in a conspiracy to destroy Japanese authority. He also claimed that they were tried and convicted by an emergency court-martial presided over by only him, and therefore there was no extrajudicial execution [8].

The court rejected this claim since there was no formal trial or due process protections for the victims and they were not allowed to present any defense, making any court-martial done only to "impart a lawful appearance to the executions". Also, the concerns about an imminent threat to Japanese power was not present since Japan was at the height of its power in 1944, when the executions took place, so there was no reasonable chance that the conspiracy, even if it existed, had any change of success. He was found guilty and executed less than three months later [8].

### 2.3.3 Kamada case

This trial occurred in Pontianak, Indonesia in 1947. The Defendant was charged with ordering or not controlling his subordinates in the execution of 150 people he claimed were conspiring against the Japanese. Kamada succeeded Daigo (above) as the commander of the naval base and had similar beliefs that a conspiracy existed. The Defendant denied having ordered or knowing anything about the executions but was found guilty by the court because his subordinate testified, he would have never taken the actions to execute people

without an order. He was convicted in 1947 and executed two months later [8].

#### **2.3.4 Kokubu case**

The Defendant was charged with having mistreated local youths who were recruited to do heavy manual labor for the Japanese, and for committing extrajudicial executions. According to the evidence the Defendant executed many of the youths when they were caught stealing supplies or leaving the area without permission. The Defendant admitted he committed the executions but that stated they were not a war crime because the Japanese Military Penal Code permitted them. The court ruled that the Penal Code did not apply since it only permitted extrajudicial executions during combat. The court also found that of the 1,800 youths he supervised only 180 survived to the end of the war. He was executed three months later [8].

#### **2.3.5 Yoshida**

This trial occurred in Balikpapan, Indonesia in 1948. The Defendant was charged with executing approximately six people in July of 1945 (shortly before the end of the war) probably due to their involvement in the resistance against the Japanese as Japanese power waned. Although the actions of the victims could have been punished under the Japanese Penal Code because the victims were summarily executed without a trial the Defendant was found guilty of extrajudicial killings. The Defendant confessed fully to the killings but defended his actions as following an order he did not know was unlawful. Because of his confession and low rank, Sergeant Major, the Defendant was sentenced to four years in prison [8].

#### **2.3.6 Makino**

This trial occurred in Amboina, Indonesia in 1948. The Defendant was charged with ordering two subordinates to kill 100 villagers in retaliation for the villagers' attack on a naval base where one Japanese guard was killed. After several villagers were tortured all the villagers were taken to a river and executed by machine gun. Makino was personally involved in the torture and killings. There is no record of the Defendant's arguments regarding innocence but there was an attempt to coverup the killings as being the result of the defense of the naval base from an attack by the villagers. The Defendant was found guilty of extrajudicial executions and rape and was executed a few days later [8].

### **2.3.7 Discussion**

It is clear from these cases that the Netherlands punished Japanese military when they could be identified and arrested for charges including extra judicial or summary executions (Yoshida, Kokubu, Kamada, and Daigo, and Suzuki) and for mass killings (Makino). There are undoubtedly more cases, but these cases are well documented and discussed.

Although the defendants were provided with due process, including an attorney, judges, the right to testify on their own behalf and witnesses, all were convicted, and most were executed for their crimes. The court applied customary law along with the law of the NEI in convicting and sentencing the defendants. The courts were funded through the Dutch government and there was no outcry that the Netherlands lacked jurisdiction over the defendants, even those who executed saboteurs or commandos. The defendants were afforded due process and the Netherlands vigorously pursued these and other war criminals to avenge the actions by the Japanese against Dutch and Indonesian civilians.

## **2.4 Brief History of the Netherlands East Indies**

### **2.4.1 Colonization**

It is critical to understand the relationship between the Netherlands and Indonesia to fully understand the issues faced by both after WW2. Indonesia was first explored and colonized by the Portuguese in early 1500, followed by the Netherlands near the end of the 1500s. The Netherlands explored what is now Indonesia to obtain a market for spices and United East Indies Company (VOC in Dutch) was granted a charter to colonize the area and to trade in the area where massive profits were received. In 1800 the company was dissolved, and the area became the colony named the Netherlands East Indies (NEI).

NEI was difficult to govern or colonize since it consists of a series of separate islands and different ethnic and religious groups. The Netherlands eventually gained control over the area and continued to exploit its resources as it had done under the VOC, particularly oil, rubber, quinine, as well as tea and coffee. The colony was highly profitable for the Netherlands, and it invested in industrialization and infrastructure,

including railroads, roads, and ports to make it possible to exploit more. Indonesia had a large number of Dutch colonists who made it their home. The Dutch government had control of the government of the Netherlands and nationalist movements led by men like Sukarno were arrested by the Dutch government and had their movements banned even before WW2.

#### **2.4.2 World war2**

During WW2 Japan defeated the Netherlands by 1942 and took control of Indonesia; it was considered an essential area for the Japanese war effort due to the rich oil fields and rubber that were needed for their war efforts. Dutch colonists living in Indonesia were seized by the Japanese and placed in concentration camps and many Indonesians were involuntarily conscripted. All suffered severely from Japanese rule, but the conscripted Indonesians were treated as disposable with a large number of them died through overwork, abuse, starvation, mass murder and execution by the Japanese, particularly near the end of the war. According to the UN over four million people died in Indonesia during the war and many others were taken to surrounding countries like Burma to work where most died.

Japan had a need to exploit Indonesia without a requiring a major military presence and effort; they decided to turn to Indonesian leaders rather than the Dutch colonists to control the country. Japan also encouraged Indonesian nationalism, particularly in the Java and Sumatra areas, to encourage Indonesians to cooperate with Japanese war efforts. As a result, Japan encouraged nationalist leaders such as Sukarno and Hatta and gave Indonesians some participation in the government. The Japanese had used promises of more freedom to eliminate any Dutch resistance and to ingratiate themselves with the Indonesian people. They also encouraged the rise of the nationalist leader, Sukarno, to eliminate Dutch influence and install Japanese influence in its place [12]. Indonesia was unwilling to go back to being a colony. When the Dutch military and government returned to Indonesia in 1945 the Indonesian drive for independence had already begun against the Netherlands with its exhausted and reduced military and economy.

#### **2.4.3 Dutch War Crimes in the Netherland East Indies**

After the end of the war the Netherlands had been left in tatters. The country was invaded in

1940 then occupied by German troops despite its efforts to remain neutral. It surrendered to Germany after the Germans bombed the major Dutch city of Rotterdam [12]. Over 200,000 Dutch men, women and children died from war related injuries, including over 100,000 Jewish people who died mainly in concentration camps (World War 2 Database). The economic losses within the country are difficult to calculate but were substantial. The losses from the NEI have been calculated, with estimates showing the Netherlands had a surplus income (income from all sources minus the cost of administering the colony) of between 400 and 500 billion dollars from the NEI alone. None of that was available during the war and the Netherlands lost control of that surplus when Indonesia became independent, although there remained some economic ties [14].

When WW2 ended in 1945 the Netherlands immediately made arrangements to reclaim its NEI colony. In response to the loss of income that would come with Indonesian independence, the Netherlands sent troops back to the NIE as soon as was possible, to reclaim their colony and generate profits to start the rebuilding of the Netherlands. Although Japan had surrendered in August of 1945 and Indonesia declared its independence from the Netherlands a few days later, the Japanese remained control in Indonesia because the Dutch were unable to move forces in time regain control of the colony. British forces provided some assistance but most of the concentration camps were still controlled by the Japanese and despite orders to turn in all weapons to the British, the Japanese retained weapons and the right to use them. The lack of control allowed the Indonesian nationalist leaders to flourish and seize much of the infrastructure.

In reaction to this push for independence, the Netherlands sent more troops, including special forces troops to Indonesia to take over from the Japanese and British and to squelch the growing drive for independence. The combination of the Dutch perceived need to recover the economy power of the colony and the nationalist Indonesian who saw independence as possible resulted in the use by the Dutch of the very tools of repression and control they had charged the Japanese with as war crimes. Both sides committed atrocities against the Indonesian people, including mass murder and summary executions. Indonesian abuses could have been prosecuted under NEI law. However, finding laws to support criminal charges for the Dutch



was difficult. War crimes committed by the Dutch between 1945 and 1949 did not occur during an interstate war and were therefore not international; instead, the conflict was an intrastate conflict between a colonial power and their subjects. The other sources of international law used to try the Japanese and Germans during WW2, including the existing Hague and Geneva Convention did not apply.

It could be, and has been argued, that war crimes trials were impossible because historically, only international conflicts have been considered as arenas where war crimes should be regulated. International treaties were primarily the instruments of the European countries, and few would have considered intrastate conflicts, particularly those with colonies, as conflicts where their conduct should be regulated by any law. While there are several treaties that contain provisions regarding war crimes and crimes against humanity, including prohibitions against extra-judicial killings none specifically applied to intrastate or civil war. Most apply to crimes during an interstate war and include prohibitions against murder and extrajudicial killings but only in the context of interstate wars. Due to the concept of sovereignty, where countries have the right to make decisions about their internal affairs without interference, treaties or conventions seldom have strong provisions regarding internal actions.

The Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (also known as the 4<sup>th</sup> Geneva Convention) was signed. Among over 180 different countries, the Netherlands signed the Convention in 1949 and ratified it. That Convention extended some protections (but not all) from earlier Conventions to non-international conflicts. According to Article 3 of the 4<sup>th</sup> Geneva Convention where there was an armed conflict that was not international, people who were not active in the conflict must be treated humanely and not subjected to violence, death, torture, or summary executions (Article 3 of the 4<sup>th</sup> Geneva Convention, 1949).

The Red Cross was the driving force for Article 3. According to the commentary to that article of the Convention, the Red Cross had always concerned itself with humanity in general, not just the military during a war. It states that:

The principle of respect for human personality, the basis on which all the Geneva Conventions rest, was not a product of the Conventions. It is older than they are and independent of them. Until 1949 it only found expression in the Conventions in its application to military [p.27] personnel. But it was not applied to them because of their military status: it is concerned with people, not as soldiers but simply as human beings... (Commentary of 1958-4<sup>th</sup> Geneva Convention)

The problem with obtaining international approval of Article 3 lay in the fact that most of the countries viewed actors in civil wars as criminals, terrorists, and bandits, not as civilians or members of a legitimate military. The concept of including protections for non-international conflicts was first attempted in 1912 by the International Red Cross Conference and was not even discussed. It was tried again at the Red Cross International Conference in 1921, after the horrors of World War 1 and a resolution was passed allowing Red Cross intervention in non-international conflicts; the Red Cross did get involved in the civil war in Upper Silesia in 1921 and the Spanish Civil war, but not more generally. Further resolutions were passed in 1938 (Commentary of 1958-4<sup>th</sup> Geneva Convention).

Despite the resolutions there was no Convention signed by the Netherlands regarding non-international conflicts until the 4<sup>th</sup> Geneva Convention was signed in 1949. Clearly that Convention prohibited mass murders and extra judicial killings during wars that were not international, including the war for independence in Indonesia. Unfortunately, the Convention was signed by Netherlands after the end of the Indonesian hostilities. Prior to that time the Geneva Conventions only applied to international wars and since the Netherlands was considered the colonial power in charge of Indonesia 1945-1949 those conventions would not apply since laws, particularly those with criminal penalties, are not typically applied retroactively.

There are two sources of law that could or should have been used to try the Netherlands for Indonesian war crimes and one ethical consideration. First, in 1946 the Netherlands created Article 1 of Statute Book No. 46 of 1946. According to the explanation to that article:

In spite of the reference to the laws and customs of war in the definition of war crimes and except when a deviation from the general Netherlands East Indies Penal Code has been established by decree expressly for war crimes, the Netherlands East Indies existing criminal laws . . . remain in principle applicable to war crimes [15].

Murder and mass murder were both prohibited under NEI law as was torture, breach of other rules relating to the Red Cross, and carrying out of or causing execution to be carried out in an inhuman way [15]. Second, the crime of murder, at a minimum, is a violation of common law. Murdering large groups of people, as was done in the Rawagede massacre described below, or kidnapping and killing a civilian, as was done by Captain Westerling as described below would clearly violate the common laws of the Netherlands.

Lastly, there is a moral or ethical argument. If the Netherlands had the authority to try citizens of other countries for war crimes like the ones the Japanese were accused of committing in NEI, they had the moral or ethical authority to charge their own military forces. Therefore, there are at least three sources of law that could have been used to try offenders for offenses committed before 1949.

## 2.5 Documented Dutch War Crimes

After their return to Indonesia the Netherlands eventually built up its military to try to regain control over the colony. Along with regular troops they sent special forces and counterintelligence to stop nationalist movements, sabotage of Dutch assets and terrorism against Dutch and Indonesian people not tied to the nationalist movements. One member of the counter-intelligence force was Captain Raymond Westerling, a product of a Greek mother and a Dutch father who enlisted in the Royal Netherlands army in 1941 and was eventually transferred to counterintelligence (Westerling, 1952, 9-16). Westerling went on lead his special forces to regain control over the government of Indonesia and eventually to try launch an unsuccessful coup against the Indonesian government in 1950 (De Moor, 1999, 129-152). Although Westerling was not the only member of the Dutch military to commit war crimes, he was the only one that wrote proudly and publicly about his actions.

## 2.6 Westerling's Extrajudicial Killings

In 1952, two years after his failed coup attempt, Captain Westerling wrote a book, *Challenge to Terror*. The book was later translated into English and republished in 2008 after his death. Most of the book covers his childhood, time in the military during WW2 and his time after leaving Indonesia, but several chapters deal with his time in Indonesia from 1945 to 1950, first as a regular military officer and later as a member of the Counter-Intelligence Service [9]. It also details his exploits in attempting to overthrow the Indonesian government after independence and his subsequent arrests, but those issues are not relevant to this paper.

Throughout the book Captain Westerling details his many exploits that would have violated the 4<sup>th</sup> Geneva Convention had it been in place as well as the Dutch common law for the Dutch East Indies. That customary law was used to convict and execute members of the Japanese military for, among other things, summary executions and mass murders. Below are the various statements by Captain Westerling that involved summary execution and some incidents showing his use of summary execution.

Westerling noted that the policy of the Dutch towards people accused of being terrorists was to have villagers identify the terrorists, have the Dutch military and Indonesian government question them, and then return them back to the villages where they would retaliate against the villagers who identified them. Westerling argued that "When it came to dealing with them, the firmest hands was the kindest hand. One execution of a criminal might mean saving of hundreds of lives among the innocent" [9].

Westerling also argued that men he described as terrorists who used connections within the Indonesian police force to carry out terrorist acts should be executed to make an example for other terrorists. According to Westerling:

Some, who were convicted of being actually responsible for crimes, were executed. I didn't want to order any more executions than were absolutely necessary. But, for those few I intended to make striking, so the effect of the example would be as great as possible [9].

Although he refers to convictions there is nothing in the book that discusses judicial convictions

and other statements show that if he had people who had committed minor offenses, he would let them off with a warning but would be pitiless in his actions toward them if they offended again [9]. Nothing in this account shows any efforts to have a court review the actions of the revolutionaries.

Beyond these general statements in favor of extrajudicial killings, Westerling detailed several incidents where he executed revolutionaries without any legal process. The first incident occurred when British soldiers were still in Indonesia. British troops, as noted above, were withdrawn by November of 1946 [16]. According to Westerling the British soldiers were unable to arrest an Indonesian man, Terakan, who was accused of killing British soldiers. The major of the British forces requested Westerling's assistance in arresting the man who was a member of the revolutionary forces. Westerling's account shows that he and two Indonesian men were able to penetrate the camp and kill three sentinels then chloroform Terekan and carry him out of the camp. When they attempted to question the man, he got up and was killed by one of the Indonesians. His head was later presented to the British major [9]. Westerling described the event as "What did I do? I killed four men, all murderers. By doing so, I put an end to their crimes, which had hundreds of innocent victims" (67). He compared his actions to those of a police action where the village could be burned or bombed to repress the terrorists and argued that his actions were milder and noted that:

For my much milder operations, I was sometimes described as a monster. Was it because I executed personally the measures which I considered necessary...Whatever the reason, I find it difficult to follow the logic of those who condemned me for ending terrorism by executing a few carefully chosen victims who richly deserved their fate (68).

The second incident happened when Westerling spoke with an Indonesian whom he had determined was responsible for skirmishes where Dutch soldiers were killed. He noted that he had the information to convict him of crimes but because he was a nationalist, he felt he could be expected to obey a warning. Westerling warned the man to not return to the Society Club which Westerling also frequented. When Westerling found him there several days later he shot him in the head, killing him. Westerling

justified his actions by saying he had no doubt the man would have been convicted and executed by a court, so he shot him in public because "I wanted to shock public opinion" (98-99). He also noted that he felt his act was justified because the shock felt by revolutionaries ended terrorism in the city Makassar when the killing took place (100).

In a third incident Westerling faked the execution of villagers to get village elders to turn over people the village perceived to be the real criminals. After four of them were denounced by the villagers (after believing their fellow villagers were executed) those that were denounced were summarily executed. According to Westerling, after the people involved in the fake execution got up "The whole village broke into roars of laughter. Even the followers of the four men chortled with glee" [9].

The fourth incident is perhaps more telling, or explanatory, of Westerling's view of due process or a judicial finding of guilt. He was asked by a Dutch captain to help him in capturing criminals who were attacking villages. The captain was unable to capture the attackers despite having set up a private police force. Westerling informed the captain that he had captured several of the leaders. According to Westerling "He [the captain] came out into the courtyard where the convicted prisoners whom, I had tried a little earlier were lined up against a wall before the firing squad" [9]. This shows that even when Westerling said prisoners had been tried, he meant they had been tried by him, not an impartial court, before they were summarily executed.

Throughout his book Westerling declares himself to be a person who was only interested in bringing peace to Indonesia and to defeating revolutionaries who were killing their own people as well as Dutch soldiers. He noted that in 1948 the United Nations became involved in the conflict and the new Indonesian government made him the scapegoat for the killings in Indonesia. According to him he was attributed with killing 42,000 innocent Indonesians [9]. However, he also points out that the Dutch were motivated to keep Indonesia as a colony because there were few educated Indonesians, no experienced government leaders, and rampant corruption that would put the money from exports into their pockets rather than the country's (138-139). Westerling did admit he directed eleven operations in the Celebes portion of Indonesia and killed less than 600 other

terrorists by fighting or by execution. The exact number for each category is hard to determine but Westerling also states he only lost three men during that time period, making it unlikely many of the deaths of Indonesians occurred during direct conflicts [9].

A clear message from Westerling's book was his disdain for due process, trials, and evidence. Westerling believed he had ability to get men to confess and knew when they would lie. According to him, he would glare at men who would become confused and then run into the hands of his men. He would then have the people in the village decide whether death or life was appropriate and if the villagers did not support him would take him away and kill him. He opined that "I learned by experience that I could put complete faith in these communal judgments...That is more than can be said for the more formal processes of the courts of our highly organized western societies" [9]. He also discussed having arrested people only to have them be released by the civil authorities and return to kill and terrorize both their own people and the Dutch troops (95). This same phenomenon was discussed by Remy Limpach [17] who note "In the eyes of many soldiers, the arrested would then rapidly be set free...As a result the freed men could rejoin the fight against the Dutch or 'terrorize' pro-Dutch civilians and informants" (68).

Westerling would go to retire from the Dutch military and to gather together troops which he grandly estimated at 22,000 to try and overthrow the Indonesian government in Bandung and Jakarta (153). He failed in his coup and found his way to Singapore. Singapore was still under the British government at the time and when Indonesia requested he be extradited to Indonesia for trial on war crimes, the Singapore government refused the extradition, claiming that the request did not include any information regarding the commission of the offenses (The National Archives). Westerling was deported from Singapore and arrived in the Netherlands via Belgium.

### 2.7 The Rawagede Extrajudicial Killings

Although Westerling's exploits are the most colorful, there are not the only examples of war crimes committed by the Netherlands during this time period. No discussion of the violence in Indonesia is complete without a mention of the mass murder and extrajudicial killings in

Rawagede on December 9, 1947. Somewhere between 150 (Netherlands statement) and 433 people (Indonesian estimate) were killed, and the Dutch admitted to only having four casualties, but either way a mass of people were killed. According to the United Nations Security Council Committee of Good Offices-Indonesia, no Dutch soldiers were killed in the attack and no lethal weapons were found at the site. Only adult men were killed. According to the report the primary purpose of the attack was to act as a deterrent to future activities by revolutionaries in the area. There were also reports from one man taken prisoner by the Dutch of extrajudicial executions of prisoners and the major in charge admitted to killing four prisoners without a trial because "they were Indonesian soldiers". This event did not involve Captain Westerling but was part of the same attempts to control revolutionaries in 1947 [18].

Despite the investigation by the UN and their own brief investigation the Netherlands refused to try to prosecute Major Wijnen or other officers or men involved in either the mass murder or the extrajudicial executions. The Netherlands government also restricted access to the reports to the UN and government members who wanted to the possibility of having high ranking military and government officials involved in any war crimes or excesses committed in Indonesia [2].

### 3. DISCUSSION

At the time of independence in 1949 there was a clear precedent for war crimes trials involving Dutch military personnel. While such extrajudicial killings during a war of independence are not unusual, unfortunately, the fact these extrajudicial killings were committed by military personnel in the Dutch army which tried and executed Japanese soldiers at the end of World War 2 for identical killings shows the hypocrisy in the "victor's justice" <sup>4</sup> that occurs in war crimes trials. It is also a testament to the difficulties in uncovering and prosecuting war crimes, particularly those committed by European countries against their former colonies. Most crimes remain uncovered since the European country carried most of the power during the conflict and most countries after independence focus on creating a constitution and a government, not a war crimes trial. According to Nord (2015)

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<sup>4</sup> A phrase used by Dr. Richard Minear regarding the Tokyo War Crimes trials.

European states wanted to recover properties lost during the war and seemed as intent as ever on projecting power beyond the continent's borders through the exertion of formal, imperial rule. War-time Japan's own expansionist ambitions had overturned the imperial order in the Far East, but a concerted effort was made after Japan's defeat to resurrect the status quo ante... imperial powers took great care when negotiating international agreements to guarantee non-interference with their own reassertions of imperial control. Conventions on warfare were rethought in the light of Nazi crimes but in such a way as not to delegitimize counter-insurgency tactics. The UN itself was structured so that its operations would not impinge on imperial prerogatives provided they were exercised with the developmental interests of subjects in mind. The post-war world was supposed to be one safe for empire... Yet, it didn't work out that way. It proved impossible to cram the genie of Third-World nationalism back into the bottle (324).

The Netherlands was no exception. When the military returned to Indonesia after the war it was impossible to stem the tide of nationalism. The Netherlands turned to military actions to try to control and turn Indonesians back to empire, with no success. It is not surprising that the Dutch troops resorted to violence and mass killings to control the country, like what the Japanese had done during the war. Both Captain Westerling and Major Wijnen were the symbols of the violence but the fact the Netherlands never made any effort to investigate and punish the crimes shows there was at least tacit agreement with their tactics.

Despite his book containing stark evidence of the various extrajudicial executions he committed, Westerling was never charged for his crimes. In 1949 the Netherlands government ordered a commission of inquiry into potential war crimes in Indonesia after a Dutch officer sent a letter to friends about war crimes he had seen committed. Two lawyers went to Indonesia and interviewed witnesses and investigated. The report, which detailed mass killings and extrajudicial killings was never made public despite the fact it pinpointed Dutch officials in Indonesia who failed to stop the actions. It was not submitted to the government until 1954 and was accepted but not acted on because if Westerling and others were prosecuted it would open the possibility of

prosecution of high ranked officers and government officials in the Hague. The possibility of a trial was dismissed because prosecutions did not occur at the time of independence when witnesses and evidence would have been available and would not be successful now due to the length of time since the act were committed [19]. Records were not made available to researchers until 2009 and even then with restrictions [2].

The UN report found the attack at Rawagede was "deliberate and ruthless" particularly given the lack of casualties for Dutch troops and the killing of at least 150 Indonesians with only four Indonesian casualties, implying they were indiscriminate in the killings and intent on killing everyone, not merely a few known revolutionaries. The report also points out the complete lack of weapons in the possession of the villagers and the subsequent execution of four prisoners by Dutch troops [18].

There is, arguably, a legal question as to whether the actions of Captain Westerling and Major Wijnen, along with other not clearly identified military personnel violated treaties regarding war crimes. The 1949 Fourth Geneva Convention was not in place when most of the acts occurred. Earlier versions of the Hague and Geneva Conventions did not specifically include intrastate armed conflicts in their coverage. However, the common law of NIE that was used to convict Japanese soldiers and would also apply to these actions; at any rate murder is clearly a violation of any nation's laws. So, while there might be a defense to the prosecution of war crimes the reality is that the Netherlands never attempted to try either Westerling or Wijnen for war crimes despite the fact they had substantial information regarding criminal acts being conducted by their military.

The important question is why the Netherlands did not investigate war crimes; they had investigated war crimes committed against the Indonesian and Dutch people by the Japanese and in fact had executed several Japanese military personnel for the war crimes of summary execution and mass murder. As noted above there were some legitimate concerns about the ability to get witnesses and evidence to prosecute for war crimes but the statements by Westerling and the UN report on the Rawagede massacre were ample evidence of at some of the war crimes.

Bosma [20] postulates that the absence of a post colonial debate in the Netherlands may account for this unwillingness. Bosma defines post colonial debate as:

A critical and systematic reflection on the political, historical and cultural consequences of Dutch colonialism, per se, and for the power relations in our contemporary society and for relations with Indonesia, Surinam and the Netherlands Antilles and other former colonial powers (194).

According to Bosma the lack of reaction by the Dutch people and government to revelations of war crimes was not a type of amnesia but was instead a lack of moral indignation. The Netherlands was late, compared to France and the United Kingdom, in its acknowledgement of responsibility for the slave trade and the colonial wars in Indonesia (193). Indonesia was important to the Netherlands for economic reasons but as part of its identity; this is particularly true since the economic power from the colonies made the Netherlands as a player in European power struggles (195).

#### 4. CONCLUSION

These issues are coming to the forefront now as time and distance has allowed some reflection and often feelings of guilt and sometimes responsibility in the former colonizers. In 2021 Germany apologized for the genocide of the Herero and Nama people in what is now Namibia and pledged over one billion dollars in aid to Namibia (politico.com). Belgium apologized in 2000 for its involvement in the Rwandan genocide in 1994, although not for its actions during the colonial period (bbc.com). Belgium also sent its regrets, but not its apology, to the Congo for the actions of King Leopold II during colonization (cnn.com).

The Netherlands, however, continues to be hypocritical with regard to its actions in Indonesia 1945-1949. It tried and executed Japanese military for the same acts it turned a blind eye to when they were committed by their own military. They have never taken the blame or admitted to these actions and their refusal to act against them. They lost their colonies and the riches they received from the colonies, but also lost some of their respectability as a result of their inaction.

Even today, acknowledgement by the Netherlands is minimal, at best. In 2020 King

Willem-Alexander of the Netherlands stated during a state visit to Indonesia:

We are looking forward to the coming days. Our visit has a wonderful, future-oriented programme.

At the same time, it is a good thing that we continue to face up to our past. The past cannot be erased, and will have to be acknowledged by each generation in turn.

In the years immediately after the *Proklamasi* (Independence), a painful separation followed that cost many lives.

In line with earlier statements by my government, I would like to express my regret and apologise for excessive violence on the part of the Dutch in those years. I do so in the full realisation that the pain and sorrow of the families affected continue to be felt today [21].

This was a form of an apology, but it occurred 75 years after the deaths and is couched carefully in the use of the word “excessive” violence. The Dutch had refused to acknowledge their actions were war crimes; instead, they referred to them as excesses or excessive violence. This speech continues this failure. The speech also was not accompanied by any reparations for families or pledges of trials for perpetrators.

There are certainly reasons why the Netherlands did not acknowledge the war crimes committed in the NIE until very late. Even then the acknowledgement did not reflect the circumstances of thousands of civilians who were killed in mass murders or executed by Dutch military personnel. According to Lutikhuis and Moses [22] Dutch crimes were typically described as excesses rather than war crimes because that word allowed the actions to be considered unusual, not the natural behavior of troops in the NIE (65). That fit better with the image most Dutch had of themselves. They viewed the Dutch experiences as a struggle against a brutal occupier (both Germany and Japan occupied portions of Dutch land); this view makes the horrors of WW2 the Dutch experience, not what occurred after the war. According to Lutikhuis and Moses [22] “When Dutch atrocities were remembered and periodically expressed in the press and on television, they were not narratable as part of a larger story that helped people make sense of their and the country’s (colonial) past” (270). Other reasons given for the failure to accept responsibility include not wanting to stain the

memory of Dutch troops, a lack of clear evidence of war crimes, and a fear that higher government and military officials would be embroiled in any war crimes trials. All may be true, other than the lack of evidence as demonstrated above, but are true in other cases involving war crimes. Germany admitted their war crimes and made at least some attempts at reparations. The Netherlands has yet to do so.

## COMPETING INTERESTS

Author has declared that no competing interests exist.

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