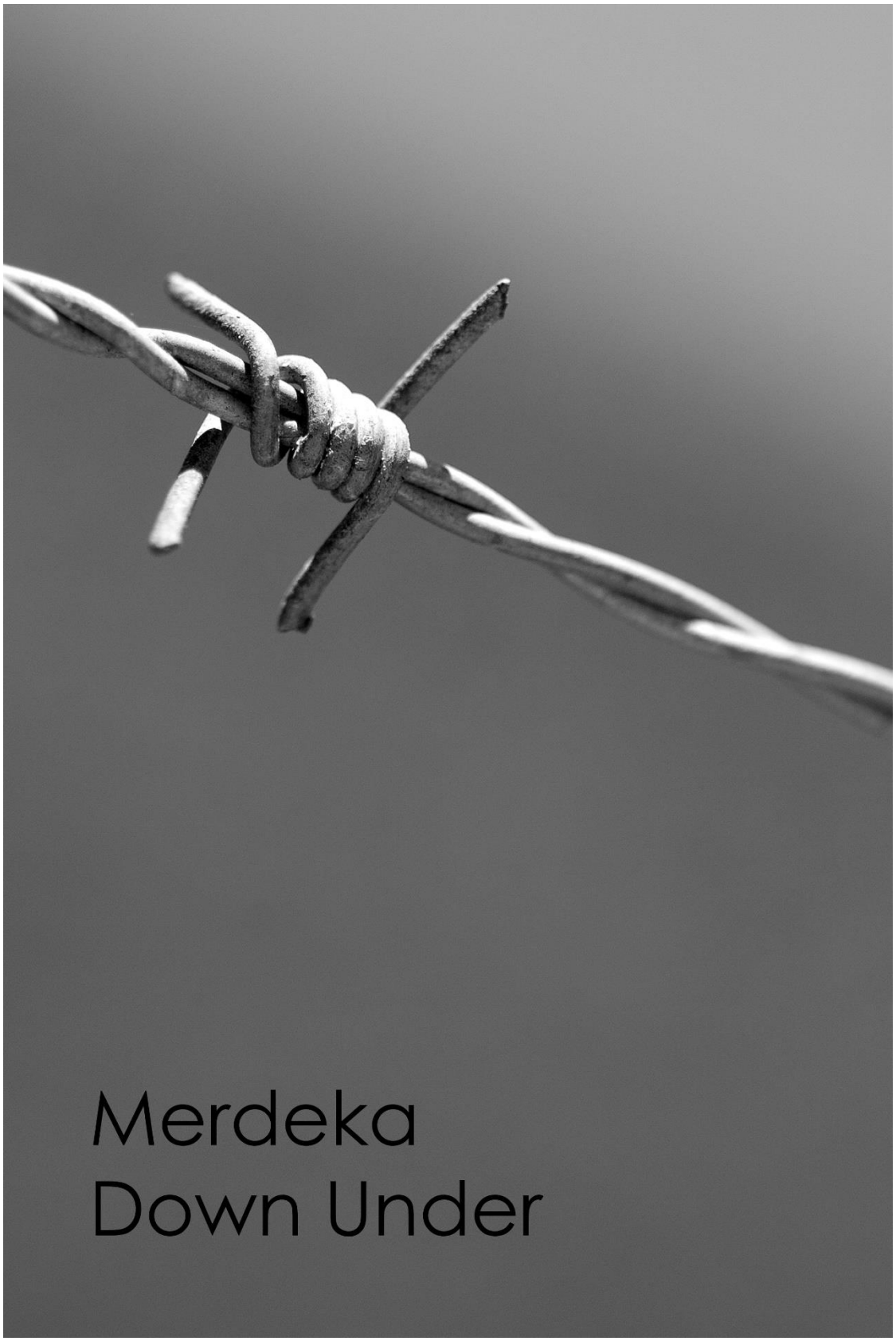

Merdeka Down Under

MRes thesis
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Declaration of Originality

I, Judith Mirjam Rozeboom, declare that this thesis is my own work and has not been submitted in any form for another degree or diploma at any university or other institute of tertiary education. Information derived from the published and unpublished work of others has been acknowledged in the text and a list of references is given in the bibliography.

Acknowledgement

I thank my supervisor, Prof. Sean Brawley, for many insightful conversations during the development of the ideas in this thesis and for helpful comments on the text.

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Table of Contents

Abstract

This thesis takes up current public debates in the Netherlands on the role played by the Dutch in the years following the 1945 Indonesian Proclamation. This research is done with special attention paid to the Dutch Indies military personnel who were withdrawn or escaped to Australia, a gap in the many debates and historical publications. The research conducted for this thesis made use of quantitative analysis and extensive qualitative analyses of archival materials from the Netherlands as well as from Australia, where the outcomes are described using a narrative-based approach. The key argument this thesis asserts is that the NEI High Command in Australia used their military justice system for the political repression of Indonesians, and this conflicted with Australia's views regarding the legality of the Indonesians' internment. The NEI Army high command incarcerated Indonesians to prevent them from returning to the Indonesian Republic to fight on the side of the independence movement. Although this political motivation was not widely proclaimed by the NEI Government-in-Exile and the Military High Command, it was often pronounced by Australians after the Asia-Pacific war.

Introduction

This thesis examines a part of Second World War history that not many people are familiar with. It is intended to broaden understanding of the national histories of three nations in the 1940s: The Netherlands East Indies (later the Republic of Indonesia), Australia and the Netherlands. It explores the history of Indonesians who fled to Australia from their home country, the Netherlands East Indies (NEI), after the Japanese occupation in 1942. This thesis provides new insights into the everyday life experience of Indonesians who had previously been submissive to the colonial endeavour. This is done with special attention paid to the Dutch Indies military personnel who were withdrawn or who escaped to Australia. The key argument this thesis asserts is that the Dutch East Indies High Command and the Dutch East Indies Government-in-Exile in Australia used their military justice system for the political repression of Indonesians, especially after the end of the Second World War.

To contextualise the research topic more clearly, this introduction will provide an historical overview. The Netherlands occupied and ruled the Dutch East Indies for many centuries, mainly for its rich spices and other commodities like cinnamon, coffee and rich textiles.[1] The occupation ended quite abruptly when the Dutch declared war on Japan in late 1941 and the Japanese army invaded the islands of the Indies in January 1942. Two months later the NEI government surrendered to the Japanese and fled to Australia where a Government-in-Exile was established. In addition to the NEI Government, other Dutch high officials, their family members, military personnel and civilian business people also fled the Japanese army to Australia.[2]

Even before the war in the Pacific had ended, the Dutch were making plans to return to the Indies. Meanwhile, at the same time, Indonesian nationalists within Australia were considering what role they could play in securing their country's independence. With the declaration of an Indonesian Republic at the end of the war the Dutch had now to contend with an Army, which consisted mainly of Indonesian soldiers, whose loyalty was not

[1] Geertje Dekkers, "Schatten Van De Voc," *Historisch Nieuwsblad* 11 (2015).: 1.
[2] Jan Lingard, *Refugees and Rebels : Indonesian Exiles in Australia* (North Melbourne, Vic.: Australian Scholarly Publishing, 2008)., 21.

guaranteed. As these soldiers, in increasing numbers, refused to serve, the Dutch military system became a new site for the nationalist struggle. For months after the Pacific War had ended, Indonesian nationalist soldiers were imprisoned in camps on Australian soil. The Dutch would return to the NEI at the conclusion of the war, but their hold over the archipelago was short lived. Military conflict erupted on Indonesia's two main islands Java and Sumatra in what become known as the police actions of 1947 and 1948 – 1949. Finally, after a protracted and difficult negotiation, the Dutch signed a sovereignty agreement with Indonesian Republican representatives and left Indonesia in December 1949.[3]

Until a decade ago, most Dutch historical debates about the events of the Second World War concerned the European war. According to Wim Willems, the terrible experiences encountered in the 1940s by NEI Europeans and Indonesians was met with indifference: the people from the Netherlands had experienced their own war with Germany and the Dutch population knew almost nothing about what had happened in Asia, let alone in the NEI. Willems argues that it is only in the last ten years that a changing attitude can be noted, and more publications about this tragic period have begun to appear.[4] A very contemporary and lively debate is currently progressing in the Netherlands. In recent years, books, newspaper articles, historical magazine articles and news items on TV have explored the topic of the first and second police actions in Java and Sumatra and the decolonisation of Indonesia in the late 1940s. In renowned Dutch newspapers, such as *NRC Handelsblad*, articles have run headlines such as: 'The bloodbath that the world did not care about'[5].

An important focus of these current public debates is the role played by the Dutch Government and the Dutch Military in the years after the 1945 Indonesian Proclamation. In particular, whether the Dutch people should pay compensation to the survivors or the relatives of the survivors of the bloody military actions in Indonesia, both from the nationalist side and from the side of those Indonesians who served in the Dutch military. In 2011, for the first time a Dutch court decision on repayment was made in favour of a small group of Indonesians. As a result, the Dutch Government was ordered to pay compensation to a few Indonesian relatives of the men who were murdered during the first police action.[6]

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[3] Gert Oostindie, and Henk Schulte Nordholt, "Nederland En Zijn Koloniale Verleden. Moeizame Overgang Van Dekolonisatie Naar Buitenlands Beleid.," *Internationale Spectator* 60, no. 11 (2006).: 573.
[4] Andrea L Smith, (ed.), *Europe's Invisible Migrants* (Amsterdam: Amsterdam University Press, 2002)., 33.
[5] Dirk Vlasblom, '*Bloedbad dat de wereld niets kon schelen'*, NRC, 26 August 2015: W10.
[6] Wouter Veraart, "Uitzondering of Precedent? De Historische Dubbelzinnigheid Van De Rawagede-Uitspraak," *Ars Aequi*, no. April (2012).: 251.

Despite these recent public debates, many aspects of this period in Dutch-Indonesian history remain unexamined. One of these is the experience of Indonesian public servants and military personnel of the Dutch who refused to execute Dutch policy in the 1940s. It is only in the last few years—almost seventy years after the first and second police actions—that Dutch Indies refusers who were prosecuted in the Netherlands, are going to court in an attempt to get their convictions revised.[7] In a recent book, Antoine Weijzen noticed the gap in the public debate: 'The issue of the Indies-refusers is part of the Dutch colonial past. It has been neglected in the debates about the colonial past in the Netherlands for a very long time.'[8] In the extant Dutch literature examining the Indies refusers there is little recognition or examination of those Indonesian military personnel who resided in Australia during the Second World War who refused to serve the Dutch. Despite his focus, Weijzen makes no mention of these 'Australian' refusers, concentrating instead on the experience within the Indies and the Netherlands. This neglected aspect of Dutch-Indonesian history is very much a part of Australian history and is the focus of this thesis.

[7] Pim van den Dool, *'Indië-weigeraars na zestig jaar in beroep tegen veroordeling'*, NRC, 15 December 2012, http://www.nrc.nl/nieuws/2012/12/15/indie-weigeraars-na-zestig-jaar-in-beroep-tegen-veroordeling-a1439040

[8] Antoine Weijzen, *De Indië-Weigeraars. Vergeten Slachtoffers Van Een Koloniale Oorlog*(Utrecht: Uitgeverij Omniboek, 2015)., 7.

Thesis Structure and Research Methods

This thesis fills a gap in historical research on Dutch-Australian-Indonesian relations. Most Dutch colonial historians, like Petra Groen and more recent authors like Remco Raben as well as Weijzen have focused their research on the end of Dutch colonialism and events in the Netherlands and in Indonesia during and after the Second World War until the end of 1949.[9] Despite Australia's role during the war years, this role is rarely mentioned in the work of these leading Dutch scholars. It is clear that these historians have not used primary archival material from the National Archives in Canberra. In contrast, most Australian historians, like Jan Lingard and Frank Bennett Jr., who have published on the Dutch Indies Government and the Royal Netherlands Forces in Australia, have not used the Dutch National Archives or secondary Dutch sources. They have mainly utilised Dutch records when they appear in Australian archives.

The research conducted for this thesis made use of quantitative analysis and extensive qualitative analyses, where the outcomes are described using a narrative-based approach. This approach is considered the conventional and modern Dutch historical approach for describing political and legal histories. The first chapter establishes the broad framework of extraterritoriality—the means by which Dutch military law was able to function in Australia during the war. In this chapter the American government and their extraterritorial rights are used as a bench mark; this was the starting-point for the Dutch East Indies representatives in their negotiations with the Australian Government. In order to explain the thoughts and ideas of the Royal Netherlands Forces negotiators, I have examined the exceptional rights granted by the Australian Government to the American Military High Command.

From my research, it appears that Dutch historians hold no interest in the study of extraterritoriality. I was unable to find any legal history articles on this topic in the Netherlands or in the Dutch language. All Dutch legal authors who have published on the subject of extraterritoriality write about a much later period, namely the forming of the European Union.

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[9] Petra M.H. Groen, *Marsroutes En Dwaalsporen. Het Nederlands Militair-Strategisch Beleid in Indonesie, 1945-1950* (Den Haag: SDU uitgeverij, 1991). Remco Raben, "On Genocide and Mass Violence in Colonial Indonesia," *Journal of Genocide Research* 14, no. 3-4 (2012); Weijzen, *De Indië-Weigeraars*.

Useful Australian articles on the subject of international extraterritoriality in Australia are also scarce. There is only one relevant work: an article published during the Pacific war.[10] The first chapter therefore relies on qualitative analyses of several primary archival sources. This analysis, while limited by the sources available, provides essential contextualising for this thesis.

The second chapter focuses on the lives and experiences of merchant seamen and Indonesian military personnel in Australia until the end of the Pacific War. Specifically, it will focus on their day to day engagement with the NEI law and military justice system. The experience of soldiers has been examined against the extra-judicial treatment of merchant sailors who were interned by the Dutch for political reasons. The Dutch National Archives in The Hague in the Netherlands holds data from hundreds of military court cases held in Australia during this period. Special permission was required to gain access to these hitherto closed files, and there were limitations on research opportunities due to strict privacy restrictions held in Dutch law. Most of these cases, from 1942 up to the time of Indonesian independence were based on minor wrongdoings such as theft or unauthorised absence.[11] For Chapter Two, I form several case studies to emphasise and articulate the specific experiences of the interned Indonesian soldiers and merchant sailors in more detail. The main limitation with this approach was that it was not feasible to describe and highlight all the extraordinary cases. A sampling approach was therefore utilised.

The final chapter explores the court martial system and the use of this system by the Dutch Military High Command for political purposes. The main focus of this third chapter is the prosecution of Indonesian military personnel for refusing to serve because of their perceived nationalist thoughts and ideas. It explores how the Dutch military system used their court martial system for political oppression. Furthermore, this chapter stresses the changing relations between the Dutch and Australian high ranking officials.[12]

The discussion of the politically inspired court martial is problematised by the absence of many primary sources. Unlike the general court martial records discussed in Chapter two,

[10] Roman Kuratowski, "International Law and the Naval, Military and Air Force Courts of Foreign Governments in the United Kingdom," *Transactions of the Grotius Society* 28 (1942).
[11] Algemeen Rijksarchief / Dutch National Archives, The Hague: archival no. 2.09.19, subfile numbers: 67, 68, 69, 70 and 91, *Dossiers van de Krijgsraad ter Velde bij het Koninklijk Indisch Leger in Australië* and *Dossiers van de Zeekrijgsraad in Australië.*
[12] National Australian Archives (NAA), Canberra: archival no. A433, 1949/2/8186, *Indonesians at Casino camp. Question of Commonwealth control pending repatriation, Part 1*.

the records relating to the political cases of 1945 have vanished. After my initial research in the Dutch National Archives, I explored some other possibilities for case records. I discovered that rather than being lost or destroyed in Batavia in 1949 these political case records are still held by the Dutch Governmental or semi-Governmental organisations. My initial thought was that these sensitive records might be held in The Hague at the Dutch Ministry of Defence at their Central Archival Depot or at the Ministry of Security and Justice. Both Departments' associates assured me that their Ministries did not possess such documents in their archives. Finally, I enquired if these records were kept by NIOD[13]. After an extensive online search and other electronic enquiries on this topic, the NIOD assured me they did not have these court martial cases either. This approach was not ideal for sourcing primary historical research, and I was well aware of the limitations imposed through my dependency on the responses and research techniques of third parties, and a reliance on their honesty and integrity in providing full disclosure of the archival materials in their possession.

Therefore, in the historical record there are only glimpses into the events held. Although there exist the names of the Indonesians tried and their military registrations, there are limited insights into how the military justice system treated them. One source I discovered was a substantial list of a group of Indonesian soldiers and their sentences. The NEI soldiers were court martialled in October 1945 in groups of thirty to forty prisoners at a time.[14] They were put in a number of Dutch military prison camps, despite the fact the war was over and these men were in Australia. I have conducted an extensive quantitative analysis of the numerical data from this source. This sampling provides insights into the broader topic because the results indicate a hitherto unexplored pattern in the treatment of NEI soldiers.

[13] NIOD is the Nederlands Instituut voor Oorlogsdocumentatie. On 9 December 2010 NIOD merged with the Centre for Holocaust and Genocide Studies (CHGS) and now operates under the name NIOD, Institute for War, Holocaust and Genocide Studies.

[14] Algemeen Rijksarchief / Dutch National Archives, The Hague: 2.10.17, archival no. 1334, *Procureur-Generaal bij het Hooggerechtshof Ned. Indië,* 1945-1950.

Literature Review

This thesis draws on a wide range of secondary sources in English and Dutch, both concerning mainly Australian-Indonesian history and Netherlands-Indonesian history. My research has identified several important publications on the subject of Indonesian or Dutch East Indies civilians and Royal Dutch East Indies Army (KNIL) personnel in Australia during the Second World War.[1] These works have examined the daily lives of these Indonesians in their temporary homeland and provided useful contextual information.

The oldest publications were by Rupert Lockwood: his article from 1970[2] and his book from the year 1982.[3] It appears that Lockwood's early article formed the basis to his book, although he does not mention this in its introduction. Both article and book narrate the lives and struggles of Indonesians in Australia during the Pacific War and post-war period. Both start with a description of the arrival of the Dutch government officials, Indonesian military and civilians. This is followed by a description of the lives of working Indonesians in Australia, their contact with Australians, and the developments of Australian trade and maritime unions and the boycotts around Indonesian independence after the war. The author also illustrates the Government's response to end the deadlock over the hold-up of Dutch ships in Australia until 1949. Lockwood was personally involved in the trade unions' Black Ban and for his further research he interviewed influential Indonesian leaders in Australia. By interviewing participants of the Black Armada, he was able to outline a special historical insight into the ideas of the strikers. His work was almost certainly biased by his own political beliefs—Lockwood was well known for his support of the Communist Party. This might make his publications less objective, and therefore require closer analysis to ensure its reliability as useful secondary source material.

[1] KNIL a Dutch abbreviation for het Koninklijk Nederlands Indisch Leger, the Royal Dutch East Indies Army
[2] Rupert Lockwood, "The Indonesian Exiles in Australia, 1942-1947," *Indonesia*, no. 10 (1970).
[3] *Black Armada: Australia & the Struggle for Indonesian Independence, 1942-49* (Sydney: Hale & Iremonger, 1982).

Published ten years after Lockwood's first major article, is Margaret George's *Australia and the Indonesian Revolution*.[4] Still considered one of the primary publications on Indonesian and Australian relations in the 1940s, it is a much quoted publication. George provides a detailed analysis of Australia's changing approach to Dutch-Indonesian relations post-1945. She states in the first chapters that before World War Two, Australia had little interest in the NEI and thus had little contact with the NEI. She ends her publication at the point when the Dutch authorities sign over the independence of Indonesia, at a time when Australia had become more or less Indonesia's biggest ally. Her work appears to be an accurate assessment of relations and negotiations between the involved parties, and she deftly captures the ambivalence of Australian policy during the conflict. In her reference list one can find numerous references to Dutch archives and Dutch archival materials, although these references contain a large number of spelling errors and reflect a time when these materials in Dutch archives were not assigned correct acquisition numbers. These errors may reflect the fact the book was published posthumously, drawn from George's PhD thesis after her death. For my research, this book had limited value. George mainly covered the topic of political negotiations between Australia, Indonesia, the Netherlands and other parties like the USA; it was less focused on the everyday life experiences of the Dutch-Indies people in Australia during or just after the War.

American born Frank Bennett (Jr.) published his adapted thesis just over a decade ago. In his *The Return of the Exiles: Australia's Repatriation of the Indonesians, 1945-47* Bennett describes, as the title suggests, the journey of Indonesians from Australia back to Indonesia.[5] He provides a detailed description of the passengers on the *HMAS Manoora* and *the Esperance Bay* and the politics surrounding the return of these political exiles. This was not the only subject of research by this author; his publication starts with the period before the Indonesian repatriation and he narrates on topics such as the everyday lives of Indonesians in Sydney and the evacuation of Indonesian political prisoners from New Guinea to Australia. This publication was of greatest value to my research because of the author's detailed description of the Tanah Merah (Dutch New Guinea) prisoners as well as his elucidation of the problems concerning repatriation after the war. Bennett was also critical of his predecessor Lockwood. He states: 'The inaccuracy of Rupert Lockwood's account of the transportation of the Digulists, (…) may

[4] Margaret L. George, *Australia and the Indonesian Revolution* (Carlton, Vic.: Melbourne University Press in association with the Australian Institute of International Affairs, 1980).
[5] Frank C. Bennett jr., *The Return of the Exiles : Australia's Repatriation of the Indonesians, 1945-47* (Clayton, Vic.: Monash Asia Institute, 2003).

raise questions about other parts of his book *Black Armada.'*[6] Bennett, like most Australian historians who have published on the Dutch Indies Government and the Royal Netherlands Forces in Australia, seemed not to have used the Dutch National Archives or primary Dutch sources. His bibliography is limited to sources from the National Archives of Australia and the Australian War Memorial Library only.

Two works published in 2008 require discussion in this review. The first one is Jan Lingard's *Refugees and Rebels: Indonesian Exiles in Australia.*[7] This book analyses the political intrigue that occurred as a result of the interaction between the Labor government, the pro-NEI opposition, the trade unions (who provided consistent support for the Indonesians in Australia), the colonial Dutch and the Indonesians themselves. She provides several short biographical descriptions of many of the Indonesians and Australians involved, as well as a more detailed narrative of the most eye-catching moments. The many photos included help to bring the story to life. Although her work is meticulously researched, the author does not make use of any primary archival materials from the Netherlands. Like Bennett, she does not mention any Dutch archives in her bibliography, nor any Dutch newspapers. In her secondary sources list she mentions one publication from 1986 written in Dutch: *Het Koninkrijk der Nederlanden in der Tweede Wereldoorlog*[8] *(The Kingdom of the Netherlands in World War II).*[9]

The second publication is by Sean Brawley. He published an interesting article in 2012 called *'The 'Spirit of Berrington House': The Future of Indonesia in Wartime Australia, 1943-1945*.[10] Brawley elaborates on the role played by NEI high officials in the training of Indonesian administrators in Australia during the Second World War. His study explores the *Bestuursschool* (civil service administrators' school) at Berrington House in Melbourne as an initial step in wartime efforts to realise a different future for Indonesia. It focuses on the experiences of two Berrington school students, Surabaya-born Julius Tahija and an Indonesian school teacher Samuel Jacob from Ambon. The author clearly identifies the lack of historical records on this topic, which might explain why this subject has been neglected by contemporary historians. This intriguing history, which was not only supported by publications written in English and Dutch but also archival materials from the Netherlands and Australia,

[6] Ibid. 43.
[7] Lingard, *Refugees and Rebels*.
[8] I have copied the title as used by Lingard in her references, although the spelling in Dutch should be 'Het Koninkrijk der Nederlanden in de Tweede Wereldoorlog'.
[9] Lingard, *Refugees and Rebels*., 306.
[10] Sean Brawley, "The 'Spirit of Berrington House': The Future of Indonesia in Wartime Australia, 1943–1945," *Indonesia and the Malay World* 40, no. 117 (2012).

provides an insight into the new role given to some KNIL military personnel after their escape to Australia and the significance of Dutch plans to return to Indonesia after the Japanese occupation.

The last Australian academic included in this review is Joost Coté who wrote the article "The Indisch-Dutch in Post-War Australia."[11] Although this is not the most recent publication on Australian-Indonesian relations, it is pertinent to my present discussion because it concerns Dutch-Indonesian contact as well. This article examines how the *Indisch Dutch* related to post-war Australia. The author describes the migration flow from Indonesia to Australia which mostly occurred via the Netherlands. He also emphasises why *Indisch Dutch* people wanted to immigrate to Australia; one of the reasons was the experience of cultural difference (and indifference) of Anglo-Australians which was for many preferable to the apparent cultural symmetry of the Netherlands. This article also briefly outlines the lives of Indonesians in Australia during the war, thus making it an important source on Australian-Indonesian, as well as Netherlands-Indonesian history. Coté's research focused mainly on the Post-War exodus to Australia and not on events in Australia during and at the conclusion of the Asia-Pacific war; this makes his work not entirely relevant for my specific research question. On the other hand, his research made me well aware of the difficulty in describing specific groups from the NEI. After exploring this article, I decided to use the term "Indonesians" to designate non-white people from all parts of the NEI, and "Dutch" to designate white colonisers.

One of the leading Dutch scholars on the topic of 1940s Dutch-Indonesian history and relations is Petra Groen. She has published several articles on the subject of military forces in the Netherlands and the Indies in the post-war period.[12] Her dissertation from 1991 is still regularly cited in major historical publications. Her book *'Marsroutes en Dwaalsporen. Het Nederlands militair-strategisch beleid in Indonesie, 1945-1950' (Marching routes and wrong tracks. The Dutch military strategic policy in Indonesia, 1945-1950)* was written in Dutch and contains summaries in English and Bahasa Indonesia.[13] In this publication, Groen focuses on the Dutch military strategy in their conflict with Indonesia in the post-war years. The first part covers the nature of the military (reoccupation) strategy, the motives behind the strategy, and

[11] Joost Coté, "The Indisch Dutch in Post-War Australia," *Tijdschrift voor Sociale en Economische Geschiedenis (Journal for Social and Economic History)* 7, no. 2 (2010).
[12] Petra M.H. Groen, "Militant Response: The Dutch Use of Military Force and the Decolonization of the Dutch East Indies, 1945–50," *The Journal of Imperial and Commonwealth History* 21, no. 3 (1993); Elly and Petra M.H. Groen Touwen-Bouwsma, *Tussen Banzai En Bersiap: De Afwikkeling Van De Tweede Wereldoorlog in Nederlands – Indië* (Den Haag: SDU Uitgevers, 1996).
[13] Groen, *Marsroutes En Dwaalsporen*.

the military and government's decision making process. The second part of her book mainly analyses the effectiveness of each chosen strategy. Besides these publications, there are some other valuable books and articles published on Dutch-Indonesian relations in the 1940s, such as an article by Gert Oostindie and Henk Schulte Nordholt.[14] These publications almost exclusively focus on the independence struggle, decolonisation and the aftermath in Indonesia. Despite Australia's role during the war years their role is rarely mentioned—a factor I have identified in the work of many other Dutch historians. In Groen's research, as well as in the research of other Dutch historians, the lack of Australian archival source material is striking.

A more contemporary book is by Dutch historian Antoine Weijzen. His publication *De Indië-Weigeraars. Vergeten Slachtoffers van een Koloniale Oorlog (The Indies refusers. Forgotten Victims of a Colonial War)* was published in 2015.[15] In this intriguing book Weijzen analyses the Netherlands' attempt to restore their authority in the Indies after the war by military action. He does not focus on the men that were sent from the Netherlands to Indonesia to fight, but on the group of Dutch conscripts who refused to be sent to the Dutch Indies. These conscientious objectors faced prison sentences of up to seven years. As the author states in his introduction: 'The issue of the Indies-refusers is part of the Dutch colonial past. It has been neglected in the debates about the colonial past in the Netherlands for a very long time'.[16] In this well written and captivating book, Weijzen researched the personal reasons why Dutch men refused service, the response by the Dutch Government and the public's view on these objectors. This publication was therefore very relevant for a comparative look at the ideas of the refusers, the Dutch military response, the Indonesian soldiers in Australia who refused to fight in the NEI army and the responses by the NEI Military High Command.

Although there has been much research done on the topic of the Indonesian struggle for independence, in my opinion there is still significant research to be done. Despite Australia's significant role during the war years, there is scant mention of it in Dutch publications. Like their Dutch counterparts, most Australian researchers seem restricted to only using archives from their own country. My main intention with this thesis is to bring both

[14] Oostindie, "Nederland En Zijn Koloniale."
[15] Weijzen, *De Indië-Weigeraars*.
[16] Ibid. 10.

Australian and Dutch available sources together, and further research on topics that have been neglected by both groups of historians.

Chapter 1: The Royal Netherlands Forces and extraterritorial rights in Australia

In late 1942 five members of the Royal Netherlands Forces were detained by Victorian police in Melbourne and held in custody at two police stations. In January 1943, a hearing was scheduled for these five detainees, whose backgrounds remain unknown, and the trial judge in their cases found that the soldiers were held under reasonable suspicion and therefore the judge recommended they be detained for further investigation.[1] As I suggest in the following discussion, these five prisoners may have been the reason why Dutch high officials in Australia took a special interest in specific rules and regulations regarding extraterritorial jurisdiction. Prior to this case it appeared that there had been no specific reason for the Royal Netherlands Forces to consider the legal provisions. Until then, the Netherlands had never received nor requested jurisdictional rights, in contrast to the United States which had negotiated jurisdictional rights with Great Britain, decades earlier. In fact, it was this country's special acquired rights that would become the model for the negotiations between the Australian and Dutch high officials. Therefore, the following chapter will discuss the Dutch proposals in the context of the extraterritorial rights granted to the US.

1.1 American extraterritoriality

Until 1941 the United States of America was the only foreign country that had successfully negotiated extraterritorial rights for their military personnel in Australia. Thus, when the American Forces arrived in Australia they had already obtained extraterritorial rights and exclusive jurisdiction. Not many useful Australian articles on the subject of international extraterritorial law in Australia in the war years have been published.[2] However one article by Roman Kuratowski, published in 1942, proved to be an invaluable source for this research. This article explains the introduction of the Allied Forces Act and The Order of 1940, which also applied to Australia, as part of the Commonwealth. Kuratowski provides valuable insight into the subject of Commonwealth extraterritoriality laws and the regulations that existed

[1] Telegram from Premier Dustain in Melbourne to Prime Minster in Canberra, 2 March 1943, NAA A1608 E45/1/11, Canberra.
[2] Kuratowski, "International Law."

until 1942, the international court-martial system as well as the extraterritorial status of friendly military forces in foreign territory.

Before further describing the manner in which these extraterritorial rights were acquired by the American Army, a general working definition of 1940s extraterritoriality is necessary. Zachary Clopton defines extraterritoriality as: 'the application of the laws of one country to persons, conduct or relationships outside of that country.'[3] In this definition Clopton does not specify the American jurisdiction during the Second World War, only the general definition of the term. Pursuant to Clopton, Michael Scharf refers to the term "extraterritorial jurisdiction" as the assertion of authority by a State to affect the legal interests of individuals whose actions occur outside of the State's territory. Extraterritorial jurisdiction may describe the authority to make law applicable to such persons; the authority to subject them to judicial processes; or the authority to compel compliance and to redress noncompliance.[4] Finally, John Wigmore described several kinds of historical extraterritorial rights that could be identified. According to this author, the one used by the Americans was that no armed force of one State may enter the territory of another State without the latter's consent. But, if that consent was given, the first State's armed force while in the territory of the second State remained under the exclusive jurisdiction of its own military commander. This was long established international common law and represented a type of extraterritoriality. No formal treaty was needed, the author continued. Naturally some special terms were usually agreed upon beforehand, when a friendly war time expedition was involved. The First World War exhibited two notable examples of this type in the working arrangements made by the United States and by Great Britain with France for reserving jurisdiction over the Expeditionary Forces sent into France to assist in repelling the German invasion.[5] Subsequently, one may rightly conclude that this was the specific type of historical extraterritorial rights upon which the Americans built their Australian extraterritorial jurisdiction in the 1940s.

The legal interest of individuals in the American Army were negotiated and obtained during the First World War. When the Americans fought in France, both American and British

[3] Zachary D. Clopton, "Extraterritoriality and Extranationality: A Comparative Study," *Duke Journal of Comparative & International Law* 23, no. 2 (2013).: 218.
[4] Michael P. Scharf, "Application of Treaty-Based Universal Jurisdiction to Nationals of Non-Party States. Universal Jurisdiction: Myths, Realities, and Prospects," *New England Law Review* 35, no. 2 (2001).: 366.
[5] John H. Wigmore, "The Extraterritoriality of the United States Armed Forces Abroad," *American Bar Association Journal* 29, no. 3 (1943).: 122.

armed forces (of which the Australian Army was a part) had been allowed to exercise exclusive jurisdiction over the misbehaviour of their own soldiers.[6] Therefore, due to this historical precedent set during the First World War, the American military had full legal jurisdiction over their own soldiers in Australia, a country that relied completely on Great Britain and their international relations, treaties and foreign policies. Doug Smith observed this as he wrote: 'After the Federation in 1901, the new nation preferred to leave matters of foreign policy to Britain.'[7] He goes on to explain that this dependency continued at least until the Japanese attack on Pearl Harbor. In 1942 an official agreement was signed to re-establish the already existing jurisdictional agreement between the UK and the USA. The United States of America Visiting Forces Bill gave effect to a treaty between the Government in the United Kingdom and the US Government; it explicated once more the jurisdiction over members of the military and naval forces of the USA by the American Forces.[8]

This complete dependency on British law did not mean that there were no disputes over exactly where the jurisdictional boundaries should be drawn between the laws of the host country and the Americans. Around the time the Visiting Forces Bill was published, Lieutenant General George Brett, who was then commander of the US forces in Australia, became the first American official to raise the question of the precise American jurisdiction in Australia. In asking for the surrender of an American GI detained by Australian police, Brett brought the question to the attention of Australian Prime Minister John Curtin. Although some members of Curtin's cabinet wanted to grant full extraterritorial jurisdiction to the US Forces, some Departments were more hesitant, notably the Department of the Army. However despite some objections voiced by their Departments, the National Security (Allied Forces) Regulations were adjusted and implemented.[9] Regulation six of the National Security Regulations, adopted on 20 October 1942, specifically defined and granted American soldiers special extraterritorial rights in Australian courts. It might be considered the most important rule for the American GIs and other military personnel stationed in Australia, and would also become the starting point for the Dutch negotiators. The rule stated:

[6] John McKerrow, *The American Occupation of Australia - a Marrige of Necessity* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2013)., 15-16.
[7] Doug Smith, "The Australian Connection," in *Australia's Relation with Asia*, ed. Peter Wicks(Melbourne: Longman Cheshire, 2000)., 483.
[8] United States of America (Visiting Forces) Bill, 28 July 1942 (printed), NAA. A989 1943/480/1, Canberra.
[9] McKerrow, *The American Occupation*., 17-18.

> (...) where any member of the United States Forces in Australia is arrested or detained on a charge of having committed, or is summoned, charged or otherwise proceeded against for having committed, an offence against the law of the Commonwealth or of any State or Territory of the Commonwealth, the appropriate officer of the United States Forces shall be notified and, if he so requests – (a) if the member has been so arrested or detained, the member shall be handed over to him; or (b) if the member has been summoned, charged or otherwise proceeded against, further proceedings in respect of the offence shall be stayed, and the member shall thereupon cease to be subject to the jurisdiction of the Criminal Courts in Australia, and the appropriate Naval or Military Court constituted in accordance with the law of the United States of America applicable to the United States Forces in Australia may exercise in relation to the member such powers as are conferred upon it by that law.[10]

In late 1941, just prior to any US forces being sent to Australia, the Australian government issued a statutory rule, rule No. 241, which generally restricted the authority of overseas countries' courts-martial in Australia to matters concerning discipline and internal administration. Rule No. 241 also considered the concurrent jurisdiction of local courts over such personnel. However, this rule was amended in early May 1942 after objections by George Brett and others, giving the US exclusive jurisdiction whenever they requested it.[11] This amendment of the National Security (Allied Forces) Regulations spelled out jurisdictional boundaries, but still occasionally led to disputes between the American Forces and the Australian authorities. One of the first publicised disagreements between the host nation and the US military was the case of twenty-five year old soldier J.W. Floyd. In the local Brisbane newspaper one can read that this six foot tall soldier was charged with rape in an air raid shelter and that he was handed over to the US authorities on their request.[12] Apparently several high ranking Australian officials protested against this handing over of the US soldier and the loss of Australian jurisdiction. John McKerrow stated that Former Commonwealth Attorney General Frank Brennan was one of the people who commented on the incident, arguing that such cases fell within the jurisdiction of Australian courts—although this

[10] Regulations under the National Security Act 1939-1940, 20 October 1942, NAA, A1608 E45/1/11, Canberra.
[11] Graham Irvine, "Legality and Freedom: Indonesian Internees in the Victory Camp, Casino, New South Wales," *Australia & New Zealand Law and History eJournal* (2011).: 5.
[12] '*U.S. Army to deal with rape charge'*, The Courier-Mail (Brisbane, Qld), Wednesday 20 May 1942: 3 http://trove.nla.gov.au/newspaper/page/2004006

comment is omitted from the Brisbane newspaper article. Furthermore, an angry public reaction to the event was noted, although this was not large or nationwide.[13]

Upon their arrival in Australia in December 1941, the US Armed Forces had their jurisdictional boundaries almost settled. The Australian government had issued statutory rule No. 241 which restricted the authority of any overseas countries' courts-martial, but soon after this was introduced, the US Forces were formally given full extraterritorial jurisdiction.

1.2 Netherlands East Indies first attempt to change the National Security Regulations

Extraterritorial jurisdiction, as obtained by the USA, was a right that the Dutch Royal Armed Forces became very interested in during the Second World War. Unlike the Americans, the Netherlands had never received nor requested these jurisdictional rights, probably because they were not directly involved in the First World War. The only agreement that existed was an agreement between the Netherlands Government and the Government of the United Kingdom which concerned the organisation, employment and some jurisdictional policies of the Netherlands Armed Forces in the United Kingdom. The Australian Attorney-General at the time, George Knowles, would later describe in a letter to his Prime Minister that there was an agreement between the United Kingdom and the Netherlands Government. This agreement provided that acts or omissions constituting offences against the law of the United Kingdom, other than murder, manslaughter and rape, would be liable to be tried by the Civil Courts of the United Kingdom.[14]

As stated previously, Australia relied completely on Great Britain for its international relations, foreign policies and treaties. The general rules and policies on extraterritoriality in the 1930s and 1940s in Australia were mainly based on the Allied Forces Act of 1940 and the National Security (Allied Forces) Regulations. Kuratowski explained that the rules of the 1940 Allied Forces Act applied to Allied countries like Belgium, Norway and the Netherlands.[15] Frederick Shedden, who was the Australian Secretary of the Department of Defence during the war, described the rules and regulations in his memorandum as follows: 'The provisions of the National Security (Allied Forces) Regulations are based on the Allied Forces Act, 1940,

[13] McKerrow, *The American Occupation*., 18-19.
[14] Letter from Attorney-General Knowles to Prime Minister's Department, 28 January 1943, NAA, A989 1943/480/1, Canberra.
[15] Kuratowski, "International Law.": 5.

of the United Kingdom, and it is thought that the law in Australia is similar to that in force in the United Kingdom'.[16]

Until mid-1942, the amendment of the previously mentioned statutory rule No. 241 of the National Security (Allied Forces) Regulations did not seem to be an urgent matter for the Royal Netherlands Forces. However, late in 1942 several NEI officials started to write telegrams and letters to their Australian counterparts on this subject. Furthermore, the Dutch even initiated negotiations to get this rule adapted. An explanation for what might have accelerated the negotiations between the NEI and Australia was that in 1942 Victorian police detained five members of the Royal Netherlands Forces, as mentioned at the start of this chapter. The NEI soldiers were held in custody in Melbourne's Bourke Street West and City Watch House police stations.[17] Early in 1943 there was an official request by the Netherlands Minister Baron François van Aerssen Beijeren van Voshol to transfer these five men to Pentridge State prison in Victoria, because the police stations were unsuitable, according to this high ranking Dutch official.[18] In his telegram, Van Aerssen made a connection between the pending recognition by the Australian Government of the status of the Dutch court martial request and the holding of the five Dutch soldiers.

A number of other references from November 1942 and April 1943 established a connection between the request to change the Allied Forces Order and the case in Melbourne as well. One of the most prominent Royal Forces representative was Rear-Admiral Frederik W. Coster, who was at that time the Senior Officer of the Royal Netherlands Forces in Australia. Coster made his first remarks on the matter in his letter to Australian Prime Minister Curtin in November 1942. He emphasised that in order to comply with regulations, it was his intention to appoint a Netherlands Court Martial to sit in the near future in Melbourne to try members of the Netherlands Forces.[19] In a minute paper several months later, the Secretary of the Attorney-General's Department wrote that the draft amending Orders had been prepared and

[16] Memorandum from F.G. Shedden to The Secretary, Prime Minister's Department, 27 November 1942, NAA, A1608 E45/1/11, Canberra.
[17] Copy of telegram by the Netherlands Minister Baron Van Aerssen, to the Prime Minister, 27 January 1943, NAA, A989 1943/480/1, Canberra.
[18] Telegram from the Netherlands Minister Van Aerssen to Prime Minister's Department, NAA, 27 January 1943, E45/1/11, Canberra.
[19] Letter from Rear Admiral F.W. Coster to Prime Minister John A. Curtin, 13 November 1942, NAA, A1608 E45/1/11, Canberra.

that these Orders were to meet the position which recently arose in Victoria regarding the detention of certain members of the Netherlands Forces.[20]

The NEI and Australian negotiators took various steps in their negotiations on the subject of extraterritoriality and extraterritorial jurisdiction. On 13 November 1942, as previously mentioned, Coster wrote his first letter on this particular subject to the Australian Prime Minister. In this letter, he described in detail the Dutch military legal system and why and how he thought the NEI military system should be implemented in Australia. Coster wrote that he requested an early accomplishment of the arrangement that throughout the Commonwealth of Australia offences committed by members of the Netherlands Forces should be brought to the notice of the appropriate officer of the NEI Forces and if he requested so, the case should be turned over to him to be tried by the Netherlands court martial. He additionally inscribed that according to the laws of the Kingdom of the Netherlands every member of the Royal Netherlands Forces who committed an offence against the Netherlands Naval or Military Laws should be tried before a Netherlands Courts Martial. Coster further described that 'The Dutch law gives no restrictions in regard to the place where the act was committed. (…) The general trend of these regulations is not in agreement with rules laid down in (…) the "Agreement between the Government of the United Kingdom and the Netherlands Government concerning the Organisation and Employment of the Netherlands Armed Forces in the United Kingdom'.[21] Almost all high ranking officials in the Australian Government were unsure what the Australian response to the Dutch request for extraterritorial jurisdiction should be. Therefore, at the time they were not in favour of granting these extraterritorial rights to the Dutch.

As far as can be ascertained, the Department of the Army was the only exception. This department appeared to have been in favour of court-martial rights for the NEI from the beginning. Interestingly, in March 1942 that same Department was hesitant to grant full extraterritorial rights to US Lieutenant General George Brett. Late in 1942 Frank Sinclair, secretary of the Department of the Army, wrote a letter to Prime Minister Curtin. In his letter the official explained that the number of Netherlands Forces in Australia was increasing considerably and therefore warranted no grounds for discrimination between the US and Dutch forces. Continuing, he recommended that the provisions of regulation six of the

[20] Minute Paper W.11647 by the Secretary of the Attorney-General's Department, 14 April 1943, NAA, npsA2B5, Canberra.
[21] Letter from Rear Admiral F.W. Coster to Prime Minister John A. Curtin, 13 November 1942, NAA, A1608 E45/1/11, Canberra.

National Security Regulations should be amended so as to confer the same powers conferred upon the US Forces to the Royal Netherlands Forces in Australia.[22] Several months later Senior Australian official E.G. Williams repeated the views of the Department of the Army in a memorandum to the Prime Minister's Department. Williams restated the Army's view that the powers sought by the Royal Netherlands Forces should be granted.[23]

Just one week after the memorandum from Sinclair to Curtin, the Ministry of Defence appears less positive about granting judiciary rights to the Netherlands Forces. In a memorandum to the Prime Minister, Secretary of Defence Shedden wrote that his Department considers the present view in the United Kingdom should first be ascertained in relation to the provisions of the National Security (Allied Forces) Regulations to the Royal Netherlands Forces in Australia. He continued saying that after such information had been obtained, the matter was one for consideration primarily by the Attorney-General's Department and for determination by the Attorney-General or by the War Cabinet.[24]

Just after Christmas of 1942, Coster wrote a second letter to Prime Minister Curtin. In this second letter Coster attempted to draw Curtin's attention to Statutory Rule No. 241 and article 6—a favourable clause for the US Army. Coster continued in this second letter hoping, if there were to be another change in the regulations for the US Forces, that the rules could also be amended in favour of the Netherlands' Forces in Australia.[25] In January of 1943, the Australian Attorney-General George Knowles wrote a memorandum to the Prime Minister's Department. In this comprehensive response, the Attorney-General provided Curtin with his views on the Dutch requests by Coster to amend the National Security Regulations. Knowles first outlined the present legal situation, he explained that the National Security (Allied Forces) Regulations, Statutory Rules 1941, No. 302, were based on the Allied Forces Act, 1940 of the United Kingdom. Certain amendments were effected to make special provisions in relation to proceedings against members of the United States Forces in Australia for offences against Australian laws. According to Knowles, as a result of representations made by the United States, the Regulations were amended. Statutory Rules 1942, Nos. 241, 251, 371 were revised

[22] Memorandum from F.R. Sinclair, Department of Army, to The Secretary, Prime Minister's Department, 11 December 1942, NAA, A1608 E45/1/11, Canberra.
[23] Memorandum from (Sgd.) E.G. Williams to the Secretary of the Prime Minister's Department, 22 April 1943, NAA, A989 1943/480/1, Canberra.
[24] Memorandum from F. G. Shedden, Secretary (Ministry of Defence) to The Secretary, Prime Minister's Department, Canberra, 19 December 1942, NAA, A6388/391C, Canberra.
[25] Letter from Rear-Admiral Coster to Prime Minister Curtin, 27 December 1942, NAA, A1608 E45/1/11, Canberra.

to provide that, where any member of the United States Forces in Australia was arrested the appropriate officer of the Unites States would be notified and may be tried by a United States tribunal.

Knowles then continued to give his opinion on the Dutch legal situation in comparison to the rights granted to United States Forces. He explained he had no knowledge of any amendment to the United Kingdom Allied Forces Act to make special provision in relation to the Indies Armed Forces. Knowles also analysed the views of Coster on the matters which are described by Coster in his letter. Knowles continued, stating that Coster misapprehended the position to an extent, considering that the general trend of these regulations was not in agreement with the rules laid down in the agreement between the UK and the Netherlands Government. It was his view that the legal position in Australia was substantially the same as that in the United Kingdom, because in accordance with the United Kingdom Allied Forces Act, the superior jurisdiction of the British civil courts was preserved. The Attorney-General ended his memorandum with the conclusion that the final decision was a matter for determination by the Commonwealth Government.[26]

Only a few days after the extensive Knowles Memorandum, the High Commissioner in London Stanley Bruce confirmed the Australian Attorney-General's definition of the Dutch and American jurisdictions. Bruce was asked by cablegram to advise on the practice adopted in the United Kingdom. He clarified that it was only in case of the United States Forces that it had been agreed to give exclusive jurisdiction in the case of all criminal offences. In the case of other Allies, the United Kingdom Courts have concurrent jurisdiction.[27] The Australian Attorney-General Knowles repeated the London point of view in his second memorandum on this topic in late January. He wrote that the British practice should be followed in Australia and that the amendment to the National Security Regulations asked for by Coster and the Netherlands Legation should not made.[28]

After reviewing advice from all legal and defence departments Curtin in February 1943 wrote a reply to Coster. The Prime Minister started his letter by pointing out that the legal status of any court martial set up by one Government in the territory of another Government

[26] Memorandum from (Sgd.) G.S. Knowles, Attorney-General's Department to The Secretary, Prime Minister's Department, 11 January 1943, NAA, A6388/391C, Canberra.
[27] Cablegram from High Commissioner's Office, London to Prime Minister's Department, 16 January 1943, NAA, A6388/391C, Canberra.
[28] Memorandum from Secretary GEO S. Knowles, Attorney-General's Department to The Secretary, Prime Minister's Department, 29 January 1943, A989 1943/480/1, Canberra.

must find its basis in agreement between the Governments concerned. Curtin continued that there had been an agreement between The United Kingdom and the Netherlands. After this acknowledgement, the Prime Minister drew one of his main conclusions. He stated that while Netherlands Courts Martial had been accorded the right to try offences which constitute offences against discipline and internal administration under the relevant Dutch law, concurrent jurisdiction has been retained in the United Kingdom Courts if the offence was also one against the United Kingdom law. Curtin regarded that the Commonwealth Government entirely shared in the view taken by the United Kingdom authorities and felt that compliance with Coster's request would be undesirable. He ended his letter stating that in all the circumstances, the Commonwealth Government could not comply with the NEI request.[29]

This Curtin letter meant that at the beginning of February 1943 it was far from certain that the National Security (Allied Forces) Regulations would be changed in favour of the Dutch Royal Forces in Australia. The Dutch Officer's requests were being denied, although some Australian Departments, like the Department of the Army, were favourable to granting the changing of statutory regulations.

1.3 Rear-Admiral Coster's third and final request to Curtin

After receiving the rejection by Curtin, Coster wrote another letter to the Prime Minister from his Melbourne office. In March 1943 he explained that he had reconsidered all information provided and that he acknowledged the scope of the Netherlands Courts Martial to be limited to matters of discipline and internal administration. However, he continued, the regulations did not fully cover the requirements for sufficient functioning of the Netherlands Court-Martial. According to Coster the judicial procedure laid down in the Netherlands law was that the case should be completely investigated and prepared by a specially appointed officer, in Dutch called an '*Officier-Commissaris*'. This Officer, under Netherlands law, had all the powers necessary to procure all the available evidence upon which the Court would subsequently

[29] Letter from Australian Prime Minister John Curtin to Dutch Rear-Admiral F.W. Coster, 2 February 1943, NAA, A1608 E45/1/11, Canberra.

base its decision. Near the end of Coster's third known letter he repeated his appeal for a similar treatment of Dutch and American military personnel. He wrote:

> In view of the above I would greatly appreciate if in respect to Netherlands Court Martial the same powers of summoning witnesses and administering oaths could be given to the President of the Court and the Investigation officer, as is granted by the amendments to the National Security (Allied Forces) Regulations, Stat. regulations Nos. 241 and 251, 1942, to the Convening officer, the president and the Trial Judge-Advocate of naval and military courts of the United States of America, with the additional powers of delegating to other military or civil judicial authorities the examining of witnesses who reside at such a distance from the Investigating Officer or Court location, that it may be impossible for either Investigating Officer or Court to examine them personally.[30]

He finished his letter with the presumption that to give effect to the requested changes it would be necessary for the National Security Regulations to be further amended. This request for amendment of the Act was equal to the request made in his second letter. A fortnight after Coster's third letter to the Prime Minister, Secretary of Defence Sheddon pointed out in a memorandum to the Australian Attorney-General that his Department had no objection to the terms of the proposed amendments to the 1939 Allied Forces Order and Allied Force (Penal Arrangements) Order.[31]

After several other enquiries regarding a decision on the requested amendments by various high ranking Dutch officials such as Baron van Aerssen and Netherlands Legation official Craandijk, in July 1943 there was a final answer. The acting Australian Attorney-General G.B. Castieau proposed that the provisions made in respect to the summoning of civilian witnesses by the United States naval and military courts be included in the National Security (Allied Forces) Regulations, which withdraws members of the United States forces from the jurisdiction of the local courts. He stated that section 94 and 95 of the Defence Act 1933-1941 in relation to the Netherlands Forces may be modified to give effect to the request of the Senior Officer and the Army recommendation.[32] One week later the Department of Defence

[30] Letter from Dutch Rear-Admiral F.W. Coster to Australian Prime Minister John Curtin, 17 March 1943, NAA, A6388/391C, Canberra.
[31] Memorandum from (Sgd.) F.G. Sheddon, Secretary (Department of Defence) to The Secretary Attorney-General's Department, Canberra, 31 March 1943, NAA. A6388/391C, Canberra.
[32] Proposed order to make provisions for reception of civilian's evidence by Netherlands Courts-Martial, W.11647, by the acting Australian Attorney-General G.B. Castieau, 16 July 1943, NAA, A6388/391C, Canberra.

advised that there were no objections to the draft Allied Forces Order which accompanied Castieau's memorandum.[33]

At the end of July 1943, in the *Commonwealth of Australia Gazette* it was officially announced that section 94 and 95 of the Visiting Forces Act of 1939 would be changed. One of the major changes in the Act was that an investigating officer of the Netherlands Forces would be appointed to a court-martial under the law of the Netherlands.[34] On November 24 of that year Frank Forde, the Minister of State for the Army, authorised:

> the detention in custody in any prisons or in any military detention barracks in any part of the Commonwealth of any member of the Royal Netherlands Forces in Australia arrested or held in accordance with the law of the Netherlands on reasonable suspicion of having committed an offence triable under that law, or charged with an offence triable under that law or sentenced, whether within or without the Commonwealth, by a service court of the Royal Netherlands Forces to any army form of imprisonment or detention during the whole or any part of the period for which such member is so arrested or held or awaiting trial or the term of his sentence, subject to the condition that the cost of maintenance of any member so detained shall be borne by the Royal Netherlands Forces and that the Commonwealth of Australia is indemnified against any such cost by the Royal Netherlands Forces and the Royal Netherlands Government.[35]

A few months after Forde's authorisation Prime Minister Curtin repeated to the Attorney General's Department the powers given to the Royal Netherlands Service Authorities. He recapped that under the Allied Forces Order No. 4, general authority was granted for holding Royal Netherlands Personnel in Australian custody. If the Dutch so desired they may use civil goals, but they first had to communicate that request with the State prison authority.[36]

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[33] Teleprinter message from Secretary, Department of Defence to Secretary, Attorney-General's Department, 23 July 1943, NAA, A6388/391C, Canberra.
[34] Extract from *Commonwealth of Australia Gazette*, No. 164, dated 28th July, 1943, NAA, A6388/391C, Canberra.
[35] Commonwealth of Australia Allied Forces (Penal Arrangements) Order (No. 4) Application to Royal Netherlands Personnel, sgd. F.M. Forde, Minister of State for the Army, 24 November 1943, NAA, A6388/391C, Canberra.
[36] Circular from Prime Minister Curtin to the Attorney General's Department, 3 February 1944, NAA, A472 W11647, Canberra.

The existence of the extraterritorial rights was not kept back from the Australian public; these rights were published in the *Commonwealth of Australia Gazette* in 1943, but were not heavily debated in public. Even after the war there appeared to be an acceptance of these extraterritorial rights. In one of the letters sent by the Committee of Indonesian Independence to the Australian Prime Minister in October 1945 one can read that, although the Committee had serious problems with the imprisonment of Indonesians, they did not debate whether or not the extraterritorial rights should have been granted or if the NEI had the jurisdictional right to intern them. The letter writer merely mentions that the NEI authorities had extra-territorial rights over the detention camps.[37]

During the war years, the National Security Act was revised several times. These amendments were at the centre of Coster's enquiries and essential for the Royal Netherlands Forces and their court system in Australia. In April 1946, a new Act was introduced to replace the National Security (Allied Forces) Regulations, under which the provisions of the Regulations would cease to operate after 31 December 1946. According to Graham Irvine this deadline sped up negotiations with the NEI Government-in-Exile over the repatriation of Indonesian soldiers. Irvine suggested that after that date their internment under Australian law would probably have been illegal.[38] The legal status of the NEI soldiers and their interment will be discussed in the final chapter. To fully elucidate what happened to the Indonesians of the Royal Netherlands Forces in Australia after the conclusion of the Pacific War, one needs to first establish what happened to them after their arrival in Australia in 1942. Additionally, it requires a look into jurisdictional encounters between Indonesian merchant seamen, servicemen and other temporary residents on the one side and the NEI courts on the other.

[37] Letter from Secretary Bondan of the Committee of Indonesian Independence to Prime Minister Chifley, 29 October 1945, NAA, A1838 401/3/6/1/2 part 1, Canberra.
[38] Irvine, "Legality and Freedom.", 9.

Chapter 2: Dutch courts martial in Australia during the war

Before the Second World War, Australia had little interest in and little contact with the archipelago then known as The Indies. As a British dominion, Australia relied mostly on the direct diplomatic relations between Great Britain and the Netherlands. Since these relations were friendly and stable, Australia and the NEI's relationship tended to be relaxed and fraternal. One might even describe the countries as apathetic towards each other. In broader terms, Australia's indifference towards the NEI was part of its general lack of attention to South East Asia.[1] Lingard describes it beautifully in her introduction:

> Australian thought about Asia was generally focused on fears of an invasion of some kind. (…) The British, French, Portuguese and Dutch colonies in the region were hardly regarded as being 'Asian' at all but rather, like Australia itself, as outposts of European civilization, whose 'native' populations attracted little interest.[2]

Due to the 1901 Immigration Restriction Act most white Australians seldom met with residents from Sumatra or Timor.[3] According to Coté unlike the Dutch East Indies colonisers, British-Australians had been largely sheltered from contact with Asians as a result of race-based policies that specifically prohibited immigration of coloured people.[4] These immigration policies did not mean that there was no contact at all. According to Brawley the relationship between the NEI and Australia did grow during the interwar period with the balance of trade remaining in favour of the NEI; bilateral relations between the two countries would improve in the pre-war years.[5] Therefore, there existed contact on a governmental level as well as on a people to people level. For instance, a (limited) tourist industry existed with Australians visiting the Indies, as well as trade activity between Western Australia tradesmen and Indonesian seamen; a small group of Indonesians who worked in the pearl fishing industry in

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[1] George, *Australia and The*. 5.
[2] Lingard, *Refugees and Rebels*., 1.
[3] also known as the White Australia Policy
[4] Coté, "The Indisch Dutch.", 118.
[5] Sean Brawley, "Second Rate Java Jaunters: Soccer Football, the Imaginary Grandstand, Cultural Diplomacy and Australia's Asian Context," *Sport in Society* 15, no. 4 (2012).507-508.

and around Broome and Dutch colonial ships also sailed into Australians main ports with regularly employed Indonesian seamen.[6]

2.1 The arrival of people of the Netherlands East Indies

In early March 1942 a large group of Dutch officials, including the NEI Governing Council, military personnel and civilians, fled the NEI to Broome and other Australian ports. The arrival of the Dutch high ranking officials, including the NEI Government came unannounced. This may be explained by the fact that the Government of the NEI had just surrendered unconditionally to the Japanese and had fled in quite a hurry. As Lingard states, the Australian Prime Minister Curtin and his Government knew nothing of the first NEI arrivals or plans until informed by press reports. Nor had the Prime Minister received any request from the Dutch for any assistance or accommodation for what was now a Government-in-Exile.[7]

The Dutch brought with them thousands of Indonesian servicemen and merchant seamen from all parts of the archipelago. The largest group of Indonesian labourers were seamen employed with the KPM[8] as nearly all Dutch ships had Indonesian crews. Before the war, the KPM Company was the biggest Dutch shipping line in the East. The Dutch company operated more than 150 ships in the Dutch East Indies. At the start of the Pacific war KPM lost just over half of its ships; seventy-nine ships were lost during the Japanese invasion of the Netherlands East Indies, leaving just over seventy to continue operating to and from various ports. Initially the KPM Company in Australia was primarily stationed in Sydney, where the company already had a base. Thereafter the ships operated from most east coast ports, such as Brisbane, Rockhampton and Townsville.[9]

At the beginning of the European war from London, the Dutch Government-in-Exile made fairly extensive changes to Dutch laws on the use of and ownership of ships and vessels. On 22 May 1940, a special Dutch governmental commission[10] was instated as the custodian over all Dutch ships. In one of the revised law articles, the monitoring of the vessels was

[6] Ibid. 507. and Lingard, *Refugees and Rebels*. 2-3.
[7] Lingard, 10-12.
[8] KPM: The KPM Company is de Koninklijke Paketvaart Maatschappij (Royal Parcel trade Company / the Royal Netherlands Packet Line).
[9] Ben van Essen, and Jan Vel, *The Dutch Contribution to the Defence of Australia During the War in the Pacific 1941-1945* (Adelaide: Ben van Essen, 2007)., 10.
[10] de Nederlandse Scheepvaart - en Handelscommissie (N.S.H.C.): The Dutch Shipping and Trade Commission.

transferred from the Dutch shipowners to this governmental organisation.[11] As a result, the control of Dutch shipping rested *de facto* with the Dutch Government-in-Exile in London. Just one day after Pearl Harbour and just three months before the Dutch surrender to the Japanese army, a handover took place for the monitoring of the NEI vessels by the Dutch Commander Naval Forces for the benefit of the NEI government.[12]

When the NEI administration surrendered to the Japanese, the Dutch ships that were in Australian harbors were signed over—in the first instance to the Australian War Shipping Administration and then to the US forces in Australia. The ships were put to use for the war effort. According to the Australian War Memorial the KPM eventually numbered nearly thirty vessels, many of which were converted in Australia with Australian gun crews on board.[13] During the war the signed over KPM ships became a life-line to Australian and US forces; it has been estimated that the KPM delivered around 100,000 troops to the Allied forces. For instance, the *Nieuw Amsterdam* was part of a convoy which left Sydney Harbour on 4 February 1941 carrying Australian and New Zealand troops on the first part of their journey to Egypt.[14] Many Dutch merchant ships became well known to Allied fighting men as these vessels served throughout the war transporting troops back and forth.[15]

Most Indonesian seamen deployed for the war effort became increasingly dissatisfied. They were paid less for their dangerous jobs than their Dutch and Australian counterparts and their living conditions were generally very poor. This was one of the main reasons why large groups of Indonesian crew went on strike in 1942 demanding equal pay for their wartime work and improvements to their living conditions. For a comparison, the Indonesians were only paid £2 per month while the Australians were paid £22 per month.[16] In a letter from the Dutch Minister of Colonies to the NEI Lieutenant Governor General the position of the Indonesian merchant seaman was discussed. The Minister argued that they were free workers. However they were only free in name, because in practice they could not make use of their rights, such

[11] Anna M.G. Smit, *Nederlandse Maritieme Rechtspraak Op Het Grondgebied Van Groot-Brittannië Gedurende De Tweede Wereldoorlog* (Arnhem: Gouda Quint, 1989)., 30.
[12] Ibid. 179-180.
[13] Australian War Memorial, https://www.awm.gov.au/exhibitions/alliesinadversity/seafaring/shipping
[14] Jack Ford, "The 'Floating Dutchmen': The Netherlands Merchant Navy in the Pasific War," *Journal of Australian Naval History* 6, no. 1 (2009).: 80.
[15] Doug Hurst, "Dutch Forces in Australia in World War 2," in *Broome 3 March 1942 - 3 March 2012, Remembrance Booklet*, ed. Emma Verheijke(Abbott & Co, Western Australia, 2012)., 10.
[16] Ford, "Floating Dutchmen.", 84.

as ending their employment contract, because of the existing foreign immigration provisions.[17]

The question is whether these Indonesians were technically free men. According to Arnold Knauth in 1943, 'the present solution therefore is that seamen continue their civilian status and are free to accept or reject any particular ship or voyage which is offered them'. But, as far as can be retrieved, this rule appeared to apply only to American seamen.[18] The ships the Indonesians manned were assigned for war duty, therefore their strike could be seen as mutiny and many strikers were imprisoned under military law. Dutch and Australian officials had to work out what to do with the strikers, because these Indonesians could not remain in camps indefinitely. The Dutch military authorities offered the solution. On 10 November 1942 the Dutch military issued a royal decree. The royal directive stated that the seamen who refused to re-join Dutch KPM ships would be required to work in camps as militarised civilian labourers. This meant that the striking seamen would be subject to 'military provisions for punishment, discipline and military law, as laid down for the Royal Netherlands Indies Army'.[19] This Dutch royal decree to apply NEI military law to its (Indonesian) civilians was supported by the Australian Government who formally recognised it on 30 November 1942.[20] After a while most of the 2,000 Indonesian seamen were released from camps and prisons. KPM granted the strikers their pay claim and the majority of the strikers returned to the KPM ships, which they refitted and reconstructed in Australian dockyards.

Exactly how many Indonesians came to Australia during and just after the Asia-Pacific War remains unclear. It has been calculated that in 1942 a total of just over a thousand KNIL officers and soldiers evaded capture by the Japanese and reached Australia.[21] Official records stated in total almost 5,500 Indonesians were admitted to Australia and this data suggests that the majority of them were merchant seamen of the KPM.[22] There appears to be a discrepancy between the official number of NEI people arriving from the Indies and the estimates by leading historians. Lockwood argues that there must have been a larger number of Indonesians arriving in Australia for a period of time during the Pacific war. His calculations

[17] Smit, *Nederlandse Maritieme Rechtspraak*., 302.
[18] Arnold W. Knauth, "Alien Seamen's Rights and the War," *American Journal of International Law* 37 (1943).: 80.
[19] Royal Decree number 74, Royal Netherlands Indies Army Headquarters, 10 November 1942, NAA, A472 W11647, Canberra.
[20] Lingard, *Refugees and Rebels*., 26.
[21] Essen, *The Dutch Contribution*., 34.
[22] Bennett, Australia's repatriation, 2-3.

indicate there must have been many more than the 5,500 Indonesians in the official assessment. He estimated this based on the number of Dutch ships moving in and out of Australian ports. About 5,000 seamen must have passed through, which places the number closer to 10,000 Indonesians who stayed in Australia during this period.[23] This is a claim repeated by Bennett.[24] One might infer that Lockwood and Bennett were closer to the exact number of temporary Indonesian residents, and that the statistics of the official assessment are a bit on the conservative side. For instance, during the large 1942 strike some 2,000 Indonesian KPM-seamen were involved at one time, which occurred prior to the arrival of a group of over 500 Indonesians from Tanah Merah (Dutch New Guinea).[25]

2.2 Imprisonment in Casino and the start of the Black Ban

During their time in Australia, some KNIL-military personnel and NEI civilians committed minor crimes and were convicted. How many Dutch and Indonesians were incarcerated during the war remains unclear, as exact numbers are unavailable. What can be concluded is that these crime rates did not grow exponentially across most Australian states, with Queensland the only exception. This state was host to a relatively large number of foreigners in temporary residence. The analysed census data shows that there was substantial growth in the crime rate during the time mainly military personnel lived in Queensland. The total number of incarcerated men at the end of each year in this state almost doubled between 1940 and 1944—from 283 to almost 500 men. In the 1945 census it was explicitly stated that Service Personnel confined in Civil Prisons were included in the total of 489 men imprisoned in 1944.[26] One may conclude that this growth in the crime rate coincided with the temporary residence of those young males. Nowadays, statistics show the birth origin of all prisoners, but in 1945 the Queensland census did not specify who committed these crimes or from which country the prisoners came. Unfortunately, in the 1940s census no distinction was made between foreigners and Australian citizens or between foreign and Australian service personnel.[27]

[23] Lockwood, "The Indonesian Exiles.", 37-38.
[24] Bennett jr., *The Return*., 2.
[25] Lingard, *Refugees and Rebels*., 23, 79.
[26] The Queensland Year-Book, 1945, Publication 13013 of The Queensland Year-Book, 1945. Publication 13013 of the Australian Bureau Statistics, 68.
[27] *Ibid*, 70.

About fifteen months after the arrival of the NEI administration the Dutch steamer *Both* berthed in Edgecumbe Bay, Queensland. Aboard this vessel were around 520 Indonesians from the Dutch prison camp in Tanah Merah who were to be re-interned in Australia.[28] The group was often referred to as Digulists, since their camp was situated in Boven-Digul, a part of Dutch New Guinea and the only part of Indonesia that was never fully occupied by the Japanese forces.[29] Tanah Merah was created by the colonial Government in the 1920s after the revolt of 1926 and 1927, the so-called Communist Rebellion, which the colonial authority severely crushed. The NEI Government thought they needed an isolated colony for the internment of nationalist and communist rebels.[30] According to Louis Schoonheyt this deportation colony was called Tanah-Merah, after the Malay language word to mean red soil, which described the land it was built on. In his publication the author makes mention of a story about a traveller who visited the colony and asked if the name of the settlement was related to the local political climate.[31]

The colonial rulers chose this place in Boven-Digul because it was very difficult to get to (only possible by boat or airplane) and even more difficult to escape from—only three escape attempts were successful.[32] One of the successful escape attempts was by a group of political prisoners who reached the Australian territory in the early 1930s. The group, who were first chased by Dutch guards and later by indigenous tribal warriors, made it to the south coast of Dutch New Guinea. The three prisoners were helped by Melanesians and were given a boat for further escape. They then sailed to the coast of Papua, a territory of Australia. Via the Torres Strait, the three Tanah Merah escapees ended up on Thursday Island where they filed political asylum with the local authorities. Unfortunately, their political asylum claim was rejected and they were deported back by the Australian guards to the NEI, where they were reinterned in Dutch New Guinea.[33]

One of the reasons that the Dutch Government-in-Exile wanted to move the Digulists to Australia during the war was that they were afraid that the Tanah Merah group might fall into the hands of the Japanese occupiers causing the nationalist prisoners to defect and join

[28] Lockwood, *Black Armada*., 2-3, 15-16.
[29] Bennett jr., *The Return*., 30-31.
[30] Jaap Anten, "*Book Review:* Landvoogd Tussen Twee Vuren. Jonkheer Mr. A.C.D. De Graeff, Gouveneur-Generaal Van Nederlands-Indie 1926-1931 - Herman Smit," *BMGN - Low Countries Historical Review* 128-1, no. 16 (2012).: 1.
[31] Louis J.A. Schoonheyt, *Boven-Digoel* (Batavia, the Netherlands East Indies: N.V. Koninklijke Drukkerij De Unie, 1936)., 44.
[32] Bennett jr., *The Return*., 31.
[33] Lockwood, *Black Armada*., 18-19.

the Japanese force. Bennett argued that the Dutch wanted to move these political prisoners to Australia for one of two reasons: either for political reasons (to keep them out of Japanese hands, so they could not be used by Japan for propaganda purposes) or they simply wanted to augment the NEI labour force in Australia. The latter argument was plausible because the Dutch in Australia experienced a shortage of all types of personnel throughout the war.[34]

It is unclear if all prisoners were removed from the isolation camp at once. None of the historians refer to imprisoned rebels who stayed behind in New Guinea nor of a second ship containing Digulists berthing at any Australian port. But a secret report from Kenneth Plumb of the Australian Security Service suggests that at least two Indonesian Nationalists from Tanah Merah arrived in Australia much later than 1942. Plumb writes:

> On 19th April, 1945 two Indonesians, Iljas Jacoub and Mochtar Loefthfi, accompanied by their respective wives and children, arrived at Brisbane from Merauke in a Dutch Catalina Flying boat. (…) In December 1934 they were deported to Tanah Merah, Dutch New Guinea, where they remained in exile until the end of 1944, when they were transferred to Merauke for employment in the office of the Assistant Resident.[35]

After their arrival in their new country the group from Boven-Digul was treated differently to other newcomers. Lockwood claimed that this group of Indonesians was designated by the NEI to be treated as prisoners of war. According to the Dutch Government-in-Exile, the Digulists were considered enemies of the Allied cause owing to the serious security risk they posed if they were released. On this basis, the Australian Government accepted the resettlement of Tanah Merah prisoners.[36] The group from Tanah Merah was made the exception because the Government-in-Exile had already designated these people as enemies of the NEI. Upon their arrival this group of so-called dangerous nationalists was first transported to Liverpool military camp in NSW and later they were incarcerated in an Australian POW camp in Cowra, 225 kilometres west of Sydney. Other Indonesians would be interned as well: about 800 of the 2,000 KPM who went on strike for better working conditions were sent to Prisoner of War Camp No. 12 located at Cowra.[37]

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[34] Bennett jr., *The Return*., 3, 22, 32.
[35] Secret report from lt. K.C. Plumb of the Security Service in Brisbane, Commonwealth of Australia, 2 May 1945, NAA, A367 C80426, Canberra.
[36] Lockwood, *Black Armada*., 21.
[37] Lingard, *Refugees and Rebels*., 23.

One of the most infamous camps for NEI prisoners was built at Casino, in the Northern part of NSW. This camp, also known as Victory Camp, was situated on Kyogle Road and was originally established by the Australian government for the reception of the 6th and 7th Division returning from the Middle East.[38] In December 1943, the Dutch moved their first group of around one hundred Indonesians (some of them former KPM seamen from Cowra and some from Melbourne) into this by now abandoned Casino camp. This group became known as the Technical or 'Oil' Battalion.[39] This first group of Indonesians were not imprisoned in Camp Victory; they could walk in and out of the camp without any restrictions and the conditions appeared to be rather relaxed. This situation lasted for some time, but would eventually change. According to Lingard the peaceful co-existence between the Dutch, the Indonesians and the town of Casino was shattered around the end of the Asia-Pacific war.[40]

Two months after the end of the war a group of almost 100 Indonesians walked off KPM vessels in Brisbane. This walk-off became the start of a nationwide dockside workers' ban against Dutch ships in Australia.[41] One important reason for the walk-off was the Indonesian demand for the promised wage rate to be reinforced by the Dutch ship owners, as the Indonesian seamen were paid less for their jobs than their Dutch and Australian counterparts. This economic argument led to strong support for the Indonesian strikers by Australian Unions.[42] Other walk-offs soon followed. On 20 September 1945 an Indonesian crew aboard the Dutch KPM-ship *Merak* berthed in Melbourne harbour and let their captain Josef Veldhuyzen know that they would not provide any further service. Two weeks after their arrival, the 64 '*inlandsche bemanning'* (native crew) packed their bags and left the ship.[43] The Australian strike became known as the Black Ban and this ban, which started in Brisbane's harbour, was endorsed and augmented in other harbour cities like Sydney and Melbourne. The Black Ban of Dutch ships would persist for four years, although some Dutch newspapers

[38] Copy of a letter to or from the Director General, Commonwealth Investigation Branch about the Dutch Detention Centre in Casino, 22 February 1946, NAA, A1838 401/3/6/1/4, Canberra.
[39] Indonesia was and still is rich in oil and the Dutch needed the Indonesians to undergo training so they could repair or rehabilitate oil installations after the Asia-Pacific War was over.
[40] Lingard, *Refugees and Rebels*., 123.
[41] Ibid. 143.
[42] Lockwood, *Black Armada*., 95.
[43] Proces-Verbaal by Pieter Wessels, Dutch Vice Consul in Melbourne, 3 November 1945, Procureur-Generaal bij het Hooggerechtshof Ned.Indië, 1945-1950, document nr. 2.10.17, inv. nr. 1334, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.

thought it had finished after ten months. These papers wrote articles in July 1946 with headlines such as 'Trick against Terror – Dutch break the blockade in Australian harbours'.[44]

The strike meant that members of the waterfront unions were not be allowed to load or to repair Dutch ships. Dutch hospital ships were exempted from the ban, but only if they were not carrying guns.[45] At the same time as the *Merak* walk-off, Dr Van Mook, Lieutenant-General of the Indies announced that he wanted the Indonesians to return to the Dutch ships and that these vessels should return to the Eastern part of Indonesia. The Indonesians wanted to return to Republican-held territory (western part of Indonesia) on ships that were not owned by Dutch companies. In October 1945, arrests of Indonesian protesters and strikers began in Sydney after an illegal protest. The first group of twenty-three Indonesians appeared in an Australian court, and they were described by Lockwood as deserters.[46] These so-called Indonesian mutineers were incarcerated in Camp Lytton and later transferred to Camp Victory.

The conditions for the Indonesians in this borrowed camp were much harsher and more difficult compared to the time the Technical Battalion had arrived. Life in camp Casino was often described as terribly boring or even atrocious. Around the time of the arrest of the twenty-three Indonesians the Committee of Indonesian Independence wrote a letter to Prime Minister Chifley expressing their concerns over the conditions at Camp Victory:

> Our Committee is extremely concerned at the constant string of reports being received concerning the conditions in this Camp. We have every reason to believe that cases of physical ill-treatment due to neglect and without medical attention; that good food and drink are insufficient, and accommodation far too crowded to agree with Australian or any decent standards of health.[47]

Harsh conditions were one of the reasons why some newspapers, as well as some protest groups, referred to it as a "concentration camp" giving it the unpleasant nickname 'Little

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[44] '*List tegen terreur – Nederlanders breken de blockade in de Australische havens*', Friesch Dagblad, Leeuwarden, 20 July 1946: 2.
[45] '*Sydney's waterfront. Dutch ships "Black". Indonesian seamen's case'*, The West Australian, Perth, 27 September 1945: 5, http://trove.nla.gov.au/newspaper/article/44822431
[46] Lockwood, *Black Armada*., 128-129.
[47] Letter from Secretary Bondan of the Committee of Indonesian Independence to Prime Minister Chifley, 29 October 1945, NAA, A1838 401/3/6/1/2 part 1, Canberra.

Belsen'.[48] The Bendigo branch of the Australian Communist Party described the camp to Prime Minister Chifley—using familiar communist-sounding terminology—as 'a concentration camp, which is run by foreign power using Nazi methods and maintaining Nazi conditions which have rivalled the worst in Belsen and Buchenwald camps'.[49] This description may sound like an exaggeration, nevertheless several other groups asked the Prime Minister to close down this detention camp too. These groups, including civilian protest groups as well as labour councils from all over Australia, sent letters of complaint to Chifley. Each organisation gave specific reasons for why they demanded the camp be closed: the Western Australian Nurses' Association referred to the ill-treatment of the Indonesians,[50] the Australasian Meat Industry Employees' Union cited that the camp negated the principle of self-determination of free people to determine their own destiny and set up their own self Government,[51] and the Ipswich Trades & Labour Council noted the number of incidents in the camp which were bringing disrepute to Chifley's Government.[52] Even the Australian Commonwealth Investigation Branch was far from impressed. Inquiry officer Barnwell of the Branch reported back to his Deputy Director in Sydney in an essay he penned about the conditions in Camp Casino. He noted there was a compound built therein, in which 560 Indonesians were detained for refusing to obey commands given to them by the Dutch Military Authorities.[53] This remark on the compound 'therein' meant that at the time of writing the essay the Dutch had erected a barb-wired camp within their already criticised camp. When the Dutch took over the camp in 1943 and placed the Oil Battalion within these facilities, there were very few structural boundaries, let alone guard towers with barbed wired. Within a few years the Dutch had transformed Victory Camp into an internment camp and the unpleasant nickname 'Little Belsen' seemed more and more apposite.[54]

After the war, extensive talks were held between the Australian government, the Dutch legation and the Indonesian prisoners, to negotiate the repatriation of the Indonesians

[48] '*Casino citizens demand closing of 'Little Belsen'*', Tribune, Sydney, Friday 4 October 1946: 7, http://trove.nla.gov.au/newspaper/article/206686594

[49] Letter from the Australian Communist Party to Prime Minister J.B. Chifley, 25 March 1946, NAA, M1458/1, Canberra.

[50] Letter from the P.M. Payne, secretary of the Western Australian Nurses' Association to Prime Minister B. Chifley, 18 October 1946, NAA, A461 M350/1/9 part 2, Canberra.

[51] Letter from W.A. Hodsen, District Secretary of the Australasian Meat Industry Employees' Union to Prime Minister B. Chifley, 24 October 1946, NAA, A461 M350/1/9 part 2, Canberra.

[52] Letter from R. Both, secretary of Ipswich Trades & Labour Council to Prime Minister B. Chifley, 25 October 1946, NAA, A461 M350/1/9 part 2, Canberra.

[53] Essay from (Sgd) W.H. Barnwell, Inquiry Officer of the Commonwealth Investigation Branch, 18 September 1946, NAA, A433 1949/2/518, Canberra.

[54] Hand-drawn map Casino camp area, no date, NAA, A1838 401/3/6/1/4 part 1, Canberra.

to their desired locations. Eventually, in 1946, a total of 2,856 Indonesians, some former KPM seamen and some KNIL military personnel, would be repatriated on two vessels from Australia to different ports in Indonesia.[55] A tiny group of thirteen Indonesians were transported by air to Batavia by the Dutch, without reference to the Australian Government. This group was removed from Casino and transported by air on orders of the Judge Advocate-General of the NEI Army. According to Secretary of External Affairs William Dunk this group was to face court-martial on the charge of murder.[56] Another small group of free Indonesians did not leave Australia straight away; the Australian Government permitted these Indonesians to remain temporarily so they could continue working for the Indonesian Republic.

2.3 The imprisonment of military foreigners in Australia

As mentioned in the previous chapter, in late 1942 the Victorian police arrested a group of five Royal Netherlands Forces members. Although it remains unclear what the exact charges were, records indicate it may have been a petty crime as the five were released sometime in 1943, just several months after their arrest. No official Australian documents can be retrieved on this case which were written after the Minute Paper by the Secretary of the Attorney-General's Department, dated 14 April 1943.

Aside from petty crimes like stealing a bike or the sale of black-market liquor, there were only a few cases of foreign soldiers to receive large nationwide attention in the Australian press. The case of Edward Leonski, a twenty-four year old soldier from New York and member of the 52nd signal battalion, was one of them. Leonski's case was one of the largest American criminal cases on Australian soil. From the *Canberra Times* to the *Brisbane Telegraph*, all major regional papers wrote about the case. Private Leonski pleaded not guilty but was found guilty of three murders. He was sentenced on 17 July 1942 and by November it was confirmed by US Major General Sutherland that Leonski would be hanged by the neck.[57] Remarkably, the 1944 Victorian census did not count this hanging of the American soldier as an execution that took place in the state of Victoria. According to this census the last execution

[55] Bennett jr., *The Return*., 243-244.
[56] Memorandum by the External Affairs Secretary William Dunk for the Department of Immigration, 3 December 1946, NAA, A433 1949/2/8186, Canberra.
[57] Transcript of Evidence – Leonski Murder Trial – U.S. Military Forces and covering letter, 4 November 1942, NAA, A472 W7493 part 2, Canberra.

that took place in this state was in 1941, a year before the Leonski murder trial.[58] But according to Sydney's newspaper *The Sun* Leonski's sentence was carried out in Victoria. The US soldier, after being in confinement for twenty-four weeks, was hanged at the Metropolitan Gaol Pentridge on Monday November 9 for the murder of three women in Melbourne.[59]

To indicate emphatically the specific experiences of the interned Indonesian soldiers and sailors in more detail I have formed a number of case studies. I have focused on their day to day engagement with the NEI law and military justice system. The experience of the soldiers has been examined against the extra-judicial treatment of merchant sailors who were interned by the Dutch as well. Like Edward Leonski some Indies soldiers were also charged with very serious crimes.

As far as can be currently ascertained there was only one death sentence pronounced by the Dutch courts-martial system while in operation in Australia. This is the intriguing case of soldier Jacob Pattiranie, who is described in his case file as a non-European cannoneer second class.[60] This KNIL soldier was born in Amoerang, North Celebes.[61] On his Service and Casualty Form of the Australian Military Forces, Pattiranie is described as a Menadonese prisoner of war. The description of POW is quite exceptional as (former) NEI solders were almost exclusively registered as internees, not as POWs. Furthermore, his Service Form reveals that the soldier was born in 1920, was captured in Biak (Dutch New Guinea) in June 1944, and that he first was jailed at Gaythrone and about one month later in Camp Colombia.[62] The charges against Pattiranie were: two counts of rape (although these crimes were hardly mentioned in the court case files) and high treason. His high treason charges were described more extensively: in August 1942, the soldier was alleged to have betrayed two Royal Marines in occupied Surabaya (Java), who were in hiding from the Japanese Kempei.[63] The accused had joined the Kempei in their search for the two Marines and he had pointed out where the two were in hiding. Pattiranie confessed to all of the crimes and he was found guilty by the Dutch Brisbane court in October 1944. He received the maximum sentence for his crimes: death by

[58] The Victorian Year-Book, 1943-1944, Part VI: Law and Crime, Publication 13012 of the Australian Bureau Statistics, 274.
[59] '*Leonski Dies For Murders*', The Sun, Sydney, 9 November 1942: 3 http://trove.nla.gov.au/newspaper/article/230597851
[60] Krijgsraden te Velde te Australië, document no. 2.09.19, inv. nr. 70, case number 10931, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.
[61] Nowadays known as North Sulawesi.
[62] Service and Casualty Form - Pattiranie, Jacobus, 1944, NAA, MP1103/1, PWJA100095, Canberra.
[63] The Kempei was the military police arm of the Japanese Army, or as the organisation is described in the Dutch courts martial case files as the Japanese Gestapo.

bullet. The KNIL cannoneer was first transported back to the Brisbane prison and later to Merauke in Dutch New Guinea, where he was executed on 24 January 1945. In contrast to the Leonski case, nothing can be found on this NEI soldier or his crimes, trial and conviction in any 1944 or 1945 Australian newspaper, nor in any major Dutch or Dutch East Indies newspaper.[64] One reason for this could be that the American GI committed his crimes in Australia, thus making it of greater interest to the Australian public. The Indonesian soldier had committed his crimes outside Australian territory.

One other reasonably well documented case, is the trial of seven civilians or semi-military personnel contracted by the Royal Armed Forces. These (most likely) Indonesians were tried in 1943. It was unclear whether these Indonesians were civilians hired by the NEI Forces or were part of the Armed Forces because of the previously mentioned November 1942 royal decree issued by the Dutch military. The accused, aged between twenty-five and thirty-five, were each described in their case files as a '36th Australian employment company civilian labourer'.[65]

This trial is of interest for several reasons. Firstly, the group went on trial in 1943 in a Dutch court in Melbourne as one group, although the seven were each charged for different but related offences; the oldest defendant Wagimin, born in Grissee (Java), was charged only with theft and received a jail sentence of five and a half months. This is a minor charge compared to the one received by twenty-six year old Surabaya born Asmawie who received a sentence of eight years' imprisonment after being charged with attempted murder and theft committed by two or more persons. Secondly, their court reports revealed something else of note: only four of the accused received help from an official lawyer, Mr. Tahija. In the files of the other three charged it was specifically noted that 'no request has been made to be assisted at trial by a lawyer / advisor'[66] despite the fact that the Indonesians were facing quite severe charges, ranging from three counts of theft, to receiving stolen goods and fugitive activities, to intentional negligence and attempted murder. It is unclear why the three had not requested counsel as no reason was given in their court-martial transcripts. The four defendants who received counsel by Mr. Tahija also received help from an official translator, which was clearly stated in their court case files. The other three, Asmawie, Salie and Pake did not get the same

[64] Both Dutch and NEI newspapers were still heavily censored in 1944 and 1945.
[65] Krijgsraden te Velde te Australië, document no. 2.09.19, inv. nr. 69, case number 10912, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.
[66] Description from the court case file in Dutch: 'geen verzoek heeft gedaan zich ter terechtzitting door een raadsman te doen bijstaan'.

help or at least this was not reported in their files, while in all other researched case files one can ascertain the name of a translator if one was provided by the court. Again, it remains unclear from their case files why these three accused did not get the same treatment and assistance as the other four accused in the same case; it might be possible that these three did not need an interpreter. Finally, of the group of seven, the three unrepresented received the highest jail sentences: Asmawie received a gaol sentence of eight years, Salie a five year sentence and Pake three years.

The Jacob Pattiranie case appears to be quite exceptional, due to the death sentence as well as the fact that he had committed the crime in the Dutch East Indies and was tried in a Dutch Australian court. Quite a few NEI soldiers and marines were also convicted in Dutch-run courts but for misconduct committed in their temporary homeland. Unfortunately, many of these court case files have disappeared from the archives. What is known from the remaining cases is that almost all the convictions were of low ranking soldiers in the Army or Marines, like Pattiranie, or even NEI semi-military personnel who worked for the Dutch Royal Forces, such as the seven aforementioned Indonesians. Almost exclusively, the Royal Armed Forces convicts were army drivers, foot soldiers or low ranking sailors. The highest ranked officer to be convicted was a captain of the infantry.[67] The captain was charged with 'in time of war being responsible for the loss of a military post as commanding soldier' in July 1942. The 44 year old captain was convicted in a Dutch court in Melbourne in 1943.[68]

During the war, Australia became a nation of soldiers from several countries and of different ethnic backgrounds; a small number were arrested and a small group was jailed for their crimes. The statistical numbers seem to back up the conclusion that in states with a lot of foreign visitors, like Queensland, a slight increase in crime can be noted. During the war and in the first post-war years, the Dutch made use of the regular and available prisons, but they created their own prison camps as well. In states like Queensland and NSW, temporary camps were put back into service to accommodate the incarcerated Indonesians—NEI personnel, KPM seamen and other groups such as the Digulists. On average the treatment of the Indonesians by the Dutch in these camps was poor. Partly due to this ill-treatment, many Australians, who previously might had chosen the side of the white Dutch high ranked officials and KPM ship owners, chose the side of the Indonesians. By the time the war had ended,

[67] In Dutch Kapitein der infanterie, nowadays comparable with NATO level OF2.
[68] Krijgsraden te Velde te Australië, document no. 2.09.19, inv. nr. 69, case number 10910, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.

Australians—united in several civilian protest groups and workers on the Australian docks—were on the side of Indonesians.

Chapter 3: Australia and the NEI's disagreement on Indonesian prisoners after the Pacific War

The legal status of those interned by the Dutch colonisers during the war had not been subject to much debate in Canberra. However, the discussion became more prominent when on 15 August 1945, the Japanese occupiers capitulated and two days later Soekarno and Hatta proclaimed the independent Republic of Indonesia. Indonesia became a divided country. To the west was the Republic consisting mainly of the islands of Java and Sumatra, while the eastern part—islands such as Timor, Celebes and Borneo—remained part of the Dutch East Indies, although colonial rule could not be restored immediately. The Government-in-Exile had expected to return to their colony where reoccupation was their first priority. But, according to Groen:

> The Netherlands, (…) had only a handful of servicemen, the reoccupation had to be entrusted to its allied agents. The Australians did indeed occupy eastern Indonesia in September 1945 without too much difficulty. In Java and Sumatra, the birthplace of the Indonesian Republic, the British encountered more opposition from an improvised Republican army.[1]

The NEI Government-in-Exile was under the impression that the majority of the Indonesian population was still sympathetic to their rule.

Two military campaigns were conducted by the Dutch military to reoccupy Republican held territory. The first police action started on 21 July 1947 and succeeded in re-taking large parts of Sumatra and about half of Java.[2] The second police action in late 1948 and early 1949 saw the Dutch win still more territory and capture the Republic's capital Jogjakarta.[3] After the first, but more so after the second police action, protracted and difficult negotiations took place between the Dutch and the Republic. On 27 December 1949, the Dutch government

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[1] Groen, "Militant Response." 31.
[2] Annemarie Heerikhuizen van, "De Wisselwerking Tussen Indonesische Onafhankelijksstreven En Nederlands Kolonisalistisch Beleid in De Periode 1945-1949," ed. Lorenzo van Velzen(Amsterdam: University of Amsterdam, 2013).: 6.
[3] Bart and Moses Luttikhuis, A. Dirk, "Mass Violence and the End of the Dutch Colonial Empire in Indonesia," *Journal of Genocide Research* 14, no. 3-4 (2012).: 266-267.

signed the Indonesian sovereignty agreement and left Indonesia (except for West New Guinea).[4]

3.1 The extended incarceration of KNIL military personnel in Lytton and Casino

As described earlier, in late 1945 and early 1946 a total of almost 3,000 Indonesians were repatriated to Indonesia from Australian ports on two vessels, *the Esperance Bay* and the *S.S. Manoora*. On these vessels were small groups of former KNIL military personnel—soldiers who were found guilty but had already served their sentences. The sentences of most of these Indonesians were equal to their time served in remand. Among the 3,000 were groups of Indonesians who were former KPM merchant seamen who the Australians deported to the Republic.[5]

Although the war had ended several months earlier, in early 1946 large groups of NEI Army personnel remained imprisoned in Dutch detention centres in Queensland and NSW. Most of these Indonesians wanted to return to their homeland but were not allowed to by the NEI authorities; the main reason given by the authorities was that their prison sentences had not expired. In a lengthy correspondence from January 1946, between the Dutch Director of Justice and the Lieutenant Governor-General in Australia, the situation with the incarcerated Indonesians was analysed and a plausible Australian standpoint was identified. The Director of Justice was aware of potential objections by the Australian authorities; he identified that the Australian Government might consider the Indonesians political prisoners rather than military personnel convicted of military offences. The author then suggested a solution for this problem: transfer the Indonesian prisoners and incarcerate them on Netherlands-Indies territory. He suggested the island of Ambon as the most suitable location because pensioned KNIL-combatants could easily serve as camp guards.[6]

[4] Oostindie, "Nederland En Zijn Koloniale.", 573. West New Guinea nowadays refers to the provinces Papua and West-Papua.
[5] Letter from the President of the Courts-Martial in Australia Mr. J. La Riviera to The Legal Director in Batavia, 7 June 1946, Procureur-Generaal bij het Hooggerechtshof Ned.Indië, 1945-1950, document nr. 2.10.17, inv. nr. 1334, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.
[6] Memorandum from the Director of Justice to the Lieutenant Governor-General, 15 January 1946, Procureur-Generaal bij het Hooggerechtshof Ned.Indië, 1945-1950, document nr. 2.10.17, inv. nr. 1334, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.

Until April 1946 there existed two substantial groups of Indonesian prisoners, one group in Lytton (Brisbane, Queensland) and one in Casino, NSW. The KNIL soldiers were prosecuted before the merger of the camps, so were incarcerated in both Lytton and Casino. A memorandum, written almost certainly by a high ranking Dutch military person, provides an insight into the situation of the incarcerated Indonesians.[7] The author mentions the existence of a group in Lytton of 221 Indonesian conscientious objectors. This group consisted of two previous groups—44 prisoners originally from a camp in Bundaberg and another 177 Indonesians already detained in the Brisbane camp. The memorandum goes on to explain why the prosecution and detention of these 221 prisoners in the Lytton camp was problematic. The author writes:

> These people are not regarded as detainees, as a result, they sabotage the litigation process completely, and that is why it is made impossible to prosecute them by the court-martial. A discussion has been held with the Australians about this problem and an agreement was reached (…) that after the submission of their written claims for arbitration a transfer to a detention camp will follow in accordance with the agreement of November 24, 1943.[8]

The November 1943 agreement that he mentions is the Allied Forces Penal Agreement Order between the Commonwealth of Australia, signed by Minister of State for the Army Frank Ford and the NEI authorities. According to this agreement the Dutch could arrest members of the Royal Netherlands Forces and detain the soldiers in any prison or in any military detention barrack.[9]

Another group of Indonesian detainees was imprisoned in Casino. This was a group of about 340 Indonesian military personnel who were already detained in Camp Victory before the amalgamation. According to the President of the Dutch Court-Martial in Australia La Riviere, Lytton-prisoners were transported from Lytton to Casino sometime in April 1946. He states that the detainees were guarded in their new detention camp by thirty Australian

[7] The author's autograph was unreadable in this document and he did not write his full name elsewhere on the letter. The author seemed to be involved in the whole legal process and appeared to have excellent legal knowledge.
[8] Memorandum from H.W. F…. (*unreadable*) to Colonel Warners, 18 January 1946, Procureur-Generaal bij het Hooggerechtshof Ned.Indië, 1945-1950, document nr. 2.10.17, inv. nr. 1334, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.
[9] Commonwealth of Australia Allied Forces (Penal Arrangements) Order (No. 4) Application to Royal Netherlands Personnel, sgd. F.M. Forde, Minister of State for the Army, 24 November 1943, NAA, A6388/391C, Canberra.

M.P.'s, led by two officers.[10] Therefore, after the amalgamation this new Casino group consisted of all 564 Indonesians.

The names of the accused, their military ranks and their military registration numbers have all been identified. It is also known whether they were acquitted or sentenced. Moreover, at least in the case of the 340 men from the Casino-group it can be ascertained that if they had desired it, they could have received legal representation by second lieutenant Raden Mas Soedibio Loman. It should be noted however that this information about the representation comes from a Dutch source.[11] According to the Casino Indonesian Defence Committee, the legal representation of the Casino-internees was below par. They state:

> Why were they not allowed independent defence? The worst type of criminal is allowed such. Even the war criminals at the Nuremberg Trials were allowed such. Then why not those men?[12]

Analyses of both Casino and Lytton groups show that in total 564 Indonesians received sentences. Available records show that the military rank of 560 of the Indonesians was recorded.[13]

The Dutch authorities were not very precise in their description of the different ranks of the various Indonesian soldiers and marines. One may identify that all the ranks were described differently. For example, in this group the Dutch identified military soldiers, foot soldiers and cannoneers. After consultation with Colonel Harold Jacobs[14] most of the different appellations can be regarded as belonging to the same level, employment or rank. For statistical purposes, the ranks have been divided into three groups. These three groups of Indonesians are now called 'lower ranked' (soldiers second class), 'middle ranked' (soldiers first class) and 'high ranked' (corporals and sergeants). In a total group of 560 Indonesians,

[10] Letter from Major J. La Riviera to the Attorney-General, Justice Department in Batavia, 26 April 1946, Procureur-Generaal bij het Hooggerechtshof Ned.Indië, 1945-1950, document nr. 2.10.17, inv. nr. 1334, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.
[11] Memorandum from H.W. F…. (*unreadable*) to Colonel Warners, 18 January 1946, Procureur-Generaal bij het Hooggerechtshof Ned.Indië, 1945-1950, document nr. 2.10.17, inv. nr. 1334, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.
[12] Letter from the Casino Indonesian Defence Committee to E.J. Ward, 21 January 1946, NAA, A1838 401/3/6/1/4 part 1, Canberra.
[13] Lists of sentenced Casino-group and Lytton-group military personnel by the Courts-Martial in Australia, 4 January 1946, Procureur-Generaal bij het Hooggerechtshof Ned.Indië, 1945-1950, document nr. 2.10.17, inv. nr. 1334, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.
[14] Colonel Harold Jacobs; currently the Defence Attaché for Australia and New Zealand at the Dutch embassy in Canberra.

whose military ranks could be retrieved, the sentences of 556 could be ascertained. In Table 1, one may identity the three different ranks in the two prison camps.

	Total group (N=560)	**Lytton** (N=220)	**Casino** (N=340)
Lower ranked			
N	433	150	283
%	77.3	68.2	83.2
Middle ranked			
N	50	23	27
%	8.9	10.5	7.9
Higher ranked			
N	77	47	30
%	13.8	21.4	8.8

Table 1. *Ranks of sentenced Indonesians*

The distribution of different ranks over the two camps appears to be unequal, as there is a higher percentage of lower ranked Indonesian in Casino (83.2% vs. 68.2%).[15] The distribution of the middle ranked groups is almost equal. During sentencing, the entire group of middle ranked and higher ranked Indonesians (in both camps) were all lowered in rank; from sergeant to marine first class, each and every one of them was downgraded to soldier second class. This addition to their sentences could not be inserted in this table. The significance of the absolute numbers and their relative percentages will be further discussed after completing all analyses.

	Total group (N=556)	**Lytton** (N=219)	**Casino** (N=337)
Lower ranked	N=432	N=150	N=282
Mean	13.4[1]	12.8[2]	13.7[2]
SD	3.1	3.6	2.7
min-max	6-48	12-48	6-18
Middle ranked	N=48	N=23	N=25
Mean	12.6[1]	12.0[3]	13.2[3]
SD	1.9	0.0	2.4
min-max	12-18	12-12	12-18
Higher ranked	N=76	N=46	N=30
Mean	14.9[1]	14.1[4]	16.2[4]
SD	3.3	2.1	4.4
min-max	0-24	12-21	0-24

Table 2. *Average sentences in months*[16]

[15] Using a Mann-Whitney test, the distribution of the two camps is significantly different (Z= -4.330; p<.001), suggesting that in Lytton there were higher ranked Indonesians present: 21.4% of the 220 Indonesians in Lytton were higher-ranked military personnel, compared to 8.8% in camp Casino.

[16] 1= significant difference between the ranks within the total group (p<.001).

2= significant difference between camp Lytton and camp Casino (Z=-4.724; p<.001).

3= significant difference between camp Lytton and camp Casino (Z=-2.242; p=.025).

4= significant difference between camp Lytton and camp Casino (Z=-3.614; p<.001).

Table 2 presents data on the number of months sentence an average Indonesian received. Once again the group was divided by rank as well as by camp. One of the main conclusions that can be drawn from an analysis of this data is that on average the lower ranked Lytton group soldiers received a lower sentence of just over one year compared to the Casino lower-ranked who received on average almost two months more. This is even more startling, as in Casino no prisoner received a longer sentence than twenty-four months, whereas in Lytton one soldier obtained a four-year sentence (case number twenty-three, the case of Wawoeroento, a lower ranked soldier). On average Indonesian prisoners were sentenced to 13.9 months of incarceration with a minimum of 0 months (only one accused higher ranked soldier, sergeant Amat, was acquitted) and a maximum of forty-eight months of incarceration (soldier Wawoeroento). One explanation could be that most of the lower ranked and maybe even all of the middle ranked Lytton prisoners (SD = 0.0) received some kind of standard twelve-month sentence, as will be explained later on. As mentioned previously, middle ranked and higher ranked Indonesians were subject to additional punishment. Furthermore, it can be concluded that in Casino the middle and higher ranker soldiers received a substantially higher sentence than those groups in Lytton; the sergeants and corporals in Casino for instance obtained on average two months more than their Lytton counterparts. The reason for this substantial difference is unclear. None of the additionally researched sources provided any explanation for this striking and significant difference. Hopefully further research on this topic may reveal a meaningful and satisfactory explanation.

Months	**Lytton**		**Casino**	
	N	**%**	**N**	**%**
6	0		1	0.3
12	181	81.5	223	65.2
15	26	11.7	17	5.0
18	10	4.5	87	25.4
21	2	0.9	7	2.0
24	0		1	0.3
30	1	0.5	0	
48	1	0.5	0	
acquittal	0		1	

Table 3. *Frequency of sentences in Lytton and Casino*[17]

[17] Additionally, statistical analysis using a Mann-Whitney test, shows that the sentences in camp Lytton were, for all three groups of ranks, significantly lower compared to camp Casino ($p<.001$, $p=.025$ and $p<.001$ resp.).

From the final table (*Table 3*) the main conclusion drawn should be that the Lytton soldiers received a twelve-month sentence considerably more frequently, compared to the soldiers in Casino. In Lytton over eighty percent of the Indonesian inmates received this sentence; in Casino it was a little over sixty-five percent. One explanation for this discrepancy may be that the lower ranked and possibly all of the middle ranked conscientious objectors in camp Lytton, as mentioned by the unidentified Dutch letter writer (*see chapter 3, note 12*), were given a standard sentence of twelve months of incarceration, likely without an actual trial or mass court appearance.

If this was the case, one could accuse the Dutch military high command of misusing their extraterritorial rights to lock up their Indonesian soldiers. As explained in the first chapter, according to the laws of the Kingdom of the Netherlands every member of the Royal Netherlands Forces who committed an offence against the Netherlands Naval or Military Laws would be tried before a Netherlands Courts Martial.[18] Secondly, all Indonesians appeared to be grouped in groups of on average thirty-five persons. In the court proceedings each group was referred to as Case 1, Case 2, etc., plus the camp in which the Indonesians were locked up, which suggests the existence of genuine mass court cases. However, in his letter to Colonel Warners, the writer clearly states that it was made impossible to prosecute the Lytton group by court-martial, without giving any further explanation as to why. At the end of the letter, one possible explanation can be discerned. Although the letter writer does not directly refer back to the Lytton prisoners and their trials, he concludes his communication with the statement:

> This case, although the punishable facts are clear-cut, interrelates to the political developments on Java. Does this mean prosecution is desired? In my opinion, because of our prestige: yes.[19]

The letter writer in these last three sentences is very likely referring to those prisoners in Lytton. One could conclude that those men were incarcerated in Australia for no reason other than to keep them out of Indonesia.

[18] Letter from Rear Admiral F.W. Coster to Prime Minister John A. Curtin, 13 November 1942, NAA, A1608 E45/1/11, Canberra.
[19] Memorandum from H.W. F…. (*unreadable*) to Colonel Warners, 18 January 1946, Procureur-Generaal bij het Hooggerechtshof Ned.Indië, 1945-1950, document nr. 2.10.17, inv. nr. 1334, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.

Another discrepancy in the application of extraterritorial laws to actual cases is the omission of the appointment of a special officer to these cases as required by Dutch law. If this was the case, this would be in sharp contrast to Coster's thoughts and ideas. He had fought hard for the provision of a specially appointed officer—someone who would completely investigate and prepare a case as was laid down in the Netherlands law.[20] In the few original NEI papers that were recovered there is no mention of a special officer or a specific Netherlands courthouse. Conversely, the absence of a Dutch courthouse would explain why no court documents could be retrieved. Previously the Allied Forces Order in application to Royal Netherlands Personnel was outlined. According to this set of exterritorial rules and regulations the Dutch could detain their own military personnel. The Order states that a member of the Royal Netherlands Forces could be imprisoned in Australia if arrested or held in accordance with the law of the Netherlands on reasonable suspicion of having committed an offence triable under that law and sentenced by a service court of the Royal Netherlands Forces. It is questionable whether the jurisdictional description 'reasonable suspicion of having committed an offence' and 'sentenced by a service court' applied to all detainees in Lytton and Casino. Even so, there is serious doubt in all cases as to the reasonable suspicion of having committed a crime in both camps. And although referred to as Case 1 to Case 23, there is doubt that the Lytton detainees—particularly the lower and middle ranking Indonesians—were ever sentenced by a Dutch service court. Unfortunately, more concrete evidence does not appear to exist to either back up or dismiss this assumption of a 'standard sentence' of twelve months without a trial or actual court appearance in the Lytton-camp. And regrettably, no other documents from the archives on this topic have been currently retrieved. Future research on this topic will hopefully disclose more information on the almost certain existence of a Dutch 'standard sentence' and the misuse of Dutch extraterritorial rights.

One could question if the Indonesian conscientious objectors were punished harshly and unfairly, or maybe if their Dutch counterparts were punished more lightly. Comparable material exists on Indien-refusers from the Netherlands which Weijzen describes in his recent publication. He writes about 345 verdicts of refusers from the Netherlands, all whom were imprisoned at *Fort Spijkerboor*. Of those, one hundred and forty-one in this group who were unwilling to fight in Indonesia, received a prison sentence of up to one year. One hundred and

[20] Letter from Dutch Rear-Admiral F.W. Coster to Australian Prime Minister John Curtin, 17 March 1943, NAA, A6388/391C, Canberra.

twenty-four men received a sentence of twenty-four months or more, which is more than a third of the entire group. In comparison to Australia, the average prison sentence of an Indonesian soldier was just 13.9 months of incarceration (*see Table 2*). Weijzen also described a larger group of 1771 verdicts, all pronounced between 1946 and 1951. The author, however, is quite clear that the sources he used to collect his data were very unreliable. While keeping that in mind, 17.5% of them still received a sentence of three years or more and less than 1% of the draftees was acquitted.[21] In Australia, only three of the 556 Indonesians received a sentence of two years or more; one soldier in Casino and two in Lytton, and one soldier was acquitted (*see Table 3*).

At first glance these Dutch sentences appear to be much harsher than the average punishment of the Indonesians in Australia. However, the prisoners in Casino were locked up in horrible conditions, as described previously. According to Weijzen, the Dutch locked up their refusers in the Netherlands in *Fort Spijkerboor*. These circumstances were much more tolerable compared to the circumstances described in the Australian camps. Weijzen wrote that the Netherlands regime was quite benign and requests for special leave were approved abundantly.[22] Additionally, according to Dutch law, every inmate had the right to be released under probation after serving two-thirds of his sentence, if he had behaved properly.[23] This was a Netherlands law that obviously did not apply to the Indonesian political prisoners. Furthermore, after reviewing Weijzen's recent publication, one can conclude that a 'standard sentence', similar to the one that might have existed in camp Lytton, did not exist in the Netherlands. All Dutch conscripts have been tried individually in the Netherlands and not in mass groups as was the case in Casino and in Lytton.

3.2 Australia and the NEI's different outlook on the imprisoned Indonesians

The Dutch and the Australian authorities held different views on how to label and treat imprisoned Indonesians. This divergence of views was made clear by the Director of Justice in his memorandum of 1946, when he stated that the Australians might not view the Indonesians

[21] Weijzen, *De Indië-Weigeraars*., 148-149.
[22] Ibid. 155-156.
[23] Ibid. 149-150.

as military personnel who were convicted of military offences, but as political prisoners.[24] One group of Australians certainly agreed with the Director. In a letter from January 1946 the Casino Indonesian Defence Committee stated that the Dutch 'court-martialled' those whom they were forcibly detaining in the camp; and that the Indonesians' only crime appeared to be wanting their freedom.[25] At least some of the high ranking Dutch officials agreed with this Australian perception. The above mentioned letter was penned around the same time as the Director of Justice indicated that the case was interrelated with political developments in Java; specifically he remarked that prosecution was desired because of Dutch prestige.[26] One can with great certainty conclude that, like the Australians suggested, the Dutch military high command used the justice system to advance their cause and as a means for political oppression.

On 1 November 1946, the Department of External Affairs sent a cablegram to The Australian Legation in The Hague and the Australian Political Liaison Representative in Batavia. The cablegram explained that the Australians should repatriate these detainees to Indonesia. It also highlighted the ambivalence of the Dutch attitude towards the remaining Indonesians and their legal status. According to the Ministry of External Affairs the group of Indonesians concerned fell into two categories. The first group consisted of approximately 570 free Indonesians. Of those ready to be transported back to Indonesia, 200 were discharged from the NEI Army. It can be presumed the remaining 370 were former KPM merchant seamen. The cablegram records no objection by the NEI authorities to repatriate this group of 570.[27]

The second group consisted of approximately 300 Indonesians detained at Casino. According to the Netherlands Minister in Australia, these detainees were serving sentences imposed by the Royal Netherlands Indien Court Marshall for refusing to obey orders, and therefore should be transported to Morotai—one of the north eastern islands of Indonesia and still a part of the Netherlands East Indies. This suggestion is reminiscent of the January 1946 memorandum made by the Director of Justice a few months earlier who recommended

[24] Memorandum from the Director of Justice to the Lieutenant Governor-General, 15 January 1946, Procureur-Generaal bij het Hooggerechtshof Ned.Indië, 1945-1950, document nr. 2.10.17, inv. nr. 1334, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.
[25] Letter from the Casino Indonesian Defence Committee to E.J. Ward, 21 January 1946, NAA, A1838 401/3/6/1/4 part 1, Canberra.
[26] Memorandum from H.W. F…. (*unreadable*) to Colonel Warners, 18 January 1946, Procureur-Generaal bij het Hooggerechtshof Ned.Indië, 1945-1950, document nr. 2.10.17, inv. nr. 1334, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.
[27] Cablegram from the Department of External Affairs to The Australian Legation in The Hague as well as to the Australian Political Liaison Representative in Batavia, 4 November 1946, NAA, A433 1949/2/518, Canberra.

transporting the Indonesian prisoners to Netherlands-Indies territory. According to the Department of External Affair's cablegram, the Australians declined the Dutch proposal, stating that a foreign camp in Australia with what appeared to be political prisoners was no longer tolerable so long after the cessation of hostilities. The cablegram refers to the communication of the Netherlands Minister Van Aerssen. For the NEI authorities, the detention of the Indonesians in an open camp was considered unacceptable; Van Aerssen still regarded the Indonesians as refusing to serve, whose sentences had not yet expired. In contrast, the position of the Australian Department of External Affairs was quite clear: they ruled that the Indonesians in Casino were free men. This position was shared with the Department of Immigration; Migration officer Bird referred to the 'Indonesian civilian'. He addressed them as people who were interned in a Camp at Casino, who were handed over to the Commonwealth Government, and who needed to be repatriated.[28]

The second part of this lengthy November 1946 cablegram contained arguments in support of closing the Casino camp. In the cablegram the Department referred to a widespread conviction that the Indonesians were detained not for simple disobedience of military orders but for insubordination prompted by political considerations. It was considered the NEI military high command had used their justice system to advance their own cause and as a means for political oppression. Secondly, as stated in the aforementioned cablegram [29] the National Security Regulations or Act was due to be determined on 31 December 1946; and with the determination of this Act, the Dutch extraterritorial rights would cease as well.

From his office in Melbourne Dutch Lieutenant Colonel Moquette wrote on 14 December 1946 a collective letter of dismissal to 319 KNIL soldiers. It is logical to presume that these Indonesian soldiers were 'the second group of approximately 300 Indonesians who were detained in Casino', as previously described in the cablegram by the Department of External Affairs. This dismissal notice, sent to the military headquarters in Batavia as well as to the Head Bureau of the Army Registration Numbers, states that these 319 people were no longer considered worthy to be in the military due to their misconduct.[30]

[28] Letter from Commonwealth Migration Officer E.A. Bird to the Department of Immigration, 14 July 1947, NAA, A433 1949/2/8186, Canberra.
[29] Cablegram from the Department of External Affairs to The Australian Legation in The Hague as well as to the Australian Political Liaison Representative in Batavia, 4 November 1946, NAA, A433 1949/2/518, Canberra.
[30] Letter from H.E. Moquette, 14 December 1946, Inventaris van de Archieven van het gezandschap / ambassade te Australië (Canberra) 1942-1954, document no. 2.50.50.05, inv. nr. 148/VLA.511, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.

Three weeks later Moquette wrote another memo, this time sent only to the military headquarters in Batavia, addressed to the Department of Legal Affairs. This document is of significance due to several references and remarks. Firstly, Moquette refers back to his December letter repeating that he indeed dismissed all remaining punished soldiers in Australia and further stating that each of the soldiers received a copy of their notice. Secondly, Moquette describes a group of seven Indonesians who had deserted. One of these men, Corporal Oesman Troenosastro had a typed remark next to his name that indicated that he went missing from a group transferred from Lytton camp to Casino in June 1946. Thus, Moquette's reference to the timeline is generally supported by the aforementioned letter from the President of the Dutch Court-Martial in Australia La Riviere, who also remarked at the time on the amalgamation of the two camps. At the end of this communication Moquette states that he had circulated the names of these seven deserters, but that the Australian officials would not take any steps to arrest these deserters because of the political situation and because they held objections (both were not further specified). Finally, the Dutch Lieutenant Colonel describes how, according to the Dutch military high command, the Australian Government and Immigration Department viewed Indonesian prisoners. According to Moquette the Australian authorities would transport the punished men, after they took over the logistics of the camp Casino, to the 'open' camp near Brisbane and later on transport them back to the Indies.[31] Once again the differing attitudes are apparent regarding the Australian and Dutch officials' view of the Indonesians. The Dutch, and especially Moquette, regarded them as punished deserters, Indonesian (former) military personnel who were no longer worthy of being called KNIL soldiers. The Australians on the other hand considered them Indonesians who needed to be housed in an open facility and ultimately returned to their homeland.

It is difficult to ascertain the point of view of the incarcerated and deserting Indonesians in Casino and determine why they wanted to get back or if they were eager to fight for the Indonesian independence movement as the Royal Dutch Army implied; or why some of them deserted from the Dutch army and camps. Unfortunately, the absence of archival records means it is difficult to reconstruct a general Indonesian perspective. It is possible to discern some of the ideas of the Indonesian prisoners in the correspondence of Australian and Dutch officials. However, it remains unclear how the authors came to their

[31] Letter from H.E. Moquette, 6 January 1947, Inventaris van de Archieven van het gezandschap / ambassade te Australië (Canberra) 1942-1954, document no. 2.50.50.05, inv. nr. 148/VLA.556, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.

conclusions or if the authors were biased; it is clear they are not the views of the incarcerated Indonesians themselves. That said, the correspondence does provide some clue as to how a part of the Indonesian group viewed the Indonesian independence movement. In the earlier mentioned essay Inquiry officer Barnwell concluded that:

> The Indonesians whilst undergoing sentence for mutiny are in fact political prisoners, as they are supporters of the Indonesian Republic. The Dutch Commandant considers that about 200 of them would obey certain orders of the Dutch if they were not under the influence of the more fanatical supporters of the Republic. Little, however, is known regarding their political feelings other than that they are supporters of the Indonesian Republic.[32]

There is one court-martial transcript that did survive which contains the ideas of a few Indonesians; the transcript is from deserting Indonesians in Makassar and recorded from a much later date (1948).[33] It concerns one of the cases of military prosecutor Soedibjo Loman, the same second lieutenant who was appointed to provide legal representation to the Casino group of 340 Indonesian military personnel in 1945-1946. The 1948 case was the case of five Javanese fusiliers, all in their late twenties, who were arrested on 24 October 1947. They were charged with desertion from the KNIL and all five pleaded guilty. The president of the court-martial Lieutenant Colonel Van den Berg asked the five why they deserted from the army. The Javanese gave similar explanations: each of them wanted to leave the army but did not get permission by their superiors to leave. Soehardi, one of the accused, told Van den Berg that he was in a Japanese camp and was forced to fight with the Japanese which made him a very sick man. One of the other reasons why he deserted the army was that he had not seen his wife and two children for three years and he was not given permission to leave and his family was the only thing he could think of, so he left the army to see his family. Twenty-eight year old fellow accused soldier Giman provided another explanation for his desertion. He explained he was anxious for his wife and parents, and like Soehardi, he had been forced into the Japanese army where his health deteriorated significantly. He just wanted to get out of the army, and thought he could as soon as the war was over, especially because of his poor health. Furthermore, he did not get the advances he had asked for nor was he given permission to leave. This made him angry and gave him another reason for deserting. The reasons given by

[32] Essay from (Sgd) W.H. Barnwell, Inquiry Officer of the Commonwealth Investigation Branch, 18 September 1946, NAA, A433 1949/2/518, Canberra.
[33] The city is nowadays known as Ujung Padang on the Indonesian South Sulawesi Island.

the five Javanese appear not to be politically motivated. Van den Berg specifically asked the deserters if there were any other motives for leaving the army without the proper permission. All responded that they did not have any knowledge of politics in the Republic. They all were liberated from a Japanese internment camp in 1945 and from that period onwards they had been patrolling in the Koepang region[34] until June 1946.[35]

This group of five Javanese may not be representative of the whole group of incarcerated Indonesians, inside or outside of Australia, but it may provide a small insight into the motives of at least some of them. It can be concluded that the Dutch military high command was not totally correct about their assumption that all Indonesian prisoners needed to be locked up in camps in the eastern part of the NEI, nor in their assumption that all Indonesians wanted to go back to the western part of Indonesia and fight for the independence movement.

3.3 Negotiations over the last Indonesian prisoners and their return to their homeland

By the middle of 1946, numerous high-ranking Dutch and Australian officials were negotiating the return of former KNIL military personnel, KPM merchant seamen and other Indonesians. Large groups of Indonesians were still residing in several Dutch camps. These detainees were mainly held in Casino, but also in other small camps, and guarded by Dutch servicemen. From the start of these negotiations, the Dutch exhibited what one might regard as a double standard.

On the one hand, the Dutch thought they needed all the available and loyal KNIL soldiers stationed in Australia to be transported to the NEI. Lieutenant Colonel Moquette explained in a memorandum that in camp Casino alone 110 Dutch and Indonesian troops were detailed for guard and maintenance work. The decision was made by the military high command in Batavia and The Hague to withdraw the Dutch servicemen as guards of those

[34] Koepang or Kupang is the capital of the Indonesian province of East Nusa Tenggara on the island of Timor.
[35] Krijgsraden te Velde te Australië, document no. 2.09.19, inv. nr. 67, case number k.v.7/1948, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.

camps.[36] The NEI Army's plan was 'to withdraw irrevocably its guards from Camp Casino on the 15th of December, 1946.'[37]

After a meeting with Australian Minister of Migration and Information Arthur Calwell in September, the Netherlands Minister in Australia Van Aerssen Beyeren appeared to contradict his prior position, elucidating on the further detention and repatriation of the KNIL military personnel thus:

> I am unable to accept the proposal that the Indonesians shall be kept in an open camp under the supervision of Commonwealth Peace Officers, as this is considered not to be in conformity with the wish expressed previously that the serving of the sentences would be in accordance with the N.E.I. Army regulations (…) The serving of the sentences will be as much as possible in accordance with the N.E.I. Army regulations or at least with the usual conditions in detention camps. The Netherlands Indies Army authorities and I are of opinion that keeping the detainees in a so-called open camp would not meet the requirements.[38]

Herein lies the double standard: at some point in time the Dutch did not, or could no longer, maintain control over their own prisoners in Australia. Nonetheless, they still wanted to retain control over the Indonesian prisoners who would soon be guarded by the Australians on Australian soil. It seems that the Dutch thought that they still had jurisdiction over these Indonesian prisoners. Van Aerssen's attitude appears to be similar to Moquette's view of the Australian apathy towards the whole incarceration and repatriation process. The Dutch Lieutenant Colonel sounds quite displeased with the lack of effort made by the Australians to capture the seven NEI deserters, as well as the Australians' desire to transport the political prisoner's back to Brisbane.

In late October 1946, the Australian position on what they were willing to accept and do regarding the Indonesians was once more expounded. Firstly, Australian Immigration Department Secretary Heyes wrote to Moquette that arrangements had been made to transport a group of former KNIL military personnel—whose sentences of detention had

[36] Memorandum from Commander-in-Chief H.E. Moquette to the Netherlands Indies Army in South Yarra, NAA, 4 October 1946, A433 1919/2/518, Canberra.
[37] Memorandum from the Prime Minister's Department to the Secretary of the Department of Defence in Melbourne, NAA, 27 November 1946, A461 M350/1/9 part 2, Canberra.
[38] Letter from Van Aerssen Beyeren to the Department of Immigration, 10 September 1946, NAA, A433 1949/2/518, Canberra.

expired—from Brisbane to Java. Furthermore, as the camp at Brisbane could not be made ready for a larger group of men from Casino, Heyes' Department agreed that the best course of action would be to hold the Indonesians in the prisoners' compound in Casino in the freest lines possible given the circumstances.[39] Secondly, two days after this correspondence, the Australian Minister of Immigration wrote a letter to his Prime Minister. Calwell repeats the strategy of Heyes, but also raises the question of what to do with the approximately 340 Indonesian prisoners whose sentences had not yet expired. He explains that after the expiration of the National Security Act, legal difficulties regarding detaining them as prisoners would arise. The Secretary of Immigration suggests to the Prime Minister that he and the Secretary of External Affairs should discuss this directly with Baron van Aerssen.[40]

The group of former KNIL military personnel, whose sentences of detention had expired, stayed at the Brisbane camp for a short period of time. According to Commonwealth Migration Officer Bird, the Indonesians who were waiting repatriation in Brisbane behaved very well. He describes the camp conduct as exemplary and the residents complying with every request made. Furthermore, he expected no change in the behaviour of the Indonesians, since they were most anxious to return to the NEI and that they did not wish to spoil their chance of an early repatriation.[41] About one month after the two letters from Heyes and Calwell, the *S.S. Manoora* sailed once again to the Netherlands Indies and the Republic. According to a secret cablegram sent by the Department of External Affairs, the ship left Brisbane harbour on 21 November 1946. On board were 327 Indonesians (three of them from Koepang), which included 228 released from the Casino prison camp and discharged from the Army by the Dutch authorities, as well as ten females, two men suffering a mental disease and twenty-two suffering from pulmonary tuberculosis.[42]

Shortly after the departure of the *Manoora,* the detention camp in Casino was closed on 14 December 1946, and the 320 Indonesians who remained at that camp were transported to Brisbane. On the same day all of the remaining prisoners were discharged from their military service by the Netherlands East Indies Army. As described previously, the Dutch

[39] Letter from Immigration Department Secretary T.H.E. Heyes to Colonel Moquette, 22 October 1946, NAA, A433 1949/2/518, Canberra.
[40] Letter from Secretary Arthur A. Calwell to Prime Minister Chifley, 24 October 1946, NAA, A433 1949/2/518, Canberra.
[41] Memorandum by E.A. Bird of the Department of Immigration in Canberra for the Migration Office in Brisbane, 1 November 1946, A433 1949/2/518, Canberra.
[42] Cablegram from the Department of External Affairs to The Australian Political Representative in Batavia, 26 November 1946, NAA, A433 1949/2/518, Canberra.

Lieutenant Colonel Moquette wrote letters of dismissal for the 319 KNIL soldiers on 14 December. The Indonesians, who were considered to be civilians by the Australians, were from that date onwards cared for by the Australian Department for Transport and External Territories.[43]

After the arrival of the group from Camp Victory in Brisbane, the Australian authorities anxiously tried to identify where the remaining Indonesians were located in Australia. Under the White Australia policy the authorities could not allow Indonesians to stay; many were treated as prohibited migrants. For instance, the previously mentioned seven deserters identified by Dutch Lieutenant Colonel Moquette were not considered by Australian officials to be Dutch deserters, but simply people against whom action might be taken under the Immigration Act.[44] The Australian officials more or less blamed the Dutch authorities for the lack of up-to-date information on the remaining Indonesians in Australia. The officials complained that during the war some of the Indonesians were registered by the Dutch and some were not. Furthermore, the Dutch did not notify the Australians when these Indonesians left the country following repatriation by the Dutch Transport Service.[45]

An undated memorandum by the Immigration Department describes the remaining Indonesians requiring repatriation. According to this source, on the next embarkation of the *Manoora*, 341 Indonesians who were in the Brisbane camp and approximately fifty or sixty other Indonesians would be leaving their temporary homeland. The author refers to the legal status of some of these Indonesians as follows:

> The 329 men who were released from Casino Camp (…) were actually discharged by the Dutch authorities from military service. They had not completed their sentences for desertion from the N.E.I. Army when they were handed over to the Commonwealth, but it is presumed that in the view of their discharge from the Army, the Dutch authorities will not attempt to take them into custody again on arrival in Java.[46]

[43] Memorandum by the Department of External Affairs to the Secretary of the Prime Minister's Department, 25 March 1947, NAA, A481 M350/1/9 part 2, Canberra.
[44] Letter from Secretary H.E. Heyes to Colonel Moquette, 17 January 1947, NAA, A433 1949/2/8186, Canberra.
[45] Letter from Aliens Control Officer Wilham Deak to the Commonwealth Migration Officer in Melbourne, 14 March 1947, NAA, A433 1949/2/8186, Canberra.
[46] Memorandum by the Department of Immigration, no date, NAA, A433 1949/2/8186, Canberra.

Once again, the *S.S. Manoora* was the designated vessel on which the Indonesians were to be repatriated. In early May 1947, the ship embarked a group of eleven Portuguese Timorese and a group of 440 Indonesians, including their Australian wives.[47] Before the wives could embark their vessel, they were required to sign a document stating that by accepting free passage to Indonesia they could no longer expect assistance from the Commonwealth Government to return to Australia if they were to find the conditions of living in the Netherlands Indies uncongenial.[48]

The *Manoora* arrived in Cirebon (Java) on May 16 with the last group of Indonesians of this size to be repatriated, leaving only about twenty Indonesians remaining in Australia.[49] This statement from Bennett was confirmed by a confidential report entitled 'Prisoners removed in 1946 from Casino Camp' from the Australian Minister of External to an organisation or person in The Hague, the Netherlands in 1948. The report stated that all the prisoners concerned, except for one prisoner named Wawarunto,[50] had been released a considerable time ago and sent to Republican Territory.[51]

Almost three years after the end of the Asia-Pacific War the last of the large groups of Indonesians had left Australia on the *S.S. Manoora*. Most of these Indonesians were eager to go back to their homeland, but probably not for the reasons the Dutch authorities imagined. It appears that one of the main reasons was that the Indonesians just wanted to go back to their families and communities, although there is insufficient evidence to corroborate this. The Dutch Army Commanders however, suspected a desire to join the Indonesian Independence movement to be the main reason, and insisted the Indonesians be incarcerated so they could not return to their homeland. Conversely the Australian authorities just wanted to repatriate the remaining Indonesians to either The Republic or to islands that were still under the control of the NEI. It is unclear whether their reasons were motivated by humane considerations or racially based as a result of the Immigration Restriction Act.

[47] Bennett jr., *The Return*., 233-234.
[48] Letter from Commonwealth Migration Officer F.J.R. Penhailuriack, no date, NAA, A433 1949/2/8186, Canberra.
[49] Bennett jr., *The Return*., 235-236.
[50] One might expect that this man is the same one that appeared on the lists of sentenced Casino-group and Lytton-group military personnel by the Courts-Martial in Australia as Wawoeroento, who was sentenced to 48 months' imprisonment.
[51] Report from the Minister of External Affairs to the Netherlands, 14 August 1948, NAA, A433 1949/2/8186, Canberra.

Conclusion

Australia's views regarding the legality of the Indonesians' internment shifted during the period from their first arrivals in 1942 until their repatriation to Indonesia in the late 1940s. Throughout this period, the Australian government recognised the NEI Government-in-Exile and initially accepted their jurisdiction over the Indonesians and the Dutch right to intern them. In 1941 the Australian practice was 'to accept the classification and general advice of the overseas authorities in connection with the security aspect of release of such interns in Australia'.[1] In the beginning, the Department of the Army was the only government department favourably inclined to grant the Dutch their extraterritorial rights. Other departments, such as the Department of Defence, were not in favour of granting these rights to the Dutch. After lengthy negotiations between Dutch high officials such as Rear-Admiral Coster and Australian authorities such as Prime Minister Curtin, the NEI received their much wanted extraterritorial rights, commensurate with the American extraterritorial rights.[2] With the securing of the extraterritoriality, a discussion of the day-to-day application of judicial rights was not afforded a priority. The issue only became one of urgent consideration at the end of the Asia-Pacific war, in particular after the declaration of independence by Soekarno and Hatta.

During the war years, various Indonesian groups arrived in Australia, some voluntarily, some under accompaniment of Dutch authorities. The KPM seamen were the principal group of free Indonesians to arrive in Australian ports. They were actively deployed in the war effort. After a sizeable group went on strike in 1942, the Dutch changed the laws regarding freedom of movement of Indonesian KPM personnel. Most of the striking Indonesians ended up in Australian run detention camps such as the one in Cowra.[3] Later on in the Pacific war, the Dutch arranged to run their own camps, like the notorious "concentration camp" in Casino and the detention camp in Lytton. The NEI incarcerated the KPM-ers who refused to work on Dutch ships. It was in these camps where the earlier secured extraterritorial rights came into

[1] Irvine, "Legality and Freedom.", 11-12.
[2] Commonwealth of Australia Allied Forces (Penal Arrangements) Order (No. 4) Application to Royal Netherlands Personnel, sgd. F.M. Forde, Minister of State for the Army, 24 November 1943, NAA, A6388/391C, Canberra.
[3] Lingard, *Refugees and Rebels*., 23.

full effect. Not only did the Dutch lock up their own uncooperative merchant seamen, they also detained Javanese, Ambonese and other Indonesian military personnel. As discussed, all the retrieved evidence suggests that at least a substantial group of these refusers were incarcerated without a court martial appearance having been tried in absentia and en-masse.

The NEI Army high command incarcerated these Indonesians to prevent them from returning to the Indonesian Republic to fight on the side of the independence movement. Although this political motivation was not widely proclaimed, suggestions were made in internal communications, such as the quote that appeared in a letter relating to the court martial appearance attributed thus: 'Because of the Dutch prestige? Yes.'[4] The Australian Government, as well as many concerned citizens, held the more widespread conviction that the Indonesians were detained for insubordination prompted by political considerations. A further legal issue arose with the cessation of the National Security Regulation in late 1946; this meant that the Dutch extraterritorial jurisdiction would end as well. The Minister of Migration and Information Arthur Calwell explained that after the termination of the National Security Act, it would present legal difficulties for holding the Indonesians as prisoners.[5] In the end, the Dutch military dismissed these remaining incarcerated soldiers which meant the Indonesians no longer had to serve their remaining sentences because the Australian authorities regarded them as Indonesian citizens. Consequently, these free men needed to be transported back to their home country.

As noted in my introduction, a debate in the Netherlands is currently transpiring on the role of the Dutch Government and the Dutch Military in the years after the 1945 Indonesian Proclamation. Additionally, it concerns whether the Dutch people should pay compensation to the survivors or the relatives of the survivors of the bloody military actions in Indonesia. It is my suggestion, following my research on the treatment of the Indonesian military personnel in Australia that this forgotten group may need to be included in this discussion.

Future research should be conducted on the subject of the KPM and the legal status of those merchant seamen in Australia. This topic was only briefly researched for this thesis;

[4] Memorandum from H.W. F…. (*unreadable*) to Colonel Warners, 18 January 1946, Procureur-Generaal bij het Hooggerechtshof Ned.Indië, 1945-1950, document nr. 2.10.17, inv. nr. 1334, Nationaal Archief / Dutch National Archives, Den Haag / The Hague, the Netherlands.
[5] Letter from Secretary Arthur A. Calwell to Prime Minister Chifley, 24 October 1946, NAA, A433 1949/2/518, Canberra.

although closely related to the main research question it lay outside the scope of this thesis. As far as I could discern, extensive research on the KMP and the handover by the Dutch Commander Naval Forces of the NEI vessels that took place for the benefit of the NEI government, is yet to be undertaken. It remains unclear the exact status of those merchant seamen, or whether the Indonesians who did not go on strike during the war can be described as civilians or as semi-military personnel.

Despite substantial archival research completed for this thesis, additional research on the Indonesian soldiers and their legal status and detainment needs to be completed. The absence of court case transcripts makes this difficult but there may be other avenues to pursue. It is still possible that the case materials are held somewhere by the Dutch government and if found, a different conclusion to the Dutch approach might be drawn. I am absolutely sure that these court transcripts are still available, most likely somewhere in the Netherlands. For that reason I would like to continue doing research on this historical topic, a topic that is still much debated today. As I have written in my literature review, although there has been much research done on the subject of the Indonesian struggle for independence, in my opinion there is still significant research to be done.

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