

The West Papuan People's Unexercised Right to Self-Determination

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ABSTRACT

The indigenous people of West Papua¹ have been under Indonesian rule since May 1, 1963, when West Papua was transferred from the Dutch administration to Indonesia through the *New York Agreement*.² According to that agreement, arrangements were to be made for a vote on self-determination to take place in 1969 by the West Papuan people. This paper argues that the internationally upheld right to self-determination of colonized people had been denied to the people West Papua since that year (1969) because of vested political and economic interests of Indonesia and the international community on West Papua. To rectify the ongoing situation of human rights violations against indigenous West Papuans under Indonesian rule, this paper advocates for West Papua's inclusion on the agenda of the United Nations' Committee of 24 (Special Committee on Decolonization) as a way of achieving a genuine act of self-determination.³

¹ A note must be made on the use of the term 'West Papua'. The territory has been known by many different names, each of which has its own political connotations. 'West Papua' is the name adopted by separatists and their international supporters and is used here because this briefing document deals with the issue of self-determination and it is an appropriate adoption of terminology in such a context. Other names include West Irian, Irian Jaya etc. and may be periodically referred to in this document.

² *New York Agreement* - In October 1962 Dutch rule in West Papua ended and was replaced by a temporary UN administration (UNTEA), which was established as part of the UN-brokered [New York Agreement](#), signed between The Netherlands and Indonesia to resolve their dispute over the territory. (Etan.org)

³ Self determination, in the context of West Papua, is the right of the people to determine their own political destiny without influence from external sources, whether its USA, UN, or Indonesia.

CONCEPTUAL BACKGROUND

The concepts of humanity and ‘social justice’ in the post-Cold War era formed the basis for secession for colonized nations. However, humanitarian and social justice ideals are far from being the only considerations in contemporary politics. There are other sociopolitical reasons for self-determination of all colonized people, but in order to achieve that, the term ‘*realpolitik*’ must first be identified and discussed as to how it influenced international politics in our time. ‘Realpolitik’ is vast and its presence continues to influence international relations in the post-Cold War era – our time, and it also bears on the issue of secession.

Humanitarian and Social Justice Ideals

The key ideas associated with humanitarian and ‘social justice’ ideals are often used to construct arguments for secession, this includes the principles of *human rights* and self-determination.

Human Rights

Human rights are based on people having rights, claims and obligations by virtue of being humans. There exists a core of fundamental human rights that is universal as it is cross-culturally accepted. For instance, a range of states support the existence of core fundamental human rights by the acceptance and ratification of international conventions, including the two United Nations (UN) International Human Rights Covenants, which placed binding legal obligations upon signatories. These core human rights include the *right to life, liberty, property, and the right not to be expelled from the place of one’s residence* without reasonable cause(s). Evidence of violations of such fundamental right helps build concrete legal arguments and strong moral case against abusers, and a tenacious case for the justification of secession. The rise of concern for the existence of universal human rights norms is illustrated by the responses of the international community to human rights violations after the “Cold War.”

Self-determination

Self-determination is “the determining by the people of the form their government shall have, without reference to the wishes of any other nation, especially by people of a territory or former colony.”⁴ This ideology has its historical roots in the mid-late 1700s in the idea of popular sovereignty. This concept gained prominence in international law and international relationship following World War II. Its importance, however, increases immensely in areas around the world where people are seeking independence from colonial rule. Despite its presence in international conventions and laws, the concept of self-determination is often attacked for lacking clear legal connotations and definition. The literature on self-determination, common article 1 (I) of the *UN International Human Rights Covenants*, provides a widely cited definition of self-determination. It states, “All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁵ The rights under modern international law associated with self-determination include, “the right to secede from colonial rule, the right to exercise the supreme power in the territory, the

⁴ Self-determination is the right of the people to determine their own form of government without influence by foreign or outside actors. (dictionary.com)

⁵ Appendix 1: International Covenant on Civil and Political Rights’, in Alex Conte, Scott Davidson and Richard Burchill, eds., *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee*, Aldershot, Algate, 2004, p. 225.

right to adopt a new constitution and the right to a representative government.”⁶ In *General Comment 12* on article 1 of the *UN International Human Rights Covenants*, the right to self-determination is of great importance to all people because its fulfillment is the basis for the effective realization of all individual human rights.⁷

Realpolitik

Also influencing the idea behind *secessionism* is the practice associated with the term *realpolitik*. The term dates back to the mid 19th century. It’s stemmed from centuries old political theory of “realism.” The politics of realism is inherently amoral and eliminates wishful thinking and sentimentality from political judgements. Ideas associated with realism, including interest, prudence and expediency as the key motivators of states, have dominated critical thinking in international relations for centuries. The theory dictates that national interest should guide considerations and application of foreign policy. Policies with limited objectives, but reasonable chances of success are pursued. However, that is not to say that moral and ideological principles cannot and do not ever influence *realpolitik*.

WEST PAPUAN HISTORICAL BACKGROUND

The roots of the issue of West Papuan secessionist movement today go back to the post-World War II period of widespread decolonization of indigenous peoples from European imperial empires. With the ‘Charter of Transfer of Sovereignty’ (1949), article 1 (I), the Netherlands transferred complete sovereignty of the Dutch East Indies to the United States of Indonesia, recognizing it as an independent and sovereign state. However, in Article 2, the question of the political status of West Papua was deferred for determination through negotiations between the Indonesian government and the Kingdom of the Netherlands within a year of that transfer of sovereignty, with West Papua remaining a territory of the Netherlands up until that point. At the time of negotiations, the borders of the Republic of Indonesia did not include West Papua.

During this period of negotiations over the sovereignty of West Papua, which West Papuan leaders were not consulted, the two sides disagreed on the terms and conditions of the transition. Several attempts to find a lasting, satisfying resolution met only with failure. On one hand, Indonesia insisted that any agreement reached must be explicitly regarded as the transfer of sovereignty of West Papua to Indonesia, which, of course, ignored the very question of West Papua’s right as a colonized people, to self-determination. On the other hand, the Netherlands believed West Papuans must be accorded the right to self-determination. At this point, Indonesia took the stance that with the proclamation of an independent state of Indonesia on August 17, 1945, West Papua too had exercised self-determination as the territory of Indonesia. This argument comprised the whole of the former Netherlands East Indies who were accorded the right to self-determination by virtue of the ‘Charter of Transfer of Sovereignty’. The Netherlands aggressively objected to it and sought in the last years of its administration of West Papua to make ready the conditions for the people of West Papua to exercise their rights to self-determination. It was the Netherlands’ position that Indonesia and West Papua should not form a single

⁶ Ingrid Detter De Lupis, *International Law and the Independent State*, Aldershot, Gower, 1987, pp. 13 and 14.

⁷ Richard Burchill, ‘Self-Determination’, in Alex Conte, Scott Davidson and Richard Burchill, eds., *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee*, Aldershot, Ashgate, 2004, p. 34.

independent national unity, and clearly argued for the rights of self-determination for the West Papuan people. In other words, the Netherlands envisioned two separate independent states sharing a common border.

The debate occurred during the height of the Cold War tensions and the Sukarno government did the unthinkable – turning to the Soviet Union to defend its claim on West Papua. The United States of America (USA) intervened and bullied the Dutch government into giving up West Papua to Indonesia for the so-called greater purpose of combating the spread of communism in South East Asia. This line of thinking was influenced by the ‘Domino Theory’, which states that if one country in South East Asia fell, the rest would go with it,⁸ thus, Indonesia turning to the Soviet was a serious threat to the US interests in the region and that of its allies such as Australia and New Zealand.

This dispute between the Netherlands and Indonesia over the issue of self-determination for the people of West Papua was sealed with the August 15, 1962, ‘Agreement between the Republic of Indonesia and the Kingdom of the Netherlands Concerning West New Guinea (West Irian).’ This agreement is commonly known as the *New York Agreement* (NYA). In line with the provisions of the *New York Agreement*, power over the territory of West Papua would be transferred to Indonesia on May 1, 1963, under the condition that Indonesia would make arrangements for an “*Act of Free Choice (self-determination)*” to take place within six years. By 1963, the Dutch were no longer interested in the territory nor the arrangements for the West Papuan exercise of self-determination. Indonesia was left to fully implement its own ambitions without any contenders in its way.⁹

In fact, the *Act of Free Choice* was a ploy invented to appease the conscience of the Dutch, who were unwilling to defend the moral right they asserted for the West Papuans,¹⁰ and the US government who didn’t want to lose Indonesia to the Communist. The UN maintained a presence in West Papua, but Indonesia became the only authoritative power in West Papua, with free reign in determining, shaping and reshaping of the territory’s political future.

The NYA was never implemented properly. Instead of a direct vote such an impartial free *plebiscite meeting*,¹¹ which is an internationally recognized standard for voting on fundamental issues such as self-determination, Indonesia proposed and implemented a different practice known as *Musjawarah*. The *Musjawarah* is based on a so-called collective decision based on unanimous consensus through highly vaguely defined methods in order to achieve its most wanted goal which was to acquire West Papua at all costs. Under this method, 1,026 indigenous West Papuans out of an estimated population of about a million indigenous West Papuans. These West Papuan voters were under Indonesian internment for weeks prior to the *Act of Free Choice* election, and were regularly interviewed to determine who would be reliable enough to

⁸ “The Democratic Domino Theory: An Empirical Investigation” a history investigation by Peter Leeson of George Mason University, and Andrea M. Dean of West Virginia University.

⁹ Note: *the country (Indonesia) that wanted West Papua in the first place was given the right to determine the future of West Papua, as such, making is fundamentally clear that the powerbrokers designed the agreement favorably for the Indonesian government. This contributes to conflict that is raging on in West Papua today.*

¹⁰ Kees Lagerberg, *West Irian and Jakarta Imperialism*, London, C. Hurst & Company, 1979, p. 3.

¹¹ Plebiscite vote – “The direct vote of all the members of an electorate on an important public question such as a change in the constitution” (oxforddictionaries.com).

express pro-Indonesian views at the assemblies through which the act of self-determination was conducted.

The election – Act of Free Choice – took place between July 14 and August 2, 1969, largely in the absence of United Nations observers. This is critical because historical documents show that the UN thought the election was carried out fairly, but it was not. The result was highly predictable – it was *unanimous* for the territory of West Papua to become part of Indonesia. The people of West Papua were essentially subjected to the transfer of authority from one colonial power to another without saying a word in the process. Their rights, which are enshrined in the UN Charter, were denied and continued to be suppressed even to this very day.

It is important to note that throughout the period between the *New York Agreement* and the *Act of Free Choice* election outcomes, the West Papuan made it clear that they did not need another colonial ruler; they wanted freedom and ‘self-determination’. The birth of the *Organisasi Papua Merdeka* (OPM) – the Free Papua Movement in 1965, was a West Papuan direct response to increasing discontent with the Indonesian presence in West Papua. West Papuan rebellion and Indonesian counterinsurgency ensued right up to the *Act of Free Choice*, with the Indonesian military deployed in various places in West Papua in an attempt by Jakarta to prevent all West Papuan dissent at the polls. West Papuan leaders were subjected to intimidation, and were left without a choice as to how they should prepare for the *Act of Free Choice*. Those who voted were basically intimidated and were mostly kept away from the preparation process.

Ironically, Fernando Ortiz Sanz,¹² the UN Secretary General’s ‘Representative for West Irian’ during the *Act of Free Choice* election, issued a final report on the outcome, which was carefully worded as to portray that election as one that was “conducted in accordance with UN practice,” but it wasn’t. The whole election was not done in accordance with international practice, as stipulated in the New York Agreement.¹³ Adding insult to injury, the UN Secretary General endorsed the Indonesian lie that the people of West Papua were represented overwhelmingly at the polls and that they were unanimously on the side of Indonesia, and his report was adopted as a UN General Assembly Resolution (UNR) on West Papua.

The Cold War era saw a continuation of the international denial of the illegitimacy of the *Act of Free Choice*, and the legitimate desire of West Papuans to exercise their right to self-determination.

In 1975, with Cold War *realpolitik* influencing international relations and politics, the UN General Assembly (UNGA), once again, decided against allowing the West Papuan people another vote for self-determination. Thus, the betrayal and transfer of West Papua from one colonial government to another – orchestrated by the UN – was now complete. What follows was an era of denial, downplay, and rejection of the West Papuan.

Nonviolent Resistance

¹²Fernando Ortiz Sanz - <http://www.un.org/en/peacekeeping/missions/past/unsfbackgr.html>

¹³ ‘New York Agreement: Agreement Between the Republic of Indonesia and the Kingdom of the Netherlands Concerning West New Guinea (West Irian)’, *FreeWestPapua.org*, <http://www.freewestpapua.org/docs/nya.htm> (date accessed: 15 March 2006).

In 1996, a new kind of struggle emerged. This new struggle was led by one of the few educated West Papuans of the post Cold War era, Dr. Thom Wainggai (known mainly by his first name Dr. Thom). He was a West Papuan scholar, lawyer, professor, and political activist with unparalleled knowledge of the internal politics of Indonesia, West Papua, and the international community. He was the first West Papuan to attend university outside of West Papua. He earned his education in West Papua and Japan before awarded a *Fulbright Scholarship* to study in the United States where he earned his Masters degree and PhD. After he completed his studies in the US, he returned to his home. He taught at Cenderawasih University, where promoted the concept of “nonviolent” approach to the demands for West Papuan for self-determination. He epitomized the advancement of modern West Papuans in terms of educational prowess and knowledge in public administration and politics. He transcended the unfair stereotype against West Papuans, demonstrating the ability of indigenous West Papuan to live and thrive in the modern world. His teachings were embraced and pursued by West Papuans alike, even to this day. Indonesia, however, saw him as a serious threat to its political ambitions and self-created sovereignty over West Papua and its indigenous inhabitants. The Indonesian government arrested, tortured, incarcerated Dr. Thom and poisoned him. He died for what he believed in, which is West Papua is not part of Indonesia and they should be free as a unique group of people with unique cultures. He had planted a seed of nonviolent activism that soon took off in the post Suharto West Papua.

The Rise and Fall of *Reformasi* in West Papua

The post Cold War era has seen the revival of active campaigning for West Papuan secession from Indonesia and gained immense momentum after the collapse of the government of President Suharto in May of 1998. The end of Suharto’s reign gave birth to a period known as *Reformasi*, which brought about a deep sense of political freedom.¹⁴ The beginning of the 21st century gave the “nonviolent” struggle for independence of West Papua greater freedom in terms of public protest and debate about the future of West Papua. For the separatist movement, it was an opportunity to revisit decades old unsettled “self-determination” issue. The political wing of the separatist movement took advantage of the post-Suharto political freedom to voice their concerns and take action on their aspirations for independence.

This desire for freedom in the new era culminated in the establishment of *Musjawarah Besar Papua*, the Papuan Mass Consultation. On February 23 to 26 of 2000, the *Presidium Dewan Papua* (PDP), the *Papuan Presidium Council*, claimed a mandate for the West Papuan people to advance their struggle for independence and became the primary organization advocating for the independence of West Papua. The PDP cited a long history of human rights abuses against West Papuans; for instance the murder of Dr. Thom and other leaders of the struggle, but more so – the overdue right to self-determination of indigenous West Papuans. In calling for independence, the second Papuan Congress, which was held on May 29 to June 4, 2000, convened by the PDP, vigorously rejected not only the *Act of Free Choice*, but also the *New York Agreement*, on grounds that West Papuan representatives – and the people – were deliberately excluded in all these negotiations. The PDP believed that the *Act of Free Choice* and the *New York Agreement* were legally flawed, or were created not in the best

¹⁴ *Reformasi* was the wave of democratic reform in Jakarta and included public calls for military and political reform. ‘Politics’, *Embassy of the Republic of Indonesia – Canberra, Australia – Special Issues: Papua*, http://www.kbri-canberra.org.au/s_issues/papua/papua/htm (date accessed: 23 July 2006).

interest of indigenous West Papuans.¹⁵ During this period, there were limitations to the political freedoms accorded to the West Papuan people. All actions advocating independence were rejected by the Indonesian government on grounds that advocating self-determination violated the commitment of all citizens of Indonesia to the unitary state of Indonesia. A law created without the consent of the majority of West Papuans. The much anticipated freedom and liberation West Papuans anticipated evaporated when Indonesian passed laws outlawing symbols of which the 'Morning Star' flag and others were banned in October 2000. Following the enactment of this new legislation, on November 2000, several PDP senior leaders and advisers were arrested and jailed. They were accused of "subversion" and instantly incarcerated. A year later, on November 10, 2001, during Indonesia so-called "Heroes Day" celebration at the headquarters of Kopassus,¹⁶ the PDP leader, Theys Eluay, was lured to the celebration by the Indonesian army where he was murdered.

To appease angry West Papuans, on December 2001, the Indonesian government introduced a bill to develop West Papua with the hope of ending the tension between West Papuans and the military. The Indonesian government introduced a new law called the "Special Autonomy Bill." The bill purported to give West Papuans greater say in its social-political affairs and much needed funds to develop the infrastructure throughout West Papua. However, after four years, Indonesia failure to adequately implement this Act and other associated government regulations. This demonstrated the inability of the Indonesian government to honor its commitment when it comes to West Papua, and the lack of desire to ensure West Papua is adequately developed.

A decade later, West Papuans revisited their right to self-determination in a show of unity. In 2011, the people of West Papua organized the 3rd congress where they overwhelmingly voted for the establishment of their own state and government - the *Federal Republic of West Papua (FRWP)*. They confidently elected Hon. Forkorus Yaboisembut, *SPd*, as their president, and Edison Waromi, *SH*, as prime minister of the newly established government. According to West Papuan leaders, the election and the establishment of the federal government of West Papua was done in accordance with the provision of the *New York Agreement* and the '*Act of Free Choice*', which they argued was not fully implemented as required. These West Papuan leaders argued that the *Act of Free Choice* gave them the right to vote on their desire for self-determination. Once again, Indonesia reacted instantly and arrested and imprisoned the two leaders and most of the participants. These two men were charged with "subversion" – the conspiracy to overthrow the state of Indonesia.

The formation of the FRWP brought two realities to the forefront of the entire West Papuan issue. First, it demonstrated the fact that the majority of West Papuans wanted their own state. Second, the election of 1969 was a total sham – had majority of West Papua voted on that day, West Papua would have been an independent state. These two realities presented Indonesia with a huge dilemma: accept the FRWP claim and work toward a transition to an independent state and lose the entire West Papua, or crush it to the ground and hope it didn't survive. The latter would mean a tremendous violation of human rights against indigenous West Papuans. The Indonesian government sadly picked the latter option. The military moved in and arrested the newly elected leaders of West Papua and imprisoned the

¹⁵ *Ibid.*

¹⁶ Kopassus stands for Komando Pasukan Khusus - Special Forces of Indonesia Army.

entire leadership, however, it didn't deter the new generation of leaders who continue to protest publicly against this brutality. The Indonesian government's decision backfired.

Final Analysis

It can be seen from this historical background that, although agreed upon by the international community, the basis upon which West Papua was incorporated into Indonesia was dubious and a major source of the enduring discontent within the West Papuan secessionist community. The international community also questioned the *Act of Free Choice* and its outcome in the post-Cold War era. In late 2005, the Dutch parliament released a scathing report of its thorough re-examination of the *Act of Free Choice* that specifically questioned the legitimacy of Indonesian sovereignty over West Papua.¹⁷ As the former colonial administrator of West Papua who refused to give in to Indonesian demands prior to the *Act of Free Choice*, the Dutch government publically agrees that West Papuans should have been allowed to vote on their own independence and that the *Act of Free Choice* didn't adequately represent the will of the people of West Papua. In other words, Indonesia and the UN and its major peace-brokers betrayed West Papua through a sham referendum.

THE HUMANITARIAN AND SOCIAL JUSTICE CASE FOR WEST PAPUAN SECESSION

In West Papua, the case of human rights abuse and the lack of social justice since the *Act of Free Choice* was implemented, give adequate justifications for secession. This argument is also based on the application of relevant human rights laws and conventions on the right of *colonized people* to full self-determination.

Human Rights in West Papua

The fundamental rights of human beings are universally applicable to all societies, as widely agreed upon by various international organizations and governments, and by the virtues shared by all people. The people of West Papua are, by virtue of these agreements, entitled to all those rights as a nation of people with unique culture: language and ethnicity. Over the years, however, West Papuan people have been denied these rights by Indonesia and its international partners. Peter Tabuni, a prominent West Papuan author, quoted by John Martinkus, detailed human rights violations in West Papua. He wrote, "Their story is here in this document and I write only about what I know or I have seen."¹⁸ He also wrote about inhumane acts of torture resulted in death, forceful removal – expulsion from homes, rapes, unjustified killings, and massacres committed by the Indonesian military not only against OPM leadership, but also West Papuan civilian population.¹⁹ He was not only an author, but a primary witness to the gruesome human rights abuses against his people during his time in West Papua. Trust in the accuracy of Mr. Tabuni account of the human rights abuses in West Papua is important because here is a primary source that cannot be denied. In fact, there is only one 'human right' monitoring body, the *Institute for Human Rights Study and Advocacy (ELS-HAM)*, exist in West Papua, but it is under heavy established Indonesian censorship rule, and external human rights

¹⁷ Richard Chauvel, speech delivered at *Australia, Indonesia and the Crisis in West Papua* [seminar], Melbourne, La Trobe Politics Society, 8 May 2006.

¹⁸ Peter Tabuni quoted in John Martinkus, 'Paradise Betrayed: West Papua's Struggle for Independence', *Quarterly Essay*, Iss. 7, 2002, p. 14.

¹⁹ *Ibid.* pp. 14-16.

investigators have often been refused access. They are subjected to ejection or expulsion from West Papua prematurely; a testament to the Indonesian growing paranoia over losing control of West Papua. These stories and information about human rights abuses in West Papua are heavily controlled by the Indonesian government. Today, thanks to the invention of “Social Media” we get to see a whole different side to the Indonesian handling of West Papuan pro-independent movement.

Further attempts by the Indonesian government to deny the truths about human rights violations in West Papua, occurred through the detention and harsh interrogation of the leaders of the branches of ELS-HAM and legal associations when they issued statements about human rights abuses committed by the Indonesian authorities.²⁰ In addition to that, the Indonesian government banned international journalists and continues to intimidate journalists inside West Papua. Not allowing journalists and a fact finding mission to enter West Papua, is a sign that Indonesia is not being truthful in this issue. There should be free access to West Papua if Indonesia has nothing to hide. Unfortunately, this is not the case.

On January 2006, claims of severe persecution made by the West Papuan asylum seekers in Australia were vehemently denied by an Indonesian embassy spokesman in Australia. Even when faced with facts and evidence provided by people who lived through the horror of Indonesian rule for decades, the Indonesian shamelessly denied any wrongdoing. The stories of these asylum seekers in Australia were highlighted in the media. As a result, the Australian government had no choice but to grant these asylum seekers temporary protection visas in keeping with its international obligations. And by accepting these asylum seekers under refugee status, the Australian government acknowledged their claims of severe persecution to be somewhat genuine. These two major concerns were widely discussed by those asylum seekers when interviewed by the Australian media, such as *The Age*, making it easier to tell the Australian general public of the human rights violations in West Papua, which further solidified the moral justification for West Papuan cessation from Indonesia and future aspirations.

In the documentary *Blood on the Cross*, West Papuans asserted and supported Tabuni’s accounts through their own experiences or encounter with the Indonesian military. These civilians talked about the suffering they and their relatives suffered regularly through Indonesian military reprisals, including killings, rapes, and tortures. The Indonesian military committed these horrible crimes mainly against those advocating for independence and their relatives and families.²¹ It is, therefore, reasonable to conclude that the constant abuse of human rights in West Papua serves the purpose of the Indonesian authorities, whose mission is to deliberately undermine the West Papuan independence movement through violent means. Tabuni explains, “They (Indonesia) fight us because we do not agree with their program (the way they do things).”²² Indonesian depends entirely on the exertion of excessive force throughout the territory to keep the civilian population in total subjection. However, this policy has in turn galvanized support for the pro-independence movement, but it also adds a cyclical pattern to the abuse of human

²⁰ Martinkus, *op. cit.*, p. 55.

²¹ Mark Davis (Writer, Reporter and Producer), ‘Blood on the Cross’, *Four Corners* [Television Series: episode screened Ch ABC, 1999], Australia, ABC, 1999.

²² Peter Tabuni quoted in Martinkus, *op. cit.*, p. 13.

rights.²³ The scale of the violation of human rights in West makes a compelling moral claim for the secession of West Papuan from Indonesian.

West Papua and the Right to Self-Determination

To begin with, the term self-determination is unclear on areas such as who is entitled to these rights and how these principles should be applied to the cause of West Papua. However, central to the question of sovereignty in West Papua is the determination of whether West Papuans constitute ‘a people’ – a nation – to which the right to the concept and application of the term self-determination applies. As stressed above, Indonesian acquired West Papua under a string of controversial circumstances. For instance, the *New York Agreement* established that the indigenous people of West Papua constitute an eligible group of people for the articulation of freely expressed political will in accordance with international practices, through the exercise of the right to self-determination.²⁴ This was a decision (the acquisition of West Papua) made on behalf of the West Papuan people by both the Netherlands and Indonesia with the support of the international community through the UNGA. Thus, the agreement appeared to have some closure for the people of West Papua on the issue of ‘self-determination’, but that is not the case.

Fact is, West Papuans make up a group of people with the right to exercise self-determination. It was understood that provisions were made for a date to be set for the actual exercise of self-determination by the West Papuans themselves.²⁵ That, however, failed to materialize. If the *Act of Free Choice* was held in the name of West Papuans, or, as stressed above, if the they were given the right to vote freely for the issue of self-determination in 1969, they would have all voted for their own state, their own country, and their own future. That would have satisfied the “self-determination” requirement, but that was not the case. Only a tiny number of people were forced to vote against their own will. The whole thing was evidently staged and controlled through the use of bribes and military force as many West Papuans who participated in it later testified to this.

In 1969, the US Embassy in Jakarta noted the following – “Personal political views of the UN team are [that] 95 percent of Irianese support the independence movement and that the *Act of Free Choice* is a mockery.”²⁶ It was the first primary source of evidence from an independent foreign entity that the *Act of Free Choice* was not properly executed. Yet, the whole thing was designed to be that way. The response of the Western press at the time of the coerced election was equally critical; pointing out that West Papua had not exercised anything near genuine with regards to self-determination through the *Act of Free Choice*.²⁷ The media back then agreed with the indigenous voters of West Papua that the *Act of Free Choice* election was a total sham. Yet, the entire 1969 election hailed as a tremendous achievement by the US government and the UN.

Failure of pre-1969 colonial government

During the colonial era, little physical infrastructure was established in West Papua

²³ Richard Chauvel, speech delivered at *Indonesia and Australia: Why the Issue of West Papua won't go away* [seminar], Melbourne, The Australian Institute of International Affairs, 22 February 2006.

²⁴ ‘New York Agreement...’ *op. cit.*

²⁵ *Ibid.*

²⁶ Anthony Balmain newspaper article quoted in Saltford, *The United Nations and the Indonesian Takeover of West Papua, 1962-1969: The Anatomy of Betrayal*, London, Routledge Curzon, 2003, p. 134.

²⁷ Saltford, *op. cit.*, p. 167.

by the Dutch government as the territory was perceived to be a mere frontier region not worth developing. And up to the mid 1950s, the Dutch administration put little effort into the political development of West Papuans, believing they would have a presence in West Papua for at least another generation. The Dutch attempts at preparing the West Papuan people for self-government were implemented in haste. Everything was implemented in the last two years of its rule in West Papua. Within two years, in a territory with little infrastructure, the Dutch administration was unable to politically educate the entire adult population of West Papuans to a practical level for the implementation of a *plebiscite vote* on the issue of self-determination. This, compounded by the tight political control of the Indonesian administration in 1963, did not make for an ideal political understanding amongst the West Papuan people in the context of and options in the *Act of Free Choice*. With poor access to the population and the low level of education and lack of awareness on the part of West Papuans, and the costs and logistics involved in conducting the act of self-determination “in accordance with international practice,”²⁸ namely ‘one person, one vote’ system. Most of West Papua population today remained isolated, with its nomadic tribes numbering around 19,000 people and the same problem their older generations encountered in 1969 can still be seen today. For instance, these people have the most languages of all Indonesian provinces combined, and live in physically inaccessible communities in the hinterland and mountain areas.

It was profoundly impractical for indigenous West Papuans to affect the outcome of the vote in a short period of time, giving Indonesian an execute to execute the *Act of Free Choice* without the vote of the majority of West Papuans. In other words, the six year time-frame layout by the Indonesian government was not enough a period for West Papuans to prepare. These same impracticalities persisting to some degree today. And, in spite of the number reasons as to why the 1969 *Act of Free Choice* should have never been organized or implement; including the difficult social, political, and geographical conditions in West Papua in 1969, Indonesia did its best to make sure it was implemented. After the implementation, Indonesia used clever words to portray the *Act of Free Choice* as an expression of the desire of the people of West Papua to be part of Indonesia. It also suggested that the people of West Papua had twice expressed that desire; not only in 1969 but also in 1945 with the Indonesian Proclamation of Independence.²⁹ These claims apparently didn’t meet international standards, and that Indonesia deliberately ignored and violated the December 1, 1962 “declaration of independence of the sovereign state of West Papua,” by the West Papuan people themselves. It was a time when the Dutch and West Papuan flags flew side by side. One can argue that this declaration of independence was the rightful, legitimate expression of self-determination of the entire West Papuan people. They have had nothing to do with the Indonesian claim after the 1969 election.³⁰ Indonesia’s claim that West Papuans voted to cede their lands and resources to the government Indonesia is, fundamentally, morally, logically, and legally wrong. The true advocates for the West Papuan self-

²⁸ ‘New York Agreement...’ *op. cit.*

²⁹ ‘Papuans Need Democracy Not Separatism’, *Embassy of the Republic of Indonesia – Canberra, Australia – Special Issues: Papua – News on Papua (August 2004)*, http://www.kbri-canberra.org.au/s_issues/papua/htm (date accessed: 23 July 2006).

³⁰ The first was the declaration of independence of Indonesia in 1945, which West Papuans had no part in it, and the later was the ‘Act of Free Choice’ of which a fraction of West Papuans were handpicked, coerced and forced to vote favorably for West Papua.

determinations are West Papuans themselves, and they wanted the full right to choose their own political destiny. They were, however, denied that right by Indonesia. In other words, the wishes for a genuine consultation on the wishes of the West Papuan people, as the legitimate representatives in 1969, were successfully thwarted by Indonesia.

The Act of Free Choice – how it was executed

Prior to the election of 1969, the Indonesians supported the right of self-determination for West Papuans, using language associated with it merely to show the world its position in the debate on West Papua's political status. They put more efforts and expenses needed to conduct such an exercise of self-determination according to internationally recognized standards, knowing full well that the outcome could appear legitimate under international and domestic scrutiny. The only acceptable act of self-determination on the viewpoint of West Papuan people is one that, not only represent the desires of the entire population of West Papua, but one that is also acceptably made according to international standards. In the view of West Papuans, the simple provisions of the *New York Agreement* were not honored, or they were not properly implemented. For that reason alone, the *New York Agreement* remains a legal issue that has a bearing on the West Papuan secession claim. The question remains – will the people of West Papua be allowed to exercise that right.

This paper argues that the only legitimate mean for ensuring the West Papuan people's undeniable right to self-determination is fully exercised, is by putting the West Papuan case on the agenda of the United Nations Committee of 24: Special Committee on Decolonization, considering West Papua as a territory yet to be decolonised; officially recognizing it as a 'Non-Self-Governing Territory'; and facilitating negotiations between Indonesia, as the administering power, and the people of West Papua in accordance with the relevant "UN Resolutions" on decolonization.

The Discord between the Existence of Humanitarian and Social Justice Ideals and the Progress of West Papuan Secessionism

The moral and legal principles found in international conventions and laws justify the secessionist movement in West Papua. It would seem then that, with the post Cold War increase in influence of humanitarian and social justice ideals in international politics and through their application, the case for the West Papuan secession movement must also be realized. Yet, little, if any, progress has been made toward the desire for West Papuans for secession from Indonesia in the past fifty years since the Indonesian annexed the territory. The moral and legal reasons to break away from Indonesia do exist, but there has been no action taken by the relevant international bodies. There is, therefore, discordance between the existence of humanitarian and social justice ideals in politics today, and the status of West Papuan secession and aspirations. This discordance can be explained by the fact that concepts associated with humanitarian and social ideals are not the only considerations in contemporary politics; *realpolitik* plays a huge role in influencing it. Although there has been a notable rise in the presence and influence of humanitarian and social justice ideals today's international relationships, the influence of *realpolitik* on the states remains strong and visible. Because of that, the presence of moral and legal principles in the political consciousness in the world does not mean they

automatically influence the behavior and policies of states. *Realpolitik* is in the foreground, working, impacting and influencing political situations and cultural evolutions throughout the world. This is true in the case of West Papua.

INDONESIAN *REALPOLITIK* CONSIDERATIONS

To further explore the discordance between the existence of the justifications for West Papuan secessionist movement, based on humanitarian and social justice ideals and the political stagnation of West Papua's secessionist demands, the national interests of Indonesia must be examined to determine the depth of the influence of *realpolitik* on this issue.

Indonesia and West Papua

The province of West Papua holds economic, ideological, and nationalistic interests that are deemed important to different influential actors within Indonesian society and, therefore, influencing Indonesian *realpolitik* considerations in dealing with secessionism in the territory.³¹ In fact, West Papua is extremely important to Indonesia on a socioeconomic and political standpoint. So-called *realpolitik* compromises every opportunity for a meaningful dialogue on West Papua's desire for secession from Indonesia. In the view of *realpolitik*, the economic interest supersedes any moral obligation from Indonesia to honor the West Papuans right to self-determination. To put it in simple terms – West Papua is too high a price to pay, therefore, secession is not a choice.

Politics within Indonesia

Indonesia is a highly centralized system of government. Indonesia has a history of increasing political centralisation since its independence in 1945, and aggressive stifling of separatist sentiments within the resource rich provinces of the outer lying islands.³² The entire political spectrum represented in the makeup of Indonesia's contemporary parliament, considers West Papua to be an integral part of Indonesia, as does the Indonesian military.³³ Despite the promise of *reformasi*,³⁴ (the post Suharto Indonesia) the military maintains a tremendous influence on Indonesian politics and government institutions, especially security matters through *dwifungsi*, its dual role: defense against external attack and, particularly important in this instance, its internal security role.³⁵ The Tentara Nasional Indonesia (TNI) – Indonesian National Army uses its internal functions to maintain control throughout Indonesia, particularly in West Papua. Military influence in Indonesian politics means that the Indonesian parliamentary parties have yielded to the military's insistence that a rigorous approach is needed to rescue the Indonesian nation from secessionists.³⁶ Unlike many Democratic systems in the world today where military power is concentrated on a particular department or ministry, and only act when required by the government, the Indonesian government is a military regime; the military and the government are inseparable.

³¹ Indonesian national interests are not discreet points but will be dealt with separately for the purposes of analytical clarity.

³² Alan Whittaker, *West Papua: Plunder in Paradise*, Anti-Slavery Society, 1990, p. 84.

³³ Chauvel, *Australia, Indonesia and the Crisis in West Papua*, *op. cit.*

³⁴ Reformasi – reformation which began after the fall of Suharto.

³⁵ West Papuan (and other) secessionists are considered to be internal enemies of the Indonesian state and thus help to explain the existence of *dwifungsi*.

³⁶ Peter King, *West Papua & Indonesia since Suharto: Independence, Autonomy or Chaos?* Sydney, University of New South Wales Press, 2004, p. 97.

Economic Interests

West Papua is rich in natural resources. Indonesia has been extracting minerals from West Papua since occupying West Papua in the 1960s until today. The mineral, oil, and timber; the natural resources of West Papua, have been extracted, not only by Indonesian businesses, but also by multinational corporations in partnership with Indonesian partners. By allowing foreign businesses into the territory, the fate of the territory is bound to wider economic interests and additional actors that favor stability in the region and thereby supporting Indonesian sovereignty over West Papua.³⁷ The exploitation of much of West Papua's natural resources by foreign corporations is linked to both the Indonesian government and its military complex. The best known foreign corporation in West Papua is *Freeport-McMoRan Copper & Gold Incorporated*,³⁸ and for the purpose of this paper, this mining company is referred to as "Freeport". *Freeport* is one of the most lucrative mining operations in the world. In 2006, Freeport was the largest single taxpayer in Indonesia; contributed over US \$100 million³⁹ annually to the Indonesian government.⁴⁰ Consequently, an Independent West Papua would mean the loss of a significant economic asset for the Indonesian government, which is why TNI tightened its control of West Papua over the years. The protests occurring in late February 2006, which linked to the West Papuan struggle for greater autonomy, called for the closure of the Freeport operation, sparked instant outrage in the Indonesian government. The Indonesian President, Dr. Susilo Bambang Yudhoyono, immediately intervened for fear that the protests would drive away, not only Freeport, but also future foreign investors and businesses. While quick to intervene on behalf of Indonesia's economic interests, President Yudhoyono simultaneously faced criticism for his failure, four years later, to implement the 2001 *Special Autonomy* deal for West Papua,⁴¹ which is evidence that giving West Papua some degree of political independence – autonomy, was not the priority of Yudhoyono and his government.

The TNI is believed to be a principal beneficiary of resource exploitation in West Papua.⁴² In addition to its role in maintaining Indonesian authority in the West Papua and other outliers, the military presence in the territory now concerned for the economic opportunities for the TNI.⁴³ It is a fact that TNI has much influence over the mine and also benefits economically from it.⁴⁴ As such, the military's close relationship with Indonesian government's economic sector is often used as reason to fortifying Indonesian unity⁴⁵ at the expense of landowners of West Papua.

Ideological and Nationalist Interests

Indonesian nationalism is a significant development in Indonesia as a response to West Papuan secession claims. With over 17,000 islands spread over more than 5 million square kilometres of territorial seas, the state of Indonesian is not well

³⁷ Although companies could potentially remain in business with a change in the political status of West Papua, business tends to prefer the status quo. Particularly with the uncertainty that change in political situations can bring in which the economic climate, and thereby profits, can be damaged.

³⁸ To be referred to as Freeport or the Freeport Mine from here on.

³⁹ \$100 million USD is approximately IDR 145 billion.

⁴⁰ Mark Forbes, 'Papua row could scare off investors, Yudhoyono warns', *The Age*, 4 March 2006, p. 18.

⁴¹ *Ibid.*

⁴² King, *op. cit.*, pp. 95 and 113.

⁴³ *Ibid.* p. 113.

⁴⁴ *Ibid.* p. 121.

⁴⁵ The author Peter King suggests this is done through businesses that finance secessionist suppressing loyalist and *jihad* militias. *Ibid.* p. 123.

integrated. Socio-culturally, the people of Indonesia are notably heterogeneous,⁴⁶ with the potential for conflict between the different ethnic groups. A successful insurrection within these different ethnic groups could cause the disintegration of the state. The difficulty facing the Indonesian government is maintaining harmony amongst the different socio-cultural groups while preserving the territorial integrity of Indonesia, which is achieved through various principles of unity and solidarity.⁴⁷ In some cases, suppressing people's right, coercing them to accept an identity, they didn't ask for, are often done in the name of national unity.

The Indonesian concept of nationhood is described in this phrase *Bhinneka Tunggal Ika* - the idea of unity in diversity.⁴⁸ It is widely believed that TNI is the central force of unity in Indonesia and that it often used extreme measures to maintain control over West Papua for the purpose of maintaining the integrity of the "Unitary Republic."⁴⁹ Even if it means violating the human rights of indigenous West Papuans, and when confronted with this, the Indonesian government claims to be merely combating threats to West Papua's post-1962 status. It is sufficient to say that TNI is the main obstacle against the self-determination aspirations West Papuans.⁵⁰

On June 1, 1945, as leader of the *Indonesian Nationalist Movement*, Sukarno made a speech in which he introduced the concept of *Pancasila*, the idea of forging a national identity specific to the Indonesian people and above individual group's interests. Sukarno stated, "This is what we must all aim at: the setting up of one National State upon the unity of one Indonesian land from the tip of Sumatra right to Irian!"⁵¹ With President Sukarno's focus on nation building and the Indonesian triumph in its international conflict with the Dutch over West Papua, West Papua becomes and remains a trophy of Indonesian nationalism and a symbol of greater Indonesia.⁵² Due to their historical roots in forging of the Indonesian nation, the sentiment associated with, and concern for, issues of unity and solidarity are dominant and persistent elements in the Indonesian political culture.⁵³ It is indeed the guiding principles of Indonesian national identity that governs national political issues even decades later.

In his 1996 Independence Day speech, President Suharto, who succeeded President Sukarno, stated that "Pancasila⁵⁴ is the sole basic principle of our life as a society, nation and state."⁵⁵ Pancasila contains five principles that define "the Indonesian nation" or the principles of Indonesian nationalism. One of the Central principles of this Pancasila is the so-called "Democracy led by the wisdom of deliberations among representatives."⁵⁶ Ironically, however, the Suharto regime never lived up to those principles, nor did it apply that principle to its citizens nationwide. Those who questioned the state were severely attacked, and the secessionist or pro-Independence

⁴⁶ Heterogeneous – meaning, a nation of so many ethnic groups.

⁴⁷ Rudini, 'Indonesia's political future: An Indonesian perspective', in Colin Brown, ed., *Indonesia: Dealing with a Neighbor*, St. Leonards, Allen & Unwin, 1996, p. 66.

⁴⁸ *Ibid.* pp. 66-67.

⁴⁹ King, *op. cit.*, pp. 95 and 113.

⁵⁰ *Ibid.*

⁵¹ Sukarno, 'The Birth of Pantja Sila' [speech], in *The Indonesian Revolution: Basic Documents and the Idea of Guided Democracy*, The Department of Information Republic of Indonesia, 1960, p. 40.

⁵² Chauvel, *Australia, Indonesia and the Crisis in West Papua*, *op. cit.*

⁵³ Rudini, *op. cit.*, p. 68.

⁵⁴ Pancasila is an Indonesian word which describes five principles guarding the or defining Indonesian nation.

⁵⁵ Soeharto, *Address of State by H.E. The President of the Republic of Indonesia Soeharto Before the House of the People's Representatives on the Occasion of the 51st Independence Day, August 17th*, Jakarta, Department of Information Republic of Indonesia, (delivered) August 16, 1996.

⁵⁶ Five principles of Indonesian nation - http://www.indonesianembassy.org.uk/human_right-2.htm

movement in West Papua received the worst of it.

Following East Timor's independence, the Indonesian public was wary of the possibility of national disintegration and total collapse of their country. In August of 2001, a nationwide poll revealed that 62 percent of the Indonesian public opposed independence for Aceh and West Papua.⁵⁷ The TNI used this political atmosphere to re-legitimize itself as the only political force able to defend Indonesia against secessionism.⁵⁸ This thereby consolidated the TNI's justification for retaining a significant military presence in West Papua, overshadowing any ample economic reasons to stay.

In short, for various reasons and various beneficiaries the economic potential of West Papua and its place in concepts of Indonesian unity and integrity are central in shaping Indonesian *realpolitik* when considering its stance in relation, and in this case opposition, to West Papuan secessionist movement. Indonesia's international allies have also found it profitable to support Indonesian unity, as a positive relationship with Indonesia represents the potential economic rewards of a large export market and physical resource exploitation. Conversely, support for West Papuan secession and the defense of the right of self-determination and human rights are not economically profitable, as West Papuans are comparatively economically weak and few.⁵⁹ Governments appear unwilling to sacrifice any economic trade for the sake of taking a genuinely principled position when it comes to humanitarian and social justice reasons for West Papuan self-determination.

West Papuan independence activists perceive the defense of the international community of Indonesian sovereignty over West Papua to be an economic struggle. The defense of the view of indigenous West Papuans is often determined by the profits ready to be reaped from West Papuan resources.⁶⁰ When such questioning occurs, the relationships with Indonesia is subject to strain because the dual authorities within Indonesia hold territorial integrity dear and Indonesia's receptivity to foreign businesses may be altered. As the *Anti-Slavery Society* puts it, "The resources of West Papua explain the international apathy towards the struggle of the [West] Papuan people for self-determination. Indonesia has 'sold' West Papua to multi-national interests with the aim of gaining tacit support for its occupation."⁶¹ The West Papuan secessionist movement, then, has to compete against the strength of national ideology and economic interests that are aggressively defended by the Indonesia through its military. West Papua also has to contend with the interests of external actors, both governments and businesses, and their willingness to defend the economic interest in West Papua.

West Papuan advocates of self-determination recognize the factors influencing *realpolitik* in the international community. However, it is argued here that the political, economic, ideological and nationalistic concerns of the Indonesian government are illegitimate in their application to the territory of West Papua because of the questionable sham election of 1969. And the ultimate right to determine the political status and pursue economic, social and cultural development within the territory of West Papua belongs to the indigenous peoples of West Papua

⁵⁷ Poll cited by King, *op. cit.*, p. 165.

⁵⁸ King, *op. cit.*, p. 115.

⁵⁹ Whittaker, *op. cit.*, p. 83.

⁶⁰ Martinkus, *op. cit.*, p. 10.

⁶¹ Whittaker, *op. cit.*, p. 72.

as enshrined in common article 1 (I) of the *UN International Human Rights Covenants*.

CONCLUSION

The nature of the Indonesian claim of sovereignty over West Papua could not have been solidified, or achieved, without significantly violating the human rights of West Papuans. The Human Rights laws and covenants were purposely ignored to give Indonesia what it wanted – West Papuan lands and resources. Indonesia recognized the needs of exerting massive military operations throughout West Papua and other outliers in order to maintain control over the population, as such, many innocent West Papuans were murdered to keep the Indonesia's presence in West Papua alive. By supporting West Papuan human rights complaints, the international community rejected the nature of Indonesian sovereignty over West Papua and *ipso facto* the way in which West Papua was integrated into the nation of Indonesia. On the contrary, to support the Indonesian claim over West Papua also means the international community accepted, or is perfectly fine with the tremendous killings of hundreds of thousands of innocent West Papuans to maintain the status quo, and the continuous violation of human rights committed by TNI on behalf of the state – Indonesia – since the 1960s. Indonesia and the international community cannot have it both ways; Indonesia sovereignty over West Papua was achieved through human rights abuses and deliberate violation of international conventions, and the international community cannot ignore that.

With the interests of human rights in relation to *realpolitik* considerations in the territory of West Papua, the case for self-determination is urgent and should be put on the agenda of the UN Committee of 24: Special Committee on Decolonization, to facilitate the process of enacting the indigenous people of West Papua's fundamental and foundational right to self-government. That is the right accorded to all free people; that is to determine their own political future and human destiny. To ignore this is condoning the human rights abuses of West Papuans, because that is the only way for Indonesia to control the indigenous people of West Papua – by deadly force. Coercion is a part of Indonesian policy in West Papua, and it must be condemned and investigated.

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