

# Reinscription of West Papua as a Colonised State and People – Powes Parkop

## REINSCRIPTION OF WEST PAPUA AS A COLONISED STATE AND PEOPLE

by Powes Parkop, (Master of Law)

### 1. INTRODUCTION

The purpose of this paper/Submission is to present the case of West Papua/ns or West New Guinea/ns as a State and as a people entitled to exercise the right to self-determination in International Law. The paper outlines the legal basis for the case of West Papua in International Law, pointing out the historical, ethno-cultural, geographical and political basis for the rights of West Papua/ns to self-determination.

### 2. SUMMARY OF PAPER

The basic contention of this paper/submission is that the Melanesian of West Papua or West New Guinea has a valid right to self-determination under International Law as People and as State for the following reasons.

2.1 That West Papua as a State and a People was integrated into the Republic of Indonesia against the wishes and aspirations of its people and against the principles of International Law and the charter of the United Nations.

2.2 That the Melanesians of West Papua as a State and a People had never freely exercised their right to self-determination according to international law, in particular according to the Charter of the United Nations and Specific Resolutions of the General Assembly on Decolonisation, including Resolution 1514 and 1541 of the Declaration of the granting of independence to colonial countries and peoples and according to article 1 of both international covenant of Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

2.3 That the integration of West Papua as a State and a People into the Republic of Indonesia amount to the recolonisation of West Papua and her people by the Republic of Indonesia and not an expression of Self-Determination as it was not a choice of the people of that State.

2.4 That West Papua has a different pre-colonial, colonial and decolonisation history to that of Indonesia. Whereas Indonesia was at various times part of various pre-colonial empires that exist in that region, West Papua was never part of such empires. Whereas Indonesia had been a colony in the late Nineteen (19) century, a difference of nearly four hundreds (400) years. Whereas Indonesia fought and won her independence from Holland in 1945, West Papua was

forced to integrate into the Republic of Indonesia in 1969, a difference of 25 years between the independence and the purported integration.

2.5 That West Papua as a State and a People are geographically isolated by 'blue-water' from the rest of Indonesia, thus fulfilling the first prerequisite for self-determination under Resolution 1541 of the General Assembly.

2.6 That West Papua as a State and a People are ethnically and culturally different from Indonesia and Indonesians. Whereas, Indonesians are the main of the Asian Mongoloid race, West Papuans are Melanesians, ethnically and culturally the same as other Melanesians in Papua New Guinea, Solomon Island, Vanuatu, Kanaky and Fiji. This also fulfils the second prerequisite for self-determination under Resolution 1541.

2.7 That since integration in 1962 (formally in 1969), the Melanesians of West Papua as a State and a People have been continuously oppressed and discriminated against by the state of Indonesia, socially, culturally, politically and economically. The exodus of thousands of West Papuan Melanesian into Papua New Guinea and around the world as refugees since 1963 attest to the discrimination and oppression they faced as a people under Indonesian rule. This, thus fulfils the third and final prerequisite for self-determination as provided under Resolution 1541 of the United Nations General Assembly.

2.8 That in any event, the right to self-determination is a right not just a colonised people but increasingly a right that is being demanded and equally recognised by International Law, including the United Nations, as a right that is belonging to non-colonial situation or post-colonial situation as is the case of West Papua. In this respect, International Law, including the United Nations has allowed and recognise the exercise of the right by such people and states in post colonial situation to either external self-determination (that is by secession) or internal self-determination (within existing state).

2.9 That the right to self-determination is not a once and for all right belonging to colonised people and state but is an evolving right equally belonging to states and peoples as is the case for West Papuans. This is apparent by the fact that the language of all the International Covenants and Resolutions of the United Nations General Assembly relating to the right to self-determination refers to "all people have (Present Tense). The Right to Self-Determination of West Papua as a State and a People must also be accorded that right despite the purported integration into the Republic of Indonesia in 1969.

2.10 That any event, the right to self-determination is recognised by International Law and human right and not simply as a political right linked to decolonisation. Hence the criteria for exercising such a right should not be limited to classical colonial situation but increasingly to situation where a people as a state demarcated by culture, ethnically and geographically are subjected to various other human rights violations in post colonial situations as is the case of West Papuans under Indonesian rule.

2.11 That the United Nation Decolonisation Committee should take hint from the expression of the General Assembly in its declaration of 1993 as the International Year for indigenous peoples' right and recognised that such peoples and states are and should be the new subjects or beneficiaries of the right to self-determination. West Papua as a State and a People who are ethnically, culturally, geographically different from Indonesia and who have for thirty (30) years been oppressed and discriminated by the State of Indonesia must be considered as such a beneficiary of this right.

### **3. WEST PAPUAN CLAIM UNDER INTERNATIONAL LAW**

It is submitted that West Papua as a State and a People does have a right to self-determination. That such a right has not been exercised, despite the so called 1969 'Act of Free Choice' (AFC). In any event that West Papua/ns should be accorded the right to self-determination in international law as a geographically, culturally and ethnically separated State and People who have been oppressed and discriminated in the post colonial of Republic of Indonesia as (re) colonised people or indigenous people.

West Papua's claim as a State and a people entitle to exercise the right to self-determination find strong support and legitimacy in international law. There should be no dispute that West Papua either as a State or People did qualify as subjects or beneficiaries of the rights to self-determination in international law. This is apparent by the fact that West Papua or West New Guinea as it was then was initially listed on the United Nations List on 'non-self-governing territories' before 1969. In any Event the state and people of West Papua does fulfil the requirements of the rights in International Law, particularly resolution 1541 of the United Nations General Assembly, in that they were geographically, ethnically, and culturally different from their colonial administrator – the Netherlands. The issue for West Papuans now is whether the right has been exercised in 1969 as a result of the so called "AFC" and hence cannot be accorded again. In other words does the 1969 "AFC" defeats any future claims of West Papua as a State or a People to be entitled to that right or exercise it again if indeed they have exercised such a right as in 1969.

It is submitted that despite the 1969 so called "AFC" and contrary to any claims by the Republic of Indonesia and the opinion of the United Nations and specifically the Decolonisation Committee of the United Nations, West Papuans as a State and as a people have never lawfully and freely exercised their rights to self-determination under international law. The 1969 so called AFC therefore should not defeat the rights of West Papua and West Papuans to the right to self-determination on the following basis:

(1) That the 1969 AFC was not conducted in accordance with International Law in that it was not freely and fairly conducted and exercised.

(2) That the 1969 AFC had no legal basis in international law in that it was a mechanism that was agreed to by parties other than the West Papuans who were the subject of the agreement and hence wrong in law, including international law. Secondly that in any event the Agreement, upon which the exercise was conducted had already lapsed in law and thus negates the subsequent AFC conducted in 1969.

#### **4. THE 1969 “ACT OF FREE CHOICE (AFC)”**

The 1969 so-called AFC is tragedy that is and continues to be the history of West Papua and her people. This exercise which is being claimed by Indonesia and regrettably the United Nations as an exercise in self-determination by the West Papuan, involved the West Papuan Voting in a referendum to decide whether or not to be granted independence as a separate state or to be integrated into the republic of Indonesia. When the referendum was actually conducted in 1969, only 1025 hand-picked members of the specifically appointed referendum' council were allowed to vote. This act which took place aimed widespread political unrest and armed resistance was formally acknowledged by the UN General Assembly and the West Papuan henceforth cease to occupy the attention of the world community. This is despite the fact that the manner in which the so-called referendum was clearly violated the Declaration of the United Nations' own General Assembly.

Nearly a decade earlier in 1969, before the so-called AFC, the General Assembly had adopted a Declaration on granting of independence to colonial countries and peoples. The declaration upheld “the need to pay regard to the freely expressed will of the peoples.” This declaration which was adopted as Resolution 1514 of the xvth Session of the General Assembly was manifestly violated by what happened in West Papua in August, 1969. Principle ix of Resolution 1514 (xv) defined the conditions under which integration which other countries should take place: “(a) The integrating territory should have attained advanced stage of self-government with free political institutions, so that its people would have the capacity to make a reasonable choice through informed and democratic processes. (b) The integration should be the result of freely expressed wishes of the territory's peoples acting on full knowledge of the change in their status, their wishes having been expressed through informed and democratic process impartially conducted and based on universal suffrage. The United Nations could, when deemed necessary, supervise these processes.”

These principles were profoundly breached by what happened in West Papua from the moment Indonesia took over the country's administration. The adequate preparation of the people and their institutions and the manner in which the so-called AFC was conducted should render the exercise and its subsequent outcome void in international law as it clearly violates the principle of the United Nations. In any event the exercise that was forced upon the West Papuans without their consent and participation.

The 1969 'Act of Free Choice' was a result of the terms of the 'New York Agreement' signed between the United States of America, the Kingdom of Holland and Indonesia on the 15th of August, 1962. West Papuans were never a party of the agreement nor they ever consulted as to its terms and conditions. The role of the United States of America is also questionable in International Law as she was neither the Administering State of either Indonesia or West Papua. Her role can therefore only be understood in political terms at the time of the Agreement as it was at the beginning of the so-called Cold War. It is obvious that West Papua as a State and a People was one of the first victims of the Cold War between East and Western Europe.

In any event in the 'New York Agreement' should be rendered invalid in international law in that it was subsequently overridden by the Rome Agreement signed on the 30th of September 1962,

between the United States of America, Indonesia and the Netherlands Governments. Again, no West Papuan was involved in negotiating, drafting, and signing of the Agreement. The Rome Agreement provided among other things the following:

- (1) Referendum or the Act of Free Choice set for 1969 in the New York Agreement of 15 August 1962 to be delayed or if possible cancelled.
- (2) Indonesia to rule West Papua for the next twenty-five (25) years effective from the first of May 1963.
- (3) Method to be used in implementation of the Act of Free Choice or Referendum would be "musyawarah system" in accordance with the Indonesian Parliamentary practice.
- (4) UN's final report on the implementation of the Act of Free Choice presented to the UN General Assembly be accepted without open debate.
- (5) The United States of America be responsible to make investment through Indonesian State Companies for the Exploration of minerals, petroleum and other resources of West Papua.
- (6) The USA guarantees the Asian Development Bank US \$30 Million to be granted to the United Nations Development Program (UNDP) to develop West Papua for a period of twenty-five (25) years.
- (7) The USA to guarantee the World Bank funds for Indonesia to plan and implement its transmigration program where Indonesians were resettled in West Papua starting from 1977.

The so-called Act of Free Choice was not only violation of the United Nations' rules and principles on decolonisation. It was also an act which had no legal basis in INTERNATIONAL Law. It is therefore best described as an ACT OF NO CHOICE. Indonesians claim to West Papua should thus be held by International Law to be void and of no legal effect. For this reason the United Nations and International Community should revise its recognition of West Papua as part of the Republic of Indonesia and reinstate West Papua on the list of Non-Self-Governing Territories.

#### **5. RIGHT OF WEST PAPUA AS A RECOLONISED STATE**

The right of West Papua as a State and as a People also find support in international law as s recolonised people under he same principles of international law. Such a practice is not unprecedented in international law and practice. Recently Bangladesh and Eritrea are beneficiaries of such international law and practice. This right it is submitted is accorded when the post colonial state discriminate and oppresses as specific group of people and the People of West Papua it is submitted qualifies under such criteria for decolonisation in post-colonial era. The fact is that demands to self-determination in a non-colonial situation or postcolonial situation are growing both in quantity and intensity. This is equally true of external self-determination (within existing state). The secession of Bangladesh from (West Pakistan) illustrates the possibility of self-determination in a post-colonial situation.

Secession from an existing State either to constitute an independent state or to join an existing

State is already recognised as one of the means of exercising self-determination and in which self-determination has been allowed to be exercised. This is provided for in the 1970 UN declaration on Principles of International Law Concerning Friendly Relations among States of the United Nations.

It is acknowledged that the 1970 Declaration of Friendly Relations both the rights of State to Territorial integrity and the rights of people's self-determination by secession. The Right to Self-Determination in a postcolonial therefore is Consequential Right rather than an absolute right under the 1970 Declaration of Friendly Relations. The right to self-determination by secession, it is submitted that becomes a right consequential to the postcolonial State becoming oppressive and discriminatory to a specific people within the given state. This was indeed the case of Bangladesh when the International Community and the International Law ignored the Right of Pakistan to territorial integrity thus recognising and granting Bangladesh her independence. It is submitted that the same or similar situation exist for West Papua as a state and as a people.

Yours Excellency, Since the Indonesia took over administrative control of West Papua on the first of May 1963 to the present, West Papuan have been subjected to various act of intimidation, violence and other oppressive act by the Indonesian government, specifically by its Armed Forces which to this day control West Papua. The recorded and unrecorded acts of brutality, discrimination and oppression are numerous and have been well documented by the International Human Rights Organisations such as Amnesty International, Asia Watch, TAPOL and others.

Some of the examples of the brutality which Melanesians of West Papua have been subjected to since Indonesian take over is given (see pages 6-7 above).

The presence of hundreds of thousands of West Papuan refugees particularly in Papuan New Guinea but generally also in the world attest to the brutal oppressive and discriminatory rule of Indonesian in West Papua.

In this era of International Decade of Eradication of Colonialism and the International Year of the Indigenous, the People's Right we submit to the committee the following:

- (1) That the United Nations General Assembly through the good office of the chairman of this office and the good office of the Secretary-General of the United Nations to reconsider its decision in respect of the 1969 Act of Free Choice with a view to reject its legality and result.
- (2) That the United Nations Decolonisation Committee reinstate the case of West Papua as a non-self-governing territory. Territory entitled to exercise the right to self-determination.
- (3) That the Chairman of the committee uses its good office to begin a process for West Papuans to legitimately and legally exercise the Right to Self-Determination.
- (4) That the Chairman and the Member Committees of the Decolonisation Committee liase with Netherlands as the Administrative Power and the Indonesian as the occupying power to begin such a process of decolonisation.

Thank you  
MELANESIAN SOLIDARITY.