



**EXPERT SEMINAR ON TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE
ARRANGEMENTS BETWEEN STATES AND INDIGENOUS PEOPLES**

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The case of West Papua sovereignty
*The process of exclusion of indigenous peoples of West Papua
in determining their destination*
*About treaties, agreements and measures that are undemocratic and provocative
and through which Papuans are set against each other*

**Background paper prepared by
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With this paper I like to provide a contribution to our discussion on treaties, agreements and other constructive arrangements between States and indigenous peoples. An overview of two treaties and agreements affecting the lives of the indigenous peoples of Papua may shed some light on the sometimes severe impact of treaties and agreements in which the indigenous peoples are just subjects and not active objects who want to be responsible in shaping the fate and future of their own people. Treaties and agreements that hold promises, expectations, betrayal, confusion and chaos.

A. Colonisation and De- or colonisation Re-colonisation : The New York Agreement

19th century: Establishment of colonial boundaries

West Papua contains the western half of the island of New Guinea (second largest island in the world), part of the vast sea of archipelagos that is known as Melanesia. In 1848 the United Kingdom and the Netherlands established in an agreement that the 141 meridian was to mark the border between the eastern half¹ and the western half of the island. Herewith, the Netherlands officially established its colonial administration over West New Guinea, hereafter referred to as West Papua. The Netherlands' chief interest in staking a claim to the territory was to protect its lucrative assets in the Dutch East Indies (later Republic of Indonesia), its vast colony to the west of West Papua.

Geological exploration began in 1907 when Dutch military personnel surveyed the northern region and examined its natural resources.

1940s: Pacific war and its aftermath: decolonisation drive

In 1942 the Dutch were driven out of the Dutch East Indies by Japan. Also West Papua suffered under brutal Japanese occupation. West Papua was re-occupied by Allied Forces in April 1944, the Dutch East Indies remained under Japanese occupation for three-and-a-half years. On 17 August 1945, two days after the defeat of Japan but prior to its formal surrender to the Allies in September, the Indonesian nationalists unilaterally proclaimed independence. The proclamation defined the new Indonesian state as stretching from the western tip of Sumatra to the eastern island of Ambon. New Guinea was not mentioned, although later observers have said that, being a part of the Netherlands Indies, its inclusion was taken for granted.

By July 1946 all islands east of Java had been transformed from Allied control to the Dutch who were engaged in a war against the Indonesian nationalists. Late that month, the head of the Netherlands administration, Van Mook, organised a conference of delegates from the eastern archipelago. During this so-called Malino-conference, Van Mook was confronted with some strong demands for an Indonesian republic. But an even stronger plea was voiced by a delegate from New Guinea, Franz Kaisiëpo, who had arrived at the conference site in Malino, South Sulawesi, determined to press his people's views. During the talks Kaisiëpo made it clear to both the Dutch and the Indonesians present that Papuans wanted nothing to do with an Indonesian republic. They knew it would swallow them up. He requested that Holland rule West New Guinea separately from Indonesia. The Malino Conference, like others that would follow it, achieved nothing in the way of compromise. Armed conflict between the Indonesians and the Netherlands continued.

In early 1949 the Security Council formed the UN Commission on Indonesia which by June was preparing for a Round Table Conference. On 27 November 1949 the The Hague Agreement was signed. The Netherlands ceded sovereignty of the Netherlands East Indies to the Indonesian Republic, but kept West Papua. The Dutch were determined to prepare the Papuans for their own deed of self-determination; the Indonesian nationalists believed it to be an integral part of the

¹ In 1885, the eastern half of the island of New Guinea was divided between Germany (north) and the UK (south). The latter area was transferred to Australia in 1902, which occupied the northern portion during World War I and continued to administer the combined areas until independence in 1975.

coming republic. A West Papuan delegate to the conference, Johan Ariks, expressed the strongest opposition to any talk of surrendering his country to Indonesia. The Dutch delegation insisted on a provision excluding West Papua from the final agreement. The issue was left unresolved as the result of a compromise which stipulated that the disputed territory would be the subject of negotiations to be held within a year. But this didn't materialise.

Although The Netherlands did not negotiate the status of West Papua with Indonesia, it did fulfil its reporting requirement conform UNGA Resolution 1541 (XV) which reaffirms Article 73(e) of the UN Charter².

1945-1962 - West Papua as a Non-Self-Governing Territory, taking steps on the path to self-determination

In 1961, the Dutch government reported to the UN under Article 73(e) of the UN Charter³: [...] *The Dutch government has made it its aim to support the inhabitants of Dutch New Guinea in going through the subsequent phases of development as soon as possible, which will finally result in their totally free choice regarding their future place in the world. To this end, the Dutch government has designed a political policy along which the process - that must result in political maturity and in the ability of the population to express freely, on the basis of the acquired political awareness, their wishes regarding their political future – will be completed as swift as possible. The government is of the opinion that this aim can only be realised on the short term by systematically involving the population through its representatives, by raising the population's political interest and by making the population aware of the responsibilities that go with it in practice. This line of thought has resulted in a review of the 'Authority Regulations New Guinea' of 1955 which evolved by law of November 10, 1960, and in which is laid the judicial basis for the installation of a central representative body, the New Guinea Council which was inaugurated on April 5, 1961. This representative body, for the main part consisting of Papuans (23 out of 28 members), offers the opportunity, through joint dialogue and continuous co-operation with in majority elected representatives of the population, to elaborate the future policy. [...] By doing so, a dialogue partner has been created with whom the policy in all its aspects can be discussed in public and in transparency; this in anticipation of and as a practical preparation for the execution of the principle of self-determination. Regarding the latter, the New Guinea Council has been requested to make known – not later than one year after its installation – ie. before April 5, 1962 – its views concerning the way and possibly the period within which the self-determination has to be effectuated. [...]*

The New Guinea Council expressed its views on the above request in an "Advisory Note Concerning the use of the right to self-determination", February 16, 1962⁴. It stated: "*In the opinion of the New Guinea Council, 1970 is the deadline for the realisation of the right to self-determination of the people of West Papua*". Furthermore it took position against Indonesia's claim on the territory by stating: "*Administration by Indonesia is rejected, because in the New Guinea issue Indonesia is the claiming party and therefore is not neutral. Consequently Indonesia will not enable the Papuan people to exercise its right to self-determination in freedom*".

Some months before, on 19 October 1961, members of the New Guinea Council had organised a Papuan People's Congress (later to be known as the First Papuan Peoples' Congress). The Congress

² Article 73(e) of the UN Charter: States which are responsible for the administration of Non-Self-Governing Territories, are required to transmit to the Secretary-General statistical and other information of a technical nature relating to economic, social and educational conditions in the territories.

³ Unauthorised translation from the official Dutch document by Foundation Papua Lobby. The relevant paragraphs of the report in Dutch are added as Appendix A.

⁴ The New Guinea Council "Advisory Note Concerning the use of the right to self-determination" of February 16, 1962, is added as Appendix B.

adopted a Manifesto⁵ which stated: “Papuan, demand our own position, equal to that of the free nations and in the ranks of these nations we, Papuan, wish to live in peace and to contribute to the maintenance of world peace.” The Manifesto also made known the national symbols the Papuan had chosen for their nation: a) the national flag, b) the national anthem, c) the name of the country (West Papua), and d) the name of its population (Papuan). In November 1961, the flag and the anthem were confirmed by ordinances of the government of Netherlands New Guinea (“In the name of the Queen”)⁶. On December 1 of that year, the official inauguration of the Papuan flag and anthem took place in Hollandia, the capital of West Papua (nowadays called Jayapura).

1960s – Abrupt end to and betrayal of the decolonisation path

While the Papuan with the support of the Dutch, and conform UNGA resolutions 1514 (XV) and 1541 (XV) concerning Non-Self-Governing Territories, worked with confidence and enthusiasm toward the execution of self-determination, Indonesia pursued its claim to the territory. After several Indonesian armed incursions into West Papua, and increasing tension between the Netherlands and Indonesia, the United States pressed the two countries to the negotiating table. This resulted in the signing of the so-called New York Agreement on August 15, 1962⁷ (NYA) at the UN Headquarters. The General Assembly took note of the Agreement in resolution 1752 (XVII) and authorized the Secretary-General to carry out the tasks entrusted to him therein. The negotiations and the agreement were remarkable for the absence of any Papuan involvement. On 1 September 1962, only nine of the twenty-eight New Guinea Council members voted to endorse the New York Agreement. In a second vote, half the council walked out leaving the remaining fourteen to vote in favour by twelve to two.

The first step in the NYA was the establishment of a UN Temporary Executive Authority (UNTEA), headed by a UN administrator. Under the jurisdiction of the Secretary-General, UNTEA would have full authority after 1 October 1962 to administer the territory of West Papua, to maintain law and order, to protect the rights of the inhabitants and to insure uninterrupted, normal services during a period of several months until, in turn, the administration of the territory was transferred to the Indonesian Government. The most important part of the NYA was for the Papuan article XVIII which stated: “*Indonesia will make arrangements, with the assistance and participation of the UN Representative and his staff, to give the people of the territory the opportunity to exercise freedom of choice. Such arrangements will include: [...] d. The eligibility of all adults, male and female [...] to participate in the act of self-determination to be carried out in accordance with international practice [...]*”. Article XX stated: “*The act of self-determination will be completed before the end of 1969*”.

Squabbling and bickering over the arrangements for the Act⁸

The administration was transferred to Indonesia on 1 May 1963. From then on, the people in West Papua became victims of expectations, confusion, violence and oppression. Within days, Indonesian president Sukarno ordered the banning of all existing Papuan political parties and all unofficial political activity. Later that month (21 May, 1963), confidential Australian communication reported

⁵ The full text of the Manifesto adopted by the First Papuan Peoples’ Congress is added as Appendix B.

⁶ The ordinances regarding the Papuan flag and anthem are added as Appendix C.

⁷ New York Agreement - *Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian)*, U.N. Doc A/5170

⁸ This period has been studied extensively by British scholar John Saltford, who received his PhD on the United Nations and West Papua from the University of Hull. His thesis has been published as “The United Nations and the Indonesian Takeover of West Papua, 1962-1969, The anatomy of betrayal”. RoutledgeCurzon, London, 2003.

that the Dutch and UN Under Secretary General Narasimhan had agreed that a Papuan act of self-determination need not involve any direct voting on the issue by the Papuan population. Instead, some form of ‘representative’ assembly could decide on behalf of the people. One year later, May 1964, UN Under Secretary-General Rolz-Bennett met Indonesian president Sukarno in Jakarta. He privately repeated Narasimhan’s view that the Papuan act of self-determination need not include any direct voting by the West Papua population on the issue. Again a year later, May 1965, Sukarno ruled out any act of self-determination for West Papua. He claimed that the Papuans did not want it. After sporadic revolts against the Indonesian presence, Papuans in the Birds Head region, founded the Operasi Papua Merdeka (OPM, Free Papua Movement) in 1965. More Papuan attacks followed throughout the territory. On August 4, 1965, Indonesia launched Operation Sadar, the first Indonesian military counter-insurgency. In Indonesia meanwhile, an unsuccessful coup attempt took place (30 September 1965), after which Sukarno’s powers were decreased. Finally, in July 1966, he was replaced by president Suharto. In September 1966, during a visit to the UN in New York to arrange Indonesia’s re-entry to the organisation⁹, Foreign Minister Malik announced that Jakarta would permit a Papuan act of self-determination. In August 1968, Ortiz Sanz who was appointed UN Representative for West Irian (UNRWI) in April, arrived in West Papua. In November of that year he suggested a ‘mixed method’ for the Act of self-determination in a meeting with Sudjarwo Tjondronegoro, the main official point of contact for the UNRWI. Ortiz Sanz informed Sudjarwo that he could suggest no other process except “*the democratic, orthodox and universally accepted method known as ‘one-man, one-vote’*”. However, having observed the “geographical and human realities” of the territory, he conceded that this method would only be appropriate in urban areas.

Other areas could rely on “collective consultations”. In January 1969, Ortiz Sanz was informed of Indonesia’s rejection of his ‘mixed method’ suggestion for the act. Indonesia intended to consult the nine Representative Councils of West Irian in order to obtain their approval for implementing the Act through the method recommended by Jakarta. These councils had been set up in 1963 after UNTEA’s departure and replaced the Regionally Councils originally established by the Dutch. Whereas the original councils had been partially, and in some cases wholly, elected by universal suffrage, the “Representative” Councils were effectively appointed by the Indonesian authorities. Jakarta’s recommended method was for these existing councils to be enlarged to form eight regional ‘Assemblies’ (merging two of the nine councils). These would then each reach a collective decision on the questions posed in the final Act. In March-April 1969, eight regional councils met to consider the Indonesian proposals for the Act. Indonesian and UN reports say that the councils all accepted while emphasising that the Act would be unnecessary. In contrast, a British journalist, Garth Alexander, claimed that at the council meeting he witnessed in Merauke most members called for a more democratic method for the Act. On April 11, Papuans staged a demonstration in front of Ortiz Sanz’s Jayapura residence calling for a referendum on self-determination. They were dispersed by Indonesian troops who arrested many demonstrators despite military assurances to Ortiz Sanz that they would take no action. On April 19, 1969, Indonesia started the selection process for additional Assembly members for the Act, without any UN involvement. Ortiz Sanz requested that some fresh selections were held in areas where no UN officials had been present during the selections. In the end the UN witnessed six selections in which 195 of the 1022 representatives were selected who eventually took part in the Act. By early July, Indonesia isolated the representatives for the Act from the rest of the population. The Act of Free Choice began on July 14, 1969 with an unanimous vote by the Merauke Assembly to remain with Indonesia. The same unanimous results came from subsequent meetings of the Assemblies in Wamena, Nabire, Fakfak, Sorong, Manokwari, Biak and finally on August 2 in Jayapura.

⁹ On 7 January 1965, Indonesia had withdrawn from the UN in protest at the appointment of Malaysia as a non-permanent member of the UN Security Council.

Confusion, fear and violence

Already before the administration was transferred to Indonesia on 1 May, 1963, Indonesia started to intimidate the population. In November 1962 Indonesian troops took over a stretch of road near Sorong and beat up several Papuan policemen. A few days later Indonesian troops surrounded Sentani airstrip near Hollandia and held several policemen at gunpoint preventing them from carrying out their assigned task of guarding the facility. In December Indonesian troops launched a mortar attack on a police station in Sorong. One Papuan policeman was killed. On 18 December the head of the police branch of the Indonesian mission to UNTEA sent a confidential letter to all Indonesian police commissioners working with UNTEA ordering them to ensure that the police under their command sign pro-Indonesia statements calling for the early departure of UNTEA and the abandonment of any act of self-determination.

Sporadic violence also erupted between pro- and anti-Indonesian Papuans, like on 13 January 1963 in Kaimana. In the same month a Papuan student was beaten up after pro-Indonesian Papuans entered the Government School of Administration in Hollandia looking for Papuan flags. Also in January, several Papuan nurses were beaten up by Indonesian paratroops at Hollandia hospital. Later, Ortiz Sanz wrote in the Closing remarks of his report to the UN10: *“I regret to have to express my reservations regarding the implementation of Article XXII of the Agreement, relating to ‘the rights, including the right of free speech, freedom of movement and of assembly, of the inhabitants of the area’. In spite of my constant efforts, this important provision was not fully implemented and the Administration exercised at all times a tight political control over the population”*.

To give an idea of the source of Ortiz Sanz’s reservations follows an overview of some ‘incidents’¹¹:

May 1965: OPM members arrested in Bird’s Head region following attempted raisings of the Papuan flag. In Biak, Papuan rebels are reported to have attacked Shell Oil Company installations.

26 July 1965: Papuan government employees attack and kill a number of Indonesian soldiers during an illegal Papuan flag raising ceremony.

28 July 1965: OPM-leader Frits Awom leads an attack of ‘several hundred’ Papuans against army barracks in the Manokwari.

4 August 1965: Indonesia launches Operation Sadar - the first Indonesian military counter-insurgency operation.

12 August 1965: A battalion of the Indonesian army parachute commando regiment is flown to Biak from Jakarta in response to Papuan unrest.

January 1967: Indonesian military aircraft strafe Manokwari town. The Indonesian government later explains that this was in response to Frits Awom declaring a ‘free Papuan state’. Indonesia also admits that forty Papuans were killed in the attack.

1967: Throughout the year Papuan armed rebellion continues, particularly in the Bird’s Head region.

Mid-June 1968: An Indonesian combat force is sent to West Irian from South Celebes in response to continued armed Papuan rebellion.

12 August 1968: Jakarta announces that in recent military operations in West Irian 162 Papuan rebels have been killed and 3,200 surrendered.

1 November 1968: Leaflets signed by Sarwo Edhie, military commander for West Irian, are distributed around the Bird’s Head peninsula calling for rebels to surrender by 1 December.

1 December 1968: Indonesian military launches another offensive in the Bird’s Head Peninsula.

Mid-January 1969: Rebellion on Bird’s Head erupts again

¹⁰ UN doc A/7723, Annex I, 6 November 1969

¹¹ From: John Saltford, *The United Nations and the Indonesian Takeover of West Papua, 1962-1969, The anatomy of betrayal*. RoutledgeCurzon, London, 2003.

Mid-April 1969: Wide-scale rebellions erupt in Western Central Highlands. Ninety armed Papuan policemen mutiny and join the rebels.

30 April 1969: Indonesian paratroops dropped into rebel held areas. Approximately 14,000 locals are reported to have fled into the bush.

April/May 1969: Indonesian troops cross into TPNG in pursuit of West Papuan refugees, killing two.

1 May 1969: 300 Papuans demonstrate in Arso and raise the West Papuan flag. Two demonstrators are shot by Indonesian security forces.

1 July 1969: Renewed rebellion in Western Central Highlands involving Ekari tribesmen.

On 19 November 1969, the UNGA voted by 84 to none with 30 abstentions to pass a resolution¹² which *“takes note of the report of the Secretary-General and acknowledges with appreciation the fulfilment by the Secretary-General and his representative of the tasks entrusted to them under the Agreement of 15 August 1962 between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New guinea (West Irian)”*.

West Papua became the 26th province of the Republic of Indonesia. Researchers of the Yale Law School in the US, on 10 December 2003, released the results of an examination of human rights conditions in West Papua, the Indonesian-controlled western half of the island of New Guinea. The paper, entitled *Indonesian Human Rights Abuses in West Papua: Application of the Law of Genocide to the History of Indonesian Control*¹³, considers the policies and practices of the Indonesian government and military in West Papua during the four decades that the Republic of Indonesia has exercised sovereignty over the territory. The paper concludes that the historical and contemporary evidence *“strongly suggests that the Indonesian government has committed proscribed acts with the intent to destroy the West Papuans . . . in violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.”*

“Since the so-called [1969 UN-supervised] Act of Free Choice, the West Papuan people have suffered persistent and horrible abuses at the hands of the Indonesian government. The Indonesian military and security forces have engaged in widespread violence and extra-judicial killings in West Papua. They have subjected Papuan men and women to acts of torture, disappearance, rape, and sexual violence, thus causing serious bodily and mental harm. Systematic resource exploitation, the destruction of Papuan resources and crops, compulsory (and often uncompensated) labour, transmigration schemes, and forced relocation have caused pervasive environmental harm to the region, undermined traditional subsistence practices, and led to widespread disease, malnutrition, and death among West Papuans. Such acts, taken as a whole, appear to constitute the imposition of conditions of life calculated to bring about the destruction of the West Papuans. Many of these acts, individually and collectively, clearly constitute crimes against humanity under international law.”

B. Special Autonomy and Division of the province

The massive Second Papuan Peoples’ Congress held in June 2000 in West Papua, marks a turning point in the Papuan resistance against the Indonesian administration. Since the Indonesian take over in 1963, the resistance consisted mainly of armed resistance groups attacking Indonesian army units with primitive weapons. For decades, underground armed resistance was the only opposition possible, as the regime of president Suharto reacted violently to any form of autonomous organisation. But after the fall of Suharto in May 1998, a democratisation movement came up throughout Indonesia. The Papuans used the newly found freedoms for organising the Second

¹² UNGA Resolution 2504 (XXIV), Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian)

¹³ The full text of the 76-page paper is available online at:

http://www.law.yale.edu/outside/html/Public_Affairs/426/westpauahrights.pdf

Papua Peoples' Congress which was attended by some 10,000 people from all corners and sectors from the territory. The Congress accepted a new political structure, the *Dewan Papua*, in which the executive tasks are with the Presidium of the Papua Council (PDP = *Presidium Dewan Papua*) and the legislative tasks with the Papua Panel, which consists of representatives from ten civic pillars (sectors) including women, students, traditional leaders and ex-political prisoners. The Congress established four commissions that will advise the PDP on the rectification of history, the political agenda, the consolidation of Papua organisations, and on indigenous rights. The PDP was mandated to work with peaceful means for the restoration of Papuan sovereignty. The ongoing terror and human rights violations, which have claimed about 100,000 deaths in the past 40 years (according to Amnesty International), were an important motivation to opt for a peaceful path.

Through the new organisational structure a series of meetings and conferences have been organised for discussion on the problems and strategies and for the foundation of organisations aimed at strengthening the position of the people and at real development. After all the years of oppression, the people experience these public meetings where they can openly discuss the political situation and plan for their own future, already as a liberation. But at the same time people of West Papua are unaccustomed to taking the future in their own hands. For several decades they were not allowed to participate in deliberations and planning and again and again they were pushed back in the mud because they were seen as backward and primitive. The main challenge is boosting self-confidence and learning about universal human rights and indigenous (collective) rights. The desired and much needed local initiatives do not come about from one day to the other. It's a matter of time in which tangible improvement of the security situation and international recognition of, and support for the right to development are major elements.

The PDP also organised some big conferences. Important are the women's conference in July 2001 and the indigenous rights conference in February 2002. The first conference established the women's movement *Solidaritas Perempuan Papua* (SPP, Solidarity Papuan Women). The women's organisations set up earlier under the Indonesian system are elitist clubs that are mainly involved in charity; the positions in these organisations are divided on basis of the importance of the husbands. SPP is a women's movement with chapters in the 14 *kabupaten* (districts) and aims at strengthening the position of women through training and local organisations and also by questioning (traditional) male-chauvinist practices and by stimulating women to participate actively in political bodies. The conference on indigenous rights decided on the foundation of the Papua Indigenous Council (*Dewan Adat Papua*) with representatives from the various tribal peoples, and an indigenous authority (*Pemerintahan Adat Papua*) which consists of intellectual representatives and has a co-ordinating role. The task of the council and the authority is to revive and empower the traditional institutions. For decades, the Papuan culture has been suppressed because, in the eyes of Indonesia, the 'primitive' Papuan culture didn't fit within a modern Indonesia; moreover Indonesia feared the power that can originate in a cultural self-confidence. The *adat*-branches are to make the Papuans proud again of their traditional heritage and to work towards restoration of Papuan sovereignty through empowerment of the traditional institutions. The communities are to take up their own development and to set up organs for security and order. A major feature of this strategy is that efforts are not directed at fighting Indonesian institutions, but that in fact a parallel civic society is being developed.

As an answer to the loud voice for sovereignty in West Papua, the Indonesian government offered Special Autonomy to the province of Papua. In October 2001, the Indonesian Parliament (DPR) endorsed the Special Autonomy law for Papua (Law No. 21 / 2001) and in January 2002 the law was enacted. The Special Autonomy was rejected by the Presidium of the Papua Council (PDP) because the Indonesian government had presented it as the ultimate solution to all the problems in West Papua, and because it was imposed on the Papuans without proper consultation. Nevertheless, PDP recognised that Special Autonomy could benefit the Papuans. Increased income for the

province from natural resources exploitation may be used to catch up in development: infrastructure and human resource development. Also the establishment of a Papua People's Council (MRP = *Majelis Rakyat Papua*) with representatives from traditional groups, religious organisations and women, was welcomed. But PDP reiterated that there are three elements that need to be addressed in an open dialogue between Papuan representatives and Indonesian authorities:

1. Well-being of the Papuans (should be the focal point of the Special Autonomy);
2. Human rights violations since 1963;
3. Political situation: rectification of history (the 1960s).

Almost three years after the enactment of the Special Autonomy in January 2001, essential parts of the autonomy have still not been worked out and agreements are not met. From all over Papua the Indonesian government is called upon to take position by first of all supporting the implementation of the Special Autonomy in a consistent and constructive way. 'Jakarta' is reluctant to transfer the agreed payments from royalties and taxes to the province of Papua. This year (2003) Papua did not receive the 1,3 trillion rupiah (158.6 billion US \$) it is entitled to according the Autonomy Law. Last year the central government only transferred 851 million rupiah. The Papua People's Council (MRP) has not yet been installed; Jakarta keeps delaying the approval of rules and regulations needed for the election of representatives and the installation of the MRP.

While the bickering over the implementation of the Autonomy Law was still going on, Indonesian President Megawati Sukarnoputri added to the confusion by issuing a Presidential Decree (Inpres 2003/1- 27 January 2003) on the Acceleration of the Implementation of Law no. 45/1999 on the Division of the province of Papua into three new provinces. In 1999, Law no. 45/1999, already sparked huge protests in West Papua and was rejected by the provincial parliament (DPRD) in Papua. Subsequently then-President Habibie and his successor President Wahid shelved the whole idea.

Although the Special Autonomy Law enables the possibility of a future division of the province of Papua it clearly stipulates in Article 76 that any plan to divide the region into more provinces can only be executed after approval by the Provincial Parliament of Papua (DPRD) and the People's Representative Council (MRP) that has not yet been established because its ratification is delayed by the Central Government. Article 76 also stresses that the decision about the division of the province should take into consideration social and cultural unity, the availability of human resources, and economic viability and economic prospects.

Immediately after Inpres 2003/1 became known in Papua, political and religious leaders warned that the Presidential Decree was leading to uncertainty about law and politics and that it would affect the current harmony of the lives of the people of Papua. Moreover it would increase the distrust of the people of Papua about the intention of the Central Government with respect to the dealing with the problem of Papua in a peaceful and democratic way.

The feeling of uncertainty and distrust is expressed clearly by a so-called Coalition of Components of the Papuan people, in a petition dated Friday October 24, 2003:

*Sovereignty belongs to the people and will remain the property of the people
The Papuan people had hoped that reformasi would be the starting point for the growth of
democracy. Therefore, after the meeting of "Team-100" [with president Habibie], the Mubes (Big
Papua Consultation) and the Peoples' Congress of 2000 were organised. At these occasions the
whole population expressed the hope that the new energy would lead to actual respect for humanity
and human dignity in Papua.*

*Alas, after the fall of president Abdurrachman Wahid who has been replaced by Megawati
Soekarno Putri, the young democratic germ was destroyed completely. All openings for dialogue
were slammed through acts that were undemocratic, unfair and very repressive. As a result, justice
and democracy are gradually losing their dignity because of the acts of the rulers.*

In Papua, special autonomy is presented as the solution for the political dispute. The Indonesian government considers the autonomy as the total and final solution while the people of Papua see autonomy as just an answer (in the sense of the task and responsibility of the Indonesian government) to the development backlog. The Indonesian government never listened seriously to the criticism of the majority of the Papuan people concerning the presumptions of autonomy; this criticism has even resulted in loss of lives among the population.

Even before special autonomy was wholly executed, the central government imposed its will again by issuing presidential decree [Inpres] 1/2003 concerning the division of the province of Papua. This act is undemocratic and in defiance of the aspirations of the Papuans but also in defiance of law 21/2001 concerning the establishment of the MRP (Papuan Consultative Assembly), a product of the Indonesian government itself.

Although unconstitutional and undemocratic, Inpres 1/2003 forms the basis for the official declaration by certain people of the province of West Irian Jaya [February 6, 2003]. This situation has led to protests not only from the population and students, but also from NGOs, academics, human rights activists, bureaucrats, as well as officially from the DPRD (provincial parliament) of the province of Papua.

The Indonesian government did not take seriously the protests and accusations and there has not been any clarification. On the contrary, the government deliberately tolerated and consequently endorsed the declaration of the province of Central Irian Jaya. This has led again to loud protests from all sectors of society in Papua.

But there was more to come. While the wheel of Papuan protest keeps turning and the smell of the victims in Timika is still in the air, the Indonesian government took steps to formalise the West Irian Jaya electoral district and to install a provisional DPRD for the province of West Irian Jaya.

In view of the tough attitude of the government in forcing through certain actions, it is clear to us, the people of Papua, that it is its intention to transform Papua as quickly as possible into a conflict zone to which end the government deliberately uses several methods of provocation.

We already have the experience that the government through the creation of conflicts has the opportunity to commit atrocities, terror, intimidation, corruption and other forms of cruelties in Papua. The creation of conflicts in Papua has become a game for certain groups that put their own interests above the blood and the suffering of the Papuans.

In view of the developments and on the basis of sincere respect for the sovereignty of the people, we, the people of Papua, declare the following:

“The Indonesian government has failed deliberately and in defiance with the constitution, to realise a peaceful and democratic containment of the conflict in Papua. This is resulting from the fact that the government is not serious as is evident with the enacting of measures that are undemocratic and provocative and through which Papuans are set against each other.”

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Appendix A

Relevant paragraphs from the introduction from the report concerning Dutch New Guinea in the year 1960

Sent to the United Nations according to article 73e of the UN Charter

By the Dutch Ministry of Foreign Affairs

Uit: de inleiding van het rapport inzake Nederlands-Nieuw-Guinea over het jaar 1960

Uitgebracht aan de Verenigde Naties ingevolge artikel 73^e van het Handvest

Ministerie van Buitenlandse Zaken

‘Als lid van de Verenigde Naties heeft Nederland, dat verantwoordelijk is voor het beheer over Nederlands-Nieuw-Guinea, het beginsel erkend dat de belangen van de inwoners van dit gebied overheersend zijn en heeft het de verplichting aanvaard om naar zijn beste krachten, binnen het door het Handvest van de VN in het leven geroepen stelsel van internationale vrede en veiligheid, de welvaart van de inwoners van dit gebied te bevorderen. Onder dit internationaal regime heeft de Nederlandse Regering zich ten doel gesteld de inwoners van Nederlands-Nieuw-Guinea zo spoedig mogelijk de opeenvolgende stadia van ontwikkeling te laten doormaken, welke tenslotte zullen eindigen in hun volstrekt vrije keuze ten aanzien van hun toekomstige plaats in de wereld. De Nederlandse Regering heeft daartoe een politieke beleidslijn uitgestippeld waarlangs het proces, dat zal moeten leiden tot politieke rijpheid en tot de mogelijkheid voor de bevolking om zich op grond van het door haar verworven politieke bewustzijn in vrijheid uit te spreken over haar eigen wensen ten aanzien van haar politieke toekomst, zich zo snel mogelijk zal kunnen voltrekken. De Regering is er daarbij van uitgegaan dat deze doelstelling op korte termijn alleen kan worden verwezenlijkt door de bevolking door middel van haar vertegenwoordigers daarin systematisch te betrekken, haar politieke belangstelling te wekken en haar het besef bij te brengen welke verantwoordelijkheden daarmee in de praktijk gepaard gaan. Deze gedachten hebben hun weerslag gevonden in een herziening van de ‘Bewindsregeling Nieuw-Guinea’ van 1955, welke bij de wet van 10 november 1960 tot stand kwam en waarin de wettelijke basis is gelegd voor de instelling van een centraal vertegenwoordigend lichaam, de Nieuw-Guinea Raad, die op 5 april 1961 werd geïnstalleerd. In dit vertegenwoordigend lichaam, voor het overgrote deel bestaande uit Papua’s (23 van de 28 leden) is het mogelijk in gezamenlijk gesprek en voortdurende samenwerking met in meerderheid verkozen vertegenwoordigers van de bevolking het toekomstig beleid verder uit te werken. [...]

Hierdoor is een gesprekspartner ontstaan, waarmee het te voeren beleid in al zijn aspecten in openbaarheid en openheid kan worden behandeld, zulks in afwachting van en als praktische voorbereiding van de toepassing van het beginsel van zelfbeschikking. Wat dit laatste betreft is aan de Nieuw Guinea Raad verzocht om uiterlijk binnen één jaar na zijn instelling – dus vóór 5 april 1962 – zijn inzichten kenbaar te maken over de wijze waarop en eventueel de termijn waarbinnen het zelfbeschikkingsrecht ware te effectueren’.

Appendix B

New Guinea Council
Advisory Note
Concerning the use of the right to self-determination.

February 16, 1962

THE NEW GUINEA COUNCIL,

Invited by the Netherlands Government through the State Secretary of Home Affairs on the occasion of the inaugural meeting of the Council on April 5, 1961, to inform the Government of Netherlands New Guinea of its views of the manner in which the right to self-determination of the people of this Territory could be effected, as well as of the question of the desirability of setting a date for this purpose, taking into consideration the actual consequences thereof for the economic, social and cultural building-up of the country,

Considers its position with regard to the concomitant problems as follows:

- I. The Papuan people as an ethnological unit has the right to decide its own fate in pursuance of item 2 of the decolonisation resolution 1514 (XV), where it says that:

“All people 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”.

The fact that the western part of the island of New Guinea was brought under the central administration of the former Netherlands Indies Government can hardly be adduced in evidence that the Papuan inhabitants of the western half of the island have consequently become Indonesians.

The Netherlands has since December 27, 1949 administered Netherlands New Guinea in conformity with the provisions of the U.N. Charter. Accordingly, the annual representative reports referred to in Article 73e of the Charter have not only been submitted by the Netherlands, but have also been accepted as such by the United Nations on the strength of the pertinent resolution of the General Assembly no. 448 (V), dated December 12, 1950.

The people of West Papua has therefore a right to the continuation of its development to self-government, whereas the Netherlands as a member of the United Nations Organisation is, on the one hand, bound to promote this development to the best of its ability pursuant to Article 73e of the U.N. Charter, and, on the other hand, has a right to the support of the United Nations Organisation in fulfilling this obligation.

The Indonesian claim that the right to self-determination of the people of West Papua was brought into effect by the Proclamation of the Indonesian Republic on August 17, 1945, is rejected. Firstly, the people of West Papua were not represented at the issuance of the proclamation; secondly, the proclamation took place during the Japanese occupation of Indonesia at a time when New Guinea had already been liberated by the Allies.

It is not the real or fictitious unity of a people, but the voluntary combination of all component parts, on which a modern state should be based. And it is in this special sense that the Council wants to consider the right to self-determination of the people of West Papua. Whether or not West Papua by virtue of the right to self-determination will enter into a voluntary association of interests with another country, and if so, with what country, will have to be decided in due course by the West Papuan people itself. The essential point at present is that the right to decide on the matter in freedom be given to this people.

II. As set out in item 6 of the Decolonisation Resolution of the United Nations No. 1514 (XV), an insufficient economic or social development of the population should in itself not justify the prevention of the right to self-determination from being exercised.

On the other hand, there are certain minimum requirements which the development of a people must meet in order to guarantee a purposeful and justified decision. Areas not yet under control should be brought under government control as soon as possible, while the introduction of primary education and illiteracy eradication courses should keep pace with the opening-up process. As the progress of a country is highly dependent on the educational system applied, measures for the reinforcement as well as the extension of primary education, which are the necessary basis for further education and the general condition to increase the present level of development, are insisted upon with a view to accelerating the development of New Guinea.

In this connection it is also urged, in addition to the possibilities of education that are available to students from West Papua in the Netherlands, the Territory of Papua and New Guinea, in Fiji and the other Pacific Islands, to make use of Resolution No. 1540 (XV) concerning the possibilities for study and training offered by the member countries to the inhabitants of non-self-governing territories.

The process of "papuanisation", for which a ten year plan has been drawn up, should be accelerated as much as possible and by all available means. In this connection it will be necessary to forego to some extent the current conditions of appointment consisting of a university training followed by many years of experience, while for a number of political appointments preference will have to be given to those who have distinguished themselves by such qualities of character as wisdom, integrity and resoluteness, and by a political backing.

Decentralisation and democratisation should be developed with unflagging zeal, both for reasons of principle and in order to give as many individuals as possible some idea of the problems of government.

As no self-governing territory can prosper without a sound economic basis, much activity should also be displayed in this respect, with a view to operating the national resources of the country. More than half of the budget should, in principle, be financed from the national means or from unconditional financial support.

III. For the purpose of acquainting themselves with the methods used in the decolonisation process elsewhere and for a better understanding of and more goodwill for West Papua among other nations, missions composed of New Guinea Council Members and prominent Papuans should without delay be sent abroad, especially to the Afro-Asian countries, including Indonesia. Similarly missions from other countries could be invited for a better acquaintance of West Papua.

IV. The consideration mentioned above fill such an extensive programme that a justified estimate of the time involved cannot be given. However, in the opinion of the New Guinea Council, 1970 is the deadline for the realisation of the right to self-determination of the people of West Papua.

The time when this right can be exercised as well as the concomitant technical problems, should be reviewed by the New Guinea Council every two years.

V. As to the administration of West Papua, which point has frequently been discussed at the United Nations meetings, the Council considers its position with regard to this question as follows:

From an international point of view it would seem to be immaterial by whom West Papua is administered until this country can exercise its right to self-determination, as long as its people is guaranteed the possibility of making a decision in freedom.

Yet there are objections to certain forms of administration:

- a. Administration by Indonesia is rejected, because in the New Guinea issue Indonesia is the claiming party and therefore is not neutral. Consequently Indonesia will not enable the Papuan people to exercise its right to self-determination in freedom.
- b. In practice, any administration changing the current government will inevitably slow down the present rate of development.
- c. Although it is not required for international reasons, the desire for an international acknowledgement of the right to self-determination might result in a certain form of internationalisation, but especially in view of the drawback set out under b above, preference is given to administration by the Netherlands rather than another Power or direct by the United Nations.
- d. At any rate, the Council considers it of utmost importance, as was expressed in its motion of January 22, 1962, that the United Nations send a commission to West Papua at the shortest possible notice that it may learn direct of the views and wishes of the Papuan people in this respect.

Resolved at a public meeting in Hollandia
on February 16, 1962.

(sgd.) J.H.F. Sollewijn Gelpke
Chairman

J.W. Trouw, LL.M.
Clerk of the Council

Appendix C

Manifesto First Papuan Peoples' Congress, October 19, 1961

We, the undersigned, residents of the western part of Papua, representing various groups, tribes and religious denominations, knowing that we are united as a people and a nation,

DO HEREBY DECLARE

To all our fellow countrymen that we,

- I. in pursuance of Article 73a and b of the Charter of the United Nations;
- II. on the strength of the declaration of principle regarding the independence of non-self-governing territories and peoples, as laid down in the resolution No. 1514 (XV) adopted by the General Assembly of the United Nations at its Fifteenth Meeting from September 20 to December 20 1960;
- III. by virtue of the inviolable right we, inhabitants of the western part of Papua, have to our native country;

- IV. in accordance with the ardent desire and the yearning of our people for our own independence, through the National Committee and our parliament, the New Guinea Council, insist with the Government of Netherlands New Guinea and the Netherlands Government that as of November 1, 1961,
- a) our flag be hoisted beside the Netherlands flag;
 - b) our national anthem (“Hai Tanahku Papua”) be sung and played in addition to the Netherlands national anthem;
 - c) our country bear the name of Papua Barat (West Papua), and
 - d) our people be called: the Papuan people.

In view of the foregoing, we, Papuans, demand our own position, equal to that of the free nations and in the ranks of these nations, we, Papuans, wish to live in peace and to contribute to the maintenance of world peace.

Through this manifesto we summon all inhabitants who love this country and its people to rally round this manifesto and to uphold it, as it is the sole basis for the freedom of the Papuan people.

Hollandia, October 19, 1961.

W. Inury	J.E. Bonay
D. Sawom	N. Tangahma
P. Poana	H.I. Bauw
A. Onim	Sp. Malibela
F.J.S. Romainum	T. Dansidan
E. Itaar	W. Giay
M. Suwaé	O. Nemnay
J.J. Roembiak	A. Sefa
J. Jaab	J. Manory
M. Onggé	L. Ayamiseba
P.H. Jochu	M. Romainum
Iz. Menufandu	
M. Wai	
N. Jouwe	
H. Mori Muzendi	
P. Koejab	
W. Zonggonao	
F. Jufuway	
A.J.A. Rumtoboy	
E. Noembery	
J.S. Dekeniap	
S.L. Rumadas	
T.S. Akwan	
H. Jomungga	
M. Buotabui	
F. Torey	
M.W. Kaisiëpo	
B. Gebze	
Th. Mezet	

Appendix D

Ordinances and decrees of the government of Netherlands New Guinea regarding the Papuan flag and anthem

1961 No. 68

Territorial Flag of Netherlands New Guinea,

“Territorial Flag Ordinance”.

IN THE NAME OF THE QUEEN !

THE GOVERNOR OF NETHERLANDS NEW GUINEA,

WHEREAS the New Guinea Council has on the strength of the right to make proposals of law, as granted to the Council in Section 111e of the Netherlands New Guinea Act, made a proposal to lay down an ordinance concerning a territorial flag of Netherlands New Guinea,

HAVING heard the Council of Heads of Departments and in agreement with the New Guinea Council,

HAS ORDAINED as follows:

Section 1.

1. The territorial flag of Netherlands New Guinea shall be a rectangle consisting of a vertical wide red stripe at the hoist and seven horizontal blue stripes separated by six white stripes. In the centre of the vertical red stripe is a white five-pointed star, with one point vertically upwards. The five points of the star shall each form an angle of 36 degrees.
2. The height and length of the flag shall bear to each other the proportion of 2 to 3. The width of the red stripe shall be two fifth of the height of the flag. The diameter if the circumscribed circle of the star shall be seven eights of the width of the red stripe.
3. The governor shall decide the nature of the colours of the flag.

Section 2.

The display of the territorial flag beside the flag of the Kingdom of the Netherlands is provided in a regulation, cited as Flag Order, to be laid down in an administrative Order.

Section 3.

This ordinance, which may be cited as “Territorial Flag Ordinance”, shall come into operation on December 1, 1961.

Given in Hollandia, this eighteenth day of November, 1961

The Governor of Netherlands New Guinea: PLATTEEL

The Government Secretart: A. LOOSJES

Issued on November 20, 1961.

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1961 No. 69

NATIONAL ANTHEM of Netherlands New Guinea.

Ordinance providing for a national anthem for Netherlands New Guinea.

IN THE NAME OF THE QUEEN !

THE GOVERNOR OF NETHERLANDS NEW GUINEA,

WHEREAS the New Guinea Council has on the strength of the right to submit proposals regarding the laying down of ordinances, as granted to the Council in Section 111^e of the Netherlands New Guinea Act, submitted a proposal to lay down an ordinance providing for a national anthem for Netherlands New Guinea,

WITH the advice of the Council of Heads of Departments and in concert with the New Guinea Council,

HAS ORDAINED as follows:

Section 1.

The national Anthem of Netherlands New Guinea is the song made up of seven stanzas, the melody and text of which are shown in the Appendix to this ordinance.

Section 2.

When the National Anthem of Netherlands New Guinea is performed in public, every person is obliged to pay respect in a manner befitting with respect to a national anthem.

Section 3.

This ordinance shall come into operation on December 1, 1961.

Given in Hollandia, this eighteenth day of November, 1961

The Governor of Netherlands New Guinea: PLATTEEL

The Government Secretary: A. LOOSJES

Issued on November 20, 1961.

(Orders of the Governor of Netherlands New Guinea No. 364 of November 18, 1961).

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1961 No. 70

TERRITORIAL FLAG of Netherlands New Guinea.

Administrative Order for the implementation of Section 2 of the Territorial Flag Ordinance.

IN THE NAME OF THE QUEEN !

THE GOVERNOR OF NETHERLANDS NEW GUINEA,

WHEREAS it is deemed necessary for the implementation of Section 2 of the Territorial Flag Ordinance (Bulletin of Ordinances & Decrees 1961 No. 68) to lay down the following regulations,

WITH the advice of the Council of heads of Departments,

HAS ORDAINED as follows:

Section 1.

Flying the territorial flag of Netherlands New Guinea at the same time as the flag of the Kingdom of the Netherlands shall take place in conformity with the provisions of this ordinance at the places and times to be specified by the Governor.

Section 2.

1. The territorial flag of Netherlands New Guinea, when it is displayed near, from or on a building, with the flag of the Kingdom of the Netherlands, shall be placed on the left, seen from that building.<
2. The territorial flag of Netherlands New Guinea, when it is displayed with the flag of the Kingdom of the Netherlands in a hall at an outdoor meeting where speeches are delivered, shall be placed at the speaker's left and the flag of the Kingdom of the Netherlands at the speaker's right.

Section 3.

When the territorial flag of Netherlands New Guinea is displayed with the flag of the Kingdom of the Netherlands, this shall not in any way affect the regulations concerning the use of the orange pennant with the latter flag.

Section 4.

When the territorial flag of Netherlands New Guinea and the flag of the Kingdom of the Netherlands are displayed simultaneously, the latter flag shall be hoisted or unfurled first and be lowered or removed last.

Section 5.

This Order, which may be cited as Flag Order, shall come into operation on December 1, 1961.

Given in Hollandia, this eighteenth day of November 1961

The Governor of Netherlands New Guinea: PLATTEEL.

The Government Secretary: A. LOOSJES

Issued on November 20, 1961.

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