

Synthesis of the case Foundation West Papua versus the State of The Netherlands, presently (mid-2014) in faze of concertation between Foundation West Papua and the Ministry of Foreign Affairs of the State of The Netherlands.

1. The case concerns the decision making and action or lack of action by the Dutch Government at the full administrative transfer of West Papua (former Dutch New Guinea) to the Republic of Indonesia in the aftermath of the independence of Indonesia, the New York Agreement of 1962, the short intervening period of administration of West Papua under the United Nations, the "Act of free choice" of 1969, and the United Nations Resolution 2504 in 1969.

Historical scientific research was commissioned by former Foreign Minister J. van Aartsen after request by members of the Lower House for comprehensive and in-depth research that was committed by the Institute for Dutch history.

The results of the historical scientific research were transferred in 2005 to the Lower House.

2. The research being available and the actual data being finally mapped on a historical scientific way, it is clear that legal errors and shortcomings on several points on the part of the Dutch Government were committed.

3. These errors and shortcomings concern both internal Dutch law, as international law.

4. The aim of the prepared procedure are the legal inferences and following requirements towards the Dutch Government in case of absence of concertation as expressly and officially asked in the name of Foundation West Papua to the Prime Minister and Minister for General Affairs and the Minister of Foreign Affairs.

5. The Dutch state is actor at all events and agreements related to Indonesia and its independence, and the events related to West Papua which led to the full administrative transfer of West Papua to the Republic of Indonesia.

6. The clarity of the historical scientific reality leads to clarification of obvious responsibilities of the Dutch state as actor at the whole of the relevant events, deeds, agreements, resolutions, and circumstances which led to the full administrative transfer of West Papua to the Republic of Indonesia.

7. According to former Minister of Foreign Affairs Luns was in 1969 the view that Netherlands recognized a moral responsibility.

The responsibilities on the part of the Dutch state and the recognition of moral responsibility by former Minister Luns also have a legal connotation.

The Dutch state is a subject of law of public order.

Each of by the Dutch State committed deeds, also at omission of deed, is susceptible to judicial review.

8. It is undeniable that there are uncontestable bindings between the by the Dutch State committed deeds, also at omission of deed, with both Dutch law and the principles of international public law.

9. The standard of Care and Good Governance is an essential element of legal review of deed, or omission of deed, by the Dutch Government as a subject of law of public order. Care and Good Governance constitutes for the legal subject and the correct treatment of the citizen an essential element of legal certainty and sound decision-making to government actions, or the omission of government actions.
10. the Dutch state has been grossly inadequate to its duty of Care and Good Governance at the relevant events, deeds, agreements, resolutions, and circumstances which led to the full administrative transfer of West Papua to the Republic of Indonesia.
11. It has been established that all texts and agreements following the independence of Indonesia, the New York Agreement of 15 August 1962, and the agreements derived from the confidential concertation in Rome from May 1969 between Dutch and Indonesian Ministers contained ambiguities and uncertainties in their essential parts which each time led to get the right of the Indonesian vision.
12. In the Charter of transfer of Sovereignty, concluded at the round table Conference of 1949, sets Article 1 that The Netherlands transfer the full sovereignty over Indonesia to the United States of Indonesia, but assigns it to the the following Article 2 stating that New Guinea was excluded for the moment of the transfer.
13. The New York Agreement of 1962 grants an «Act of Free Choice» to the Papuans, but without any guaranty for the implementation of a plebiscite to internationally acceptable standards. On the contrary, the responsibility for the plebiscite of Dutch subjects is left entirely up to Indonesia.
14. the Dutch State is by negligence in applying on her self her own legal principles and legal rules the cause that West Papua and the West Papuan population do not have been able to correctly implement the decision-making that came them to decide on the form of self-determination, particularly external or internal self-determination.
15. The omission of action with the appropriate conclusions for protecting its Dutch subjects in West Papua is a clear breach of the principles of Care and Good Governance where the Dutch subjects are entitled to.
16. An aggravating circumstance for the Netherlands Government is that when at the same time the Republic of Indonesia in 1965 nationalized Dutch companies in order to enforce the Netherlands to the territorial transfer of West Papua to Indonesia, and thereby offered cash reparations, the Dutch Government accepted this.
17. This indicates new violations by the Dutch Government of the Rule of Care and Good Governance in relation to West Papua.
18. The agreement to accept the cash reparations took place without any right of say nor concertation with the West Papuans.
19. There is also liability and joint-liability of the Dutch state under International Law.
20. The interference by the Dutch State of the way of decision-making within the United Nations is indisputable.

21. In addition, it was historically scientifically confirmed that already before the Act of Free Choice the decision was taken to transfer West Papua to the Republic of Indonesia but that was searched for a word use to show that notwithstanding this decision already taken, the right to self-determination was respected.

22. The fear of the West Papuans but at the same time so many Dutchmen for the way things were going in the run of a coming United Nations resolution was justified. However, the Dutch Government acted on preventing the active presence of West Papuans to the agreement of the United Nations and thus preventing that West Papuans could give expression to the situation they were forced in and the injustice that was done to them, and their absence of agreement with the situation they were forced to. Also the warnings of the envoy of the United Nations was ignored by the Dutch Government.

The wording of resolution 2504 was exactly focused on putting away responsibility for the referendum through pure taking note of the outcome of the Act of free choice.

23. Whatever the wording of the New York Agreement of 15 August 1962 or Resolution 2504 of 19/11/1969 contents, none of the two texts, however, can do extinguish or expire the fundamental right to self-determination.

24. West Papua has never given up its right to self-determination, nor lost, having regard to, among others, but not limited to the non-expirability of this protected fundamental right without having exercised it following the regulations and standards of International Law.

25. Also is noted that the New York Agreement of 15 August 1962 spoke about «administrative transfer» without approaching the aspect of transfer of sovereignty. The United Nations resolution 2504 could legally not content anything more than an administrative transfer without transfer of sovereignty.

The Dutch Government has furthermore never accepted to refer in Parlement to the essential legal questions and questions from International Law about this in 1962 as well as in 1969.

The Dutch State has acted from the statement that the transfer of sovereignty with the implementation of the New York Agreement would be de facto a fact, although it would not be consummated de jure.

The sovereignty issue remains essential to form and content.

The decision imposes itself that the Netherlands have since 1945 tacitly accepted the Indonesian starting point of sovereignty of Indonesia over West Papua.

26. By the lack of clarity, the right to self-determination of the West Papuans by textual afloat, and notwithstanding a fraudulent act of free choice initiated and carried out just taking act that the Act of free Choice had taken place, the test under International Law is not only not met, but the agreements and in particular the New York Agreement are afflicted with fraud.

The agreement is permanently cursed with the cancellation grounds of fraud.

The nature of the nullity is absolute and not relative.

The invalidity is in essence of public order and legal rules of public order.

Parties can thereby not restrict the nullity to the notion of relative nullity.

The Dutch State has by international standards and with fraud turned to guilty for not granting the right to self-determination as a fundamental right protected under International Law.

27. The large-scale violation of human rights by the regime of the Republic of Indonesia was deployed from 1962, already starting from the first phase of administrative trusteeship of Indonesia over West Papua, which followed the short temporary phase of administrative trusteeship under the United Nations.

Notwithstanding the knowledge of these human rights violations by Indonesia, the Dutch Government remained active to promote the full administrative transfer of West Papua to Indonesia.

The Dutch Government has acted grossly inadequate against the West Papuans population by serious misconduct to its duty of Care and Good Governance.

Human rights violations have up to today continued on permanent and various modes.

This is testified by the many interventions at the Commission on human rights in Geneva.

It was the legal duty of the Dutch Government to protect and preserve its subjects against human rights violations.

28. The Dutch Government was actively concerned for the approval and forcing the United Nations resolution 2504 notwithstanding a group of some thirty countries were opposed.

The violations of human rights have continued as constantly crimes thanks to the efforts of the Dutch Government to make possible the full administrative transfer of West Papua to the Republic of Indonesia through resolution 2504 of 19 november 1969 by the United Nations.

The Dutch Government has committed «guilty by omission» and complicity in serious violations of human rights.

29. The Dutch Government had already in 1962 knowledge of the huge copper reserves in the Carsztengebergte, as well as the plans and motives for the granting of a licence by the Republic of Indonesia for extremely large-scale mining on West Papua to the American mining company Freeport & Co.

These granting held in itself the germs for human rights violations as well as serious crimes against the environment.

Serious pollution and land loss for the West Papuans were related.

The consequences to West Papua and its people are a permanent damage on agriculture, potable water, fisheries, and others, whereunder United Nations protection of cultural identity of indigenous people.

30. The West Papuans responded however already at the time of the facts against the imposed state of affairs to them.

The Dutch Government had sufficient knowledge of it.

The Dutch Government has again been «guilty by omission» and complicity in serious environmental crimes and associated violations of the internationally recognized rights of indigenous people.

31. The state of the Netherlands, since decades, relies through Ministers of Foreign Affairs at queries to the distressing situation in West Papua as in the field of human rights and the total lack of economic progress in general for its population, including a persistent low level of education, on principles of sovereignty and territoriality, and non-interference in domestic affairs by foreign powers.

The principles invoked by the State of the Netherlands do by no means permit to let evade the fundamental right to self-determination for the West Papuans population to international law nor its Dutch subjects to evade from the own Dutch standards of care and good governance.

The historical scientific analysis and the legal conditions for the full administrative transfer of West Papua to the Republic of Indonesia for which the Dutch state holds direct and

essential responsibility in any manner, clearly shows that by no manner the State of The Netherlands in its decision making and input into the transfer of sovereignty of Indonesia in 1949, and the so-called New York Agreement dated 15 August 1962, the meeting of May 1969 in Rome, and so many others, has met its own Dutch standards of Care and Good Governance, and neither the standards under International Law.

32. The Foundation West Papua progresses privilege to hear by right that :

- * in the course of the entire administrative transfer of West Papua to the Republic of Indonesia, the Dutch Government has committed legally erroneous behaviors, at least has committed legal irregularities ;

- * the right to self-determination on the part of the West Papuans population is not extinguished ;

- * the right to self-determination on the part of the West Papuans population has been violated ;

- * the right to free choice on the part of the West Papuans population includes internal as well as external self-determination ;

- * the Dutch Government is liable, at least partly liable, for the consequences of the incorrect behaviors or at least irregularities committed in the course of the entire administrative transfer of West Papua to the Republic of Indonesia ;

and,

33. to hear sentencing the Netherlands Government to:

- * public apologies to the people of West Papua;

- * recognize and ensure the right of West Papua to speak out for for either internal or external self-determination on a democratic way by a new public consultation organized under international supervision, and in accordance with by the United Nations accepted standards ;

- * convene and keep within 6 months an international round table conference in The Hague in effect of the conditions and organization of a new referendum for either internal or external self-determination, determining and developing a transition period of no longer than 12 month before the entry into force of the outcome of either internal or external self-determination, establishing measures for the recovery of moral, physical and material damages suffered by various crimes against humanity as well as undergoing environmental crimes and non-compliance with the rights of the indigenious, as well as the elaboration of an International Convention to achieving international cooperation in the field of further development of West Papua under either internal or external self-determination.

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