

THE HISTORY OF THE RETURN OF IRIAN JAYA (WEST PAPUA) TO INDONESIA

Background

1. West Irian was part of the Dutch colony since 1828. When the Dutch recognized Indonesian sovereignty in 1949, the status of Irian Jaya was yet to be resolved. The Agreement to Transfer the Sovereignty, signed by Indonesia and the Netherlands in The Hague in November 1949, stated *inter alia*:

"the status quo of the Residency of New Guinea shall be maintained with the stipulation that within a year from the date of transfer of sovereignty to the Republic of the United States of Indonesia the question of the political status of New Guinea be determined through negotiations."

2. Noticing that there were no signs of any solution to the Irian issue, Indonesia submitted the matter to the United Nations in 1954. Indonesia's position was endorsed by the Asia Africa Conference in April 1955 which passed a resolution supporting Indonesia and then asked the United Nations to assist the two conflicting parties in reaching for a peaceful solution. Nevertheless, up until 1961 there was no indication of any peaceful solution despite the fact that the matter was discussed at the plenary meetings of the United Nations General Assembly and at Committee One. Meanwhile, diplomatic relations between the two countries were severed in 1961. The Government of Indonesia announced a new policy, Tri Komando Rakyat (Trikorra), and the confrontation between the two parties was inevitable. In 1962 an armed fight broke between Indonesia and the Dutch in the western coast of Irian.
3. Considering the negative development, specifically in international relations which were engulfed in the Cold War era, the United Nations Secretary General U Thant appointed US Ambassador Elsworth Bunker as mediator to find a solution to the Irian issue between Indonesia and the Netherlands. The two countries finally reached an agreement on Irian, as made out in the "[Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea \(West Irian\)](#)", signed on 15 August 1962 by the Foreign Minister Mr. Subandrio as the representative of the Government of Indonesia and Mr. J.H. van Roijen and C. Schurmann as the representatives of the Netherland Government at the United Nations Headquarters in New York. This agreement was then known as the New York Agreement.
4. It was agreed by the two parties that the Agreement had to be ratified before the discussion of the Irian issue at the United Nations General Assembly and that it would enter into force upon adoption by the United Nations General Assembly and terminate when all principles contained therein had been executed. Thus, the New York Agreement entered into force at the 17th United Nations General Assembly in 1962 by the adoption of Resolution No. 1752 regarding the New York Agreement on 21 September 1962.

The New York Agreement: the Legal Foundation for Self Determination

5. The New York Agreement, which was not only agreed by Indonesia and the Netherlands, but also accepted by the international community, was in principle a legal foundation for the implementation of the rights for self determination in West Irian. The implementation of the content and spirit of the New York Agreement was monitored by the international community, thus proving it was not engineered by the parties involved in the dispute, Indonesia and the Netherlands.
6. The New York Agreement comprising 29 Articles basically contained the stipulations on:
 - 1). The transfer of administration from the Netherlands to the United Nations, in Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11;
 - 2). the transfer of administration from the United Nations to Indonesia, in Articles 12 and 13; and
 - 3). Self determination, in Articles 14, 15, 16, 17, 18, 19, 20, and 21.
7. The transfer of administration from the Netherlands to the United Nations was implemented after the United Nations Resolution that adopted the New York Agreement was signed. The United Nations temporary administration was carried out by the United Nations Executive Authority (UNTEA), an agency created for the purpose. The Dutch flag was taken down and the United Nations flag flown. The UN Secretary General substituted the Dutch security forces with UN security forces, mostly comprised of West Papuans. The UN Secretary General would send periodic reports to Indonesia, the Netherlands and the UN General Assembly. Under the Agreement, the Netherlands relinquish the governance of Irian to UNTEA effectively on 1 October 1962.
8. As determined by the New York Agreement, the UNTEA Administration in Irian was divided into two phases, the first started on 1 October 1962 until 1 May 1963. In this phase, Dutch officials were replaced by non Dutch and non Indonesian officials. UNTEA was also required to disseminate information to the West Papuans regarding the transfer of administration to Indonesia and the principles of self determination as specified in the New York Agreement. The second phase of the UNTEA Administration was to be implemented by bringing into consideration the local developments and was unbounded by a time limit. When the United Nations found the time as appropriate, UNTEA would carry out the transfer of administrative responsibility to Indonesia. Following the transfer of administrative responsibility to Indonesia, all UNTEA security personnel would be replaced by Indonesian security personnel and Indonesian laws and regulations would be applicable in the territory. This transfer of administration to Indonesia was completed on 1 May 1963.
9. Subsequent to the transfer of administration to Indonesia, an act of free choice would be carried out. The principles of the act of free choice as determined by the New York Agreement were as follows:
 - 1) The exercise of the act of free choice would be directed by the advice, assistance, and participation of the United Nations.

- 2) The procedure of the act of free choice would be consulted with the representatives of the people.
 - 3) The provisions for participation in the act of free choice would comply with international practices.
 - 4) The United Nations and Indonesia would present the report on the act of free choice to the UN General Assembly.
 - 5) Indonesia and the Netherlands would acknowledge and be bound by the result of the act of free choice.
10. It was evident that the New York Agreement, as the legal basis for the act of free choice, did not state that the principle of "one man one vote" had to be employed on the act of free choice/self determination in Irian (Penentuan Pendapat Rakyat or PEPERA in short). The New York Agreement was composed such as to ensure the transparency of the implementation of the act of free choice, by encompassing the elements of advice, assistance, and participation of the United Nations and UN reports to the international community by way of the UN General Assembly.

PEPERA as the Formal Process of Act of Self Determination

11. In realizing its mandate, the United Nations appointed Ambassador Fernando Ortiz Sanz from Bolivia as the representative of the UN Secretary General to carry out the responsibility of providing advice, assistance, and participation, and to report on the implementation of the act of self determination. Ambassador Ortiz Sanz arrived in Jakarta on 12 August 1968 and proceeded to Irian on 22 August 1968 to establish the UN office in Jayapura. The office was opened on 4 August 1969.
12. The New York Agreement did not specifically state the procedure and method of the implementation of the act of free choice. Therefore, the appropriate means that was suitable to the level of social, economic, and cultural development and the geography of West Irian needed to be established. This was due to the fact that the New York Agreement did not require the implementation "one man one vote" system on the act of self determination. There was no engineering involved and no cause for suspicion, for the reason that according to international law, there was no obligation that an act of self determination had to apply a "one man one vote" system.
13. To establish the best way to implement the act of self determination in Irian, Indonesia held a meeting with the United Nations in Jakarta and in New York. Based on the result of the meeting, Indonesia conveyed a note to Ambassador Ortiz Sanz on 18 February 1969 that basically contained a proposal on the method of the implementation of the act of self determination, which was as follows:
 - 1) The act of self determination would be carried out by a representative assembly in every regency utilizing the system of democratic deliberation.
 - 2) The representative assembly would be comprised of three representatives: a regional representative elected by the community, a functional representative representing the political, social, cultural, and religious interests, and a traditional representative consisting of directly elected tribal representatives.

3) The method had to be first consulted with the people of Irian as determined by the New York Agreement.

14. Responding to the proposal, the UN Representative stated that the United Nations was prepared to cooperate and participate on the implementation of the act of free choice. The United Nations also actively participated in the process of consultation between the Indonesian Government and the people of West Irian on the method of implementation of the act of free choice. The method of consultation was finally decided as the most appropriate for the implementation of the act of free choice. The Djakarta Times on 26 February 1969 in the article "UN and the Netherlands Approve Indonesian Policy on Act of Free Choice" wrote that "the United Nations and the Dutch Government have approved the policy of the Indonesian Government on the act of free choice in West Irian by way of consultations and not by one-man-one-vote system." Meanwhile, The Indonesian Observer on 24 February 1969 in the news article "West Irian Legislators Endorse Voting Method" reported that "the Regional Legislature of Merauke regency (kabupaten) has issued a statement emphasizing that if the act of free choice should be conducted at all it should be through the regional legislatures by means of representative voting."

15. Based on the above, the act of free choice in Irian was conducted utilizing the representative and deliberation system. During the process of the act of free choice from 14 July to 2 August 1969, the Representative of the UN Secretary General actively participated in the process according to his mandate and responsibilities as outlined in the New York Agreement. In his report to the General Assembly, the Representative of the UN Secretary General Envoy stated inter alia:

a. "The Petitions opposing annexation to Indonesia ... show that without doubt certain elements of the population of West Irian held firm convictions in favor of independence. Nevertheless, the answer given by the consultative assemblies to the questions put to them was a unanimous consensus in favor of remaining with Indonesia."

b. "Finally, on the basis of the facts presented in this report and the documents referred to, it can be stated that with the limitations imposed by geographical characteristics of the territory and the general political situation in the area, the act of free choice has taken place in West Irian in accordance with Indonesian practice, in which the representatives of the population have expressed their wish to remain with Indonesia."

16. After analyzing Indonesia's and the United Nations' reports and other documentation, the 24th UN General Assembly on 19 November 1969 adopted Resolution 2504 (XXIV) that legalized the act of self determination in Irian Jaya as determined by the New York Agreement:

"Bearing in mind that, in accordance with article XXI, paragraph 2, both parties to the Agreement have recognized these results and abide by them,"

"Takes note of the report of the Secretary General and acknowledges with appreciation the fulfillment 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)".

17. Upon the adoption of UN General Assembly Resolution 2504 (XXIV), the act of free choice by way of deliberation, not "one man one vote", was accepted by the international community. From that point on, the international community recognized, de jure and de facto, that the region of Irian Jaya was an integral part of the Unitary State of Indonesia. This international recognition could not be annulled or revoked, for not one country in the world could challenge the legitimacy of the territory of Irian Jaya as part of the Unitary State of the Republic of Indonesia. The principle of integrity and sovereignty of any state is one of the main principles embodied in the United Nations Charter. Consequently, any separatist movement would be rejected by the international community, as it violated the principles and objectives of the United Nations.

The Rome Joint Statement

18. In accordance with the New York Agreement, apart from consulting the United Nations on the implementation of the Act of Self Determination, Indonesia also kept the Netherlands informed of any developments. In the framework of bilateral meeting between Indonesia and the Netherlands, held in Rome on 20-21 May 1969, both parties agreed to issue a [Joint Statement](#) on the subjects touched and agreements reached at the meeting. Indonesia was represented by Foreign Minister Adam Malik at the meeting, whilst the Netherlands was represented by Foreign Minister Luns and Developmental Cooperation Minister Udink.

19. The Rome Joint Statement stated inter alia:

- a. The Indonesian Foreign Minister reiterated the Indonesian Government's intention to fully implement the conditions set out in 1962 New York Agreement. The Foreign Minister advised the Dutch Ministers in detail about the measures taken by the Indonesian Government regarding the act of free choice in West Irian after the comprehensive consultation with and the approval of the regional representative institutions in West Irian, and with the advice, assistance, and cooperation of the Representative of the UN Secretary General Ambassador Ortiz Sanz and his assistants.
- b. The Indonesian Foreign Minister reiterated the position of the Indonesian Government that due to technical and practical problems, the implementation of the act of free choice with the Indonesian system of deliberation was the best procedure. The Foreign Minister explained that West Irian would be accessible to analysts and foreign correspondence.
- c. On economic cooperation it was agreed that the Netherlands would provide the funds for the UN FUNDWI Projects. Projects on air, coast and river transportation should be made a priority. Both countries would forthwith convey a technical assistance project proposal to the Asian Development Bank in the form of a list of the territory's economic potentials.

Conclusions

20. The implementation of the act of self determination was carried out democratically and in a transparent manner by involving the people of Irian Jaya by way of consultation on the method of the act of free choice. The whole process of the act of free choice involved the participation, assistance, and advice of the United Nations and in turn was acknowledged by the international community (the United Nations General Assembly).

21. It was clear that the PEPERA as the implementation of the act of free choice was not legally flawed. A unilateral interpretation and misinterpretation of the New York Agreement and attempts to twist perceptions that the New York Agreement had to exercise 'one man one vote' system was certainly not justified and not true to the fact.

Source: The Ministry of Foreign Affairs - November 6th, 2002