

**EARNED SOVEREIGNTY: THE ROAD TO ADDRESSING THE PROLONGED
CONFLICT IN WEST PAPUA – INDONESIA**

JOHNI ROBERT VERIANTO KORWA

October 2016

FLINDERS UNIVERSITY
FACULTY OF SOCIAL AND BEHAVIOURAL SCIENCES
SCHOOL OF HISTORY AND INTERNATIONAL RELATIONS
MASTER OF ARTS (INTERNATIONAL RELATIONS)

A thesis submitted for the degree of Master of Arts (International Relations)

Flinders University of South Australia

October 2016

TABLE OF CONTENTS

Abstract	v
Declaration of Original Work	vi
Acknowledgements	vii
Introduction	1
CHAPTER 1: Earned Sovereignty, Theory, and Cases	
Introduction	3
The Rise of Earned Sovereignty	5
The Definition of Earned Sovereignty and its Functions	11
The Core and Optional Elements of Earned Sovereignty	13
Successful Earned Sovereignty in Practice: Kosovo, East Timor, South Sudan, and Bougainville	18
Why and How Earned Sovereignty is Appealing in the Papua Case	22
Conclusion	25
CHAPTER 2: The Nature of Conflict in West Papua and Alternative Solutions	
Introduction	27
West Papua Profile, the New York Agreement and the Act of Free Choice	28
West Papua (Netherlands New Guinea)	29
West Papua under the New York Agreement (1962-1969)	31
The Act of Free Choice (14 July to 2 August 1969)	33
Sources of Papuan Conflict	35
Alternative Solutions to Papuan Conflict and Their Weaknesses	41

Special Autonomy	41
Dialogue	43
Welfare Approach	45
Conclusion	47

CHAPTER 3: Earned Sovereignty As a Good Fit in the Papua Case

Introduction	50
Reasons for the Use of Earned Sovereignty in the Papua Case	51
Some Considerations for Indonesia to Welcome International Intervention in West Papua in the Future	59
Illustration of the Use of Core Elements of Earned Sovereignty in the Papua Case	66
Practical Details: Making the Earned Sovereignty Approach Happen in West Papua ...	69
Conclusion	75
Conclusion	78
Bibliography	80
List of Maps	iv

LIST OF MAPS

Map 1	Map of Netherlands New Guinea (Irian Jaya/West Papua).....	30
-------	--	----

ABSTRACT

This thesis proposes earned sovereignty as an effective approach to resolving the protracted conflict in West Papua, Indonesia. The earned sovereignty approach can be defined as an instrument for the purpose of the conflict resolution process in reconciling the principle of self-determination and territorial integrity through its three core elements: shared sovereignty, institution building, and the determination of final status. In order to better understand the Papua case, this thesis starts by examining the conflict from its earliest days, which saw the incorporation of Papua into Indonesia, through to current events including human rights violations. Some alternatives have already been proposed to address the Papuan conflict. They include dialogue, special autonomy, and a welfare approach. However, none of them are considered effective as the people of Papua are still calling for independence and the conflict remains unresolved. For this reason, this thesis offers earned sovereignty as a more effective solution to end the prolonged conflict in West Papua. Having said that, this thesis acknowledges that the Indonesian government will probably not be interested in earned sovereignty. Therefore, several considerations are proposed, in particular, to allow United Nations intervention in Papua. Through the use of the theoretical framework of earned sovereignty, this thesis concludes that a collaboration between Indonesia (parent-state) and West Papua (sub-state) with the assistance of the United Nations, is required to make earned sovereignty work in Papua as well as to settle the conflict there.

DECLARATION OF ORIGINAL WORK

I certify that this thesis does not incorporate without acknowledgement any material previously submitted for a degree in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

.....

Johni Robert Verianto Korwa

.....

Date

ACKNOWLEDGEMENTS

First and foremost, I would like to extend my huge thanks to my supervisor, Associate Professor Anthony Langlois, for his tireless help and invaluable feedback and advice on this thesis. Without his constant patience and intellectual support, this thesis would never have seen the light of day.

Similarly, I would like to thank my family for their unwavering support, my parents: Otniel Korwa and Wehelmina Jeanitje Boyoh, and my brothers and sisters: Feronika Korwa, Aprina Korwa, Sindy Korwa, and Mario Korwa. Without their prayers, I am nothing and would not have been able to perform well during my period of study at Flinders University in South Australia.

Also, a big thank you to my fellow students: Lidya Sinaga, Matsepho, Khonsavanh, Derek, Moharaj, Mandira, Faith, Alex, Mark, and Joshua, for being there for me when I called you and just needed someone to listen.

Last but not least, I would like to thank the following: 1) Australia Awards Scholarship (AAS) for supporting my study in Australia during my two years programme; 2) International Student Service (ISS) at Flinders University: Cassie Bach, Elaine Kane, Klaus Koefer, and Jo Smiley for assisting me throughout all my struggles at the University; 3) all the lecturers in the School of History and International Relations at Flinders University for their amazing friendship during my study in Adelaide.

“There is no equality, no democracy, and no justice in West Papua. There is only pain, bloodshed, suffering, and injustice.” Benny Wenda, an international lobbyist for the independence of West Papua.

INTRODUCTION

West Papua, well known as the land of paradise, is one of the richest islands in Indonesia.¹ It has incredibly rich resources including gold, oil and gas, land for palm oil farming, fisheries, timber, and much more.² In 1963 West Papua became a controversial issue after its integration into Indonesia.³ Indonesia believed that West Papua should become part of Indonesia despite its differing culture and identity.⁴ However the people of West Papua understood that the Dutch had granted them independence on 1 December 1961, and therefore Indonesian efforts to bring Papua into Indonesian territory were illegal.⁵ These two perspectives brought Papua into conflict by the time it had been incorporated into Indonesia. It is also worth noting that Papuans identify themselves as Melanesians; not Asians, a term that refers to Indonesians.⁶ In response to Indonesia’s occupation over their homeland, the people of Papua established the Free Papua Movement in 1965 in order to fight for a return to independence.⁷ The Indonesian government responded by using a military approach. Papua remains chaotic. It has now become a region of conflict, although the conflict has been

¹ E. Heidbuchel, *The West Papua Conflict in Indonesia: Actors, Issues, and Approaches*, Johannes Hermann and J&J-Verlag (Germany), 2007, p. 151.

² For example, the Grasberg Mine owned by Freeport-McMoRan from the United States. Grasberg is the largest gold mine in the world, located near Puncak Jaya, the highest mountain in West Papua. There is also the Tangguh project, which exploits the natural gas reserves located in Bintuni Bay, West Papua. It is operated by British Petroleum (BP) in conjunction with several Japanese and Chinese companies. See N. Tebay, *West Papua: The struggle for peace with justice*, Catholic Institute for International Relations, London, 2005, p. 20. See also Mining Global, ‘Grasberg: The World’s Largest Gold Mine’, *Mining Global*, 24 February 2015, <<http://www.miningglobal.com/miningsites/796/Grasberg:-The-World's-Largest-Gold-Mine>> accessed 18 September 2016.

³ B. Simpson, ‘Indonesia’s 1969 Takeover of West Papua Not by “Free Choice”’, *The National Security Archive – Document Release Marks 35th Anniversary of Controversial Vote and Annexation*, 9 July 2004, <<http://nsarchive.gwu.edu/NSAEBB/NSAEBB128/>> accessed 18 September 2016.

⁴ R. Chauvel, and I. N. Bhakti, *The Papua Conflict: Jakarta’s Perceptions and Policies*, the East-West Center Washington, Washington DC, 2004, pp. 5-6.

⁵ T. V. D. Broek, ‘A Peace Mission: The Church response to conflict in the West Papua case’, in J. B. Hernawan (ed), *Papua Land of Peace: Addressing Conflict Building Peace in West Papua*, Office for Justice and Peace, Catholic Diocese of Jayapura, West Papua, 2005, p. 64.

⁶ J. Elmslie, *Irian Jaya Under the Gun: Indonesian Economic Development versus West Papuan Nationalism*, University of Hawai’i Press, North America, 2002, pp. 22-23.

⁷ Tebay, op. cit., p. 5.

underway for several decades. Even today peace agreements are yet to take place on the ground. This is the focus of the thesis, which seeks to offer a way out and to establish peace in West Papua.

This thesis seeks to use the theoretical approach of earned sovereignty to propose a solution that will end the prolonged conflict in West Papua. This approach provides a step-by-step method to accumulating sovereignty, which is very helpful in conflict resolution.⁸ Chapter one examines the subject of earned sovereignty, both theory and cases, that have been developed by academics specialising in international law and international relations. It not only provides examples of successful earned sovereignty in practice including Kosovo, East Timor, South Sudan, and Bougainville, but also offers explanations as to why and how this earned sovereignty approach is a sound solution to the Papua case. Chapter two provides an historical overview of the nature of the conflict in West Papua. It also discusses the alternative solutions being proposed to address the Papuan conflict: dialogue, special autonomy, and the welfare approach, and why they are ineffective in tackling the Papuan issue. The final chapter reveals reasons and justifications for the application of earned sovereignty in the Papua case. In particular, it provides explanations that will encourage Indonesia to become interested in this approach, while at the same time welcoming participation from the UN. In addition, this chapter also provides practical details of how earned sovereignty can work in the Papuan conflict.

⁸ N. P. Kirschner, 'Making Bread from Broken Eggs: A Basic Recipe for Conflict Resolution Using Earned Sovereignty', *Whittier Law Review*, Vol. 28, No. 4, 2007, p. 1135.

CHAPTER ONE

Earned Sovereignty, Theory, and Cases

Introduction

In order to begin to understand use of the earned sovereignty approach in resolving the sovereignty-based conflict in West Papua,⁹ it is important to find out how the approach has been applied in reality. This chapter will commence by examining the emergence of the earned sovereignty approach that has been developed by academics in international law and international relations. It will include the definition and functions as well as the core and optional elements used in constructing the approach. Moreover, in order to develop a sound understanding of the approach, this chapter will provide examples of successfully earned sovereignty in practice including Kosovo, East Timor, South Sudan, and Bougainville. In addition, it will also offer explanations as to why and how this earned sovereignty approach is appealing in the Papua case. In short, this chapter is intended to explore the earned sovereignty approach as a way forward in dealing with the protracted conflict in West Papua.

It is believed that the conflict between self-determination and territorial integrity has replaced inter-state wars in the 21st century.¹⁰ Self-determination or sovereignty-based conflicts have been the centre of attention of the world since the end of World War II. Some have already been resolved by uncontested agreements and the use of military force while others remain ongoing.¹¹ In this sense the attempts of a self-determination movement to secede from the parent state has encouraged states to respond on that matter, and even with

⁹ The term 'West Papua' can be confusing because in terms of administrative political divisions it currently consists of two provinces, Papua Province and West Papua Province. In this chapter (1) and chapters (2 and 3) that follow, the term refers to both provinces.

¹⁰ P. R. Williams, 'Earned Sovereignty: The Future of Sovereignty-Based Conflict Resolution', *Denver Journal of International Law and Policy*, Vol. 40, 2011, p. 128.

¹¹ P. R. Williams and F. J. Pecci, 'Earned Sovereignty: Bridging the Gap between Sovereignty and Self-Determination', *Stanford Journal of International Law*, Vol. 40, No. 2, 2004, p. 347.

the use of force.¹² Consequently, mass killings of people carried out using military action can be justified in the name of preserving territorial integrity. For instance, the government of Sri Lanka killed more than 65,000 people in order to tackle the Tamil rebel movement seeking independence.¹³ By the same token, the government of Saddam Hussein in Iraq also killed over 5,000 Kurdish people when it sought to stop the Kurdish movement for self-determination in the 1980s.¹⁴ In these circumstances, while the international community always considers the self-determination movements as leading to massive deaths, Williams, Avoryie, and Armstrong have observed that it sometimes fails to acknowledge the existence of such phenomenon.¹⁵

Williams and Pecci identify four characteristics of sovereignty-based conflicts. First and foremost, they are extremely difficult to deal with.¹⁶ Second, sovereignty-based conflicts frequently contribute to the rise of terrorism. Despite, for example, the decline in the attack on the central government, the Liberation Tigers of Tamil Eelam were identified with the practice of suicide bombing, in common with other conflicts.¹⁷ Third, sovereignty-based conflicts have the propensity to lead to severe human rights violations as occurred for instance, when the Indonesian military murdered more than 5,000 people in order to subdue the separatist movement in Aceh.¹⁸ Last, existing international legal norms and principles offer minor contributions to those parties and mediators that are willing to tackle sovereignty-

¹² Williams, *op. cit.*, p. 128.

¹³ P. R. Williams, A. J. Avoryie, and C. J. Armstrong, 'Earned Sovereignty Revisited: Creating a strategic framework for managing self-determination based conflicts', *ILSA Journal of International and Comparative Law*, Vol. 21, No. 2, 2015, p. 5.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ There were around seventy-five models of sovereignty-based conflicts in the years between 1956 and 2002, of which only twelve of the total number of conflicts have been resolved by an accepted agreement since 2002. Williams and Pecci, *op. cit.*, p. 347.

¹⁷ *Ibid.*, p. 348.

¹⁸ *Ibid.*

based conflicts.¹⁹ In the case of Papua, Indonesia has endeavoured to resolve the self-determination movement there since the 1960s. In doing so, a number of indigenous Papuans were killed by the military while others fled to various countries.²⁰ Much of the research carried out, together with many of the reports, indicates that human rights violations go hand in hand with conflict in West Papua.²¹ In fact the Amnesty International report for 2015/2016 highlights allegations of human rights violations in West Papua, especially in the use of excessive force as a response to peaceful protests.²² For instance, the security forces arrested and detained 264 peaceful activists who were planning to organise a demonstration to mark the day of the transfer of Papua to Indonesia by the UN.²³

The Rise of Earned Sovereignty

The political debate seeking the best method to address sovereignty based-conflicts has led to the rise of the earned sovereignty approach. Williams observes that the evolution of this approach can be derived from the ideas and concepts established by Ved Nanda, a professor from the University of Denver, who has devoted attention to the self-determination issue.²⁴ Indeed, Nanda examined the Soviet and the Vietnamese interventions in Afghanistan and Kampuchea, as well as the termination of the trusteeship relationship of Micronesian nations,²⁵ which have questioned “the nature, content, and scope of the right of peoples to

¹⁹ Ibid.

²⁰ C. Budiardjo and L. S. Liong, *West Papua: The Obliteration of a People*, TAPOL, UK, 1988, p. 78.

²¹ S. Hill, ‘Papuans and Jokowi are hostage to Indonesian politics’, 2015, University of Wollongong research online.

²² Amnesty International, ‘Amnesty International Report 2015/16: The State of the World’s Human Rights’, <<https://www.amnesty.org/en/countries/asia-and-the-pacific/indonesia/report-indonesia/>> accessed 20 September 2016.

²³ Ibid.

²⁴ Williams, *op. cit.*, p. 129.

²⁵ According to the International Trusteeship System established by chapters XII and XII of the UN Charter, 11 territories were put in place from 1946 to 1950. Although 10 of the territories had been terminated by either forming an independent state or incorporation into an existing state, the Trust Territory of the Pacific Islands, the so-called ‘Micronesia’ remained in place. This consisted of the Northern Mariana Islands, Palau, the Marshall Islands, and the Federated States of Micronesia (Kosrae, Ponape, Truk, and Yap in the Eastern Caroline Islands). Micronesia was the only territory in regards to the trusteeship made by the U.S. See R. Clark,

self-determination”.²⁶ He asserted strongly that the consideration for taking the ‘sovereignty first’ or ‘self-determination first’ approach may not be a good idea in response to sovereignty based-conflicts.²⁷ Otherwise Nanda has attempted to examine the implications that sovereignty based-conflicts could have on the world and has then endeavoured to develop a better approach for dealing with these conflicts.²⁸ Nanda first participated in the self-determination debate during the 1970s as a result of his writings on East Pakistan’s right to self-determination.²⁹ He argued that the development of certain benchmarks was fundamentally needed for self-determination claims.³⁰ But beyond this, he has asserted that efforts to evaluate a demand for self-determination should be on the basis of “the nature and the extent of the deprivation of human rights of the sub-group making the claim”.³¹ In the same vein, Sarah Joseph has argued that ‘self-determination’ is the right of peoples to be free from alien subjugation, domination, and exploitation’.³² Joseph further explained that the claim of external self-determination emanating from the wish of people in a particular territory apparently clashes with the principle of territorial sovereignty.³³

Nanda then went on to re-examine self-determination in the early 1980s after the cessation of Soviet intervention in Afghanistan and the Vietnamese interference in Cambodia.³⁴ At that time, he attempted to explore in what circumstances could the demand for secession be justified or, to a lesser extent, what criteria were a good fit for the right to

‘Self-Determination and Free Association: Should the United Nations Terminate the Pacific Islands Trust?’
Harvard International Law Journal, Vol. 21, No. 1, 1980, pp. 2-3.

²⁶ V. Nanda, ‘Self-Determination under International Law: Validity of Claims to Secede’, *Case Western Journal of International Law*, Vol. 13, No. 2, pp. 257-258.

²⁷ Williams, loc. cit.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid, p. 130.

³² S. Joseph, ‘Resolving conflicting claims of territorial sovereignty and external self-determination, part 2’, *The International Journal of Human Rights*, Vol. 3, No. 2, 1999, p. 49.

³³ Ibid.

³⁴ Williams, loc. cit.

self-determination?³⁵ Regardless of any concerns related to self-determination, Nanda emphasised the importance of looking at the nature of the group pursuing self-determination and the way in which the group was marginalised from the political arena.³⁶ Nanda also considered listening to the reasons why the group demanded secession and under what circumstances their basic human rights had been neglected.³⁷ His reason for doing so was to establish certain criteria in order to address those basic human rights violations that could reduce the will for separation. In particular, the denial of human rights should no longer be justification for secession.³⁸ Concerning the rise of earned sovereignty, Grace Bolton and Gezim Visoka emphasise that the development of the notion of earned sovereignty was initially driven by the efforts of public international law to formulate a policy prescription and strategies for conflict resolution, as in the case of Kosovo in 1988.³⁹ Although there was a heightened need for Kosovo due to past violations by the Serbian regime, there was also concern that it should earn full sovereignty in order to demonstrate its ability for self-government, protect human rights, and promote regional security.⁴⁰

More than 10 years later, Nanda went on to further examine self-determination in the light of the implications of the post-Cold War period.⁴¹ The era generated a high demand for self-determination emerging from several nations including the Kurds in Iraq and Turkey as well as those claiming separation in the Balkans, the Caucasus, and around Africa.⁴² At that time, Nanda came to understand that the phenomenon he was analysing was something that he had fought for a couple of decades. This finally led to his assumption that these claims for

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ G. Bolton and G. Visoka., 'Recognizing Kosovo's independence: Remedial secession or earned sovereignty?' *South East European Studies at Oxford*, Occasional paper No. 11/10 October 2010, p. 6.

⁴⁰ Ibid

⁴¹ Williams, op. cit., p. 130.

⁴² Ibid.

self-determination deserved recognition.⁴³ Despite the fact that he acknowledged that the denial of basic human rights could be the major reason for self-determination claims, Nanda asserted that the implications emanating from such claims would vary: “the creation of a state, a federal entity...a confederation of states,” or “ethnic power arrangements”.⁴⁴ In addition, Nanda also noted the use of violence by states in dealing with self-determination movements. By way of response, he strongly promoted the creation of an instrument to investigate claims for self-determination and to conciliate the parties competing for sovereignty.⁴⁵

In the 21st century, Professor Nanda again became involved in the self-determination debate in response to Quebec’s demand to break from Canada and the self-determination claims of Kosovo and East Timor.⁴⁶ In this regard, the issues of state sovereignty and sub-state entities are apparently contentious among the international law community. As stated by Lorie Graham, “Let me just close by saying that in the last six weeks I have heard it twice stated that the defining issue in international law for the 21st century is finding compromises between the principles of self-determination and the sanctity of borders.”⁴⁷ In the case of Kosovo and East Timor, Nanda further pointed out that the international community could come into play, or intervene, based on two considerations: where the people did not enjoy political and economic life due to concerns over the authoritarian regime’s rule; and where massive human rights violations had taken place.⁴⁸ Subsequently he participated in a roundtable discussion organised by the Public International Law and Policy Group that

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid., p. 131.

⁴⁷ L. Graham, ‘Self-Determination for Indigenous Peoples after Kosovo: Translating Self-Determination “Into Practice” and “Into Peace”, *ILSA Journal of International & Comparative Law*, Vol. 6, No. 2, 2000, p. 465.

⁴⁸ Williams, loc. cit (p. 131).

sought to share thoughts and ideas in the development of the conflict resolution approach to earned sovereignty.⁴⁹

In relation to this, Williams, Avoryie, and Armstrong maintain that the international community led by the UN has to establish a basic framework in order to address the escalating violence of sovereignty-based conflicts.⁵⁰ Such a framework was not intended to promote independence. Instead, it sought to help actors contain the growing violence to achieving resolution on the self-determination matter.⁵¹ In the sense of sovereignty conflicts, Celine Francis points out that most emanate from threats or dissatisfaction concerning people's basic needs in conjunction with dignity, recognition, and safety.⁵² At that time, earned sovereignty was only an emerging concept regarding peace agreements in response to state practice in Serbia and Montenegro, East Timor, and Northern Ireland, as well as the proposed agreements for the Palestinian Road Map and the Western Sahara.⁵³ During the roundtable discussion, although too much reliance was placed on the role of mediators and parties to the conflict, there was an effort by participants to introduce the use of earned sovereignty to tackle sovereignty-based conflicts.⁵⁴ After spending much time on the discussion, this debate finally gave power to the emerging trend known as 'earned sovereignty', in which it was acknowledged as "the conditional and progressive devolution of sovereign powers and authority from a state to a sub-state entity under international supervision."⁵⁵

⁴⁹ Ibid.

⁵⁰ Williams, Avoryie, and Armstrong, op. cit., p. 4.

⁵¹ Ibid.

⁵² C. Francis, *Conflict Resolution and Status: The Case of Georgia and Abkhazia (1989-2008)*, VubPress Brussels University Press, Brussels, 2011, p. 36.

⁵³ Williams, loc. cit (p. 131).

⁵⁴ Ibid.

⁵⁵ Ibid.

According to Keren Heymann, the establishment of ‘earned sovereignty’ strives for two objectives. First, it enables the international legal community to deal with the sceptical view in relation to the ‘sovereignty’ stigma by establishing ‘a new intermediate legal status’.⁵⁶ Second, it ensures a process of negotiation in a practical and effective way by providing room for the actors to pay attention for what the sub-state entity might ‘earn’ and what the ‘price’ might be.⁵⁷ After the debate, the concept of earned sovereignty then looked very appealing to the public international law and the conflict resolution community.⁵⁸ But more importantly, Williams maintained that earned sovereignty was no longer an “emerging approach” as it had been considered as a mechanism or trial process for dealing with sovereignty-based conflicts.⁵⁹ In particular, Michael Scharf regards the creation of earned sovereignty as possibly eye-catching to those considering the right of remedial secession.⁶⁰ Accordingly, the earned sovereignty approach was adopted in practice to end the prolonged conflicts in South Sudan and Kosovo.⁶¹ It was also proposed for the Moro in the Philippines, the Tamil in Sri Lanka, and the Government of Nagorno Karbaugh as an instrument to end the conflict and address their claims to self-determination.⁶² In a nutshell, this approach is considered as a major means to address sovereignty-based conflicts. In addition, while some academics perceived the application of the earned sovereignty approach as an instrument to explain the process of transition in dealing with sovereignty-based conflicts, others maintained the approach as a bridge to connect dispute resolution and international territorial administration.⁶³

⁵⁶ K. Heymann, ‘Earned Sovereignty for Kashmir: The legal methodology to avoid a nuclear holocaust’, *American University International Law Review*, Vol. 19. No. 1, p. 173.

⁵⁷ Williams, loc. cit (p. 131).

⁵⁸ Ibid., p. 132.

⁵⁹ Ibid.

⁶⁰ M. P. Scharf, ‘Earned Sovereignty: Juridical Underpinnings’, *Denver Journal of International Law and Policy*, Vol. 31, No. 3, 2003, p. 385.

⁶¹ Williams, loc. cit (p. 132).

⁶² Ibid.

⁶³ Ibid., p. 133.

The Definition of Earned Sovereignty and Its Functions

The earned sovereignty approach is intended to tackle sovereignty-based conflicts by ensuring the devolution of sovereign authority and functions from a parent state to a sub-state entity or, in other words, making sure the power-sharing arrangements between the parties are conducted in a peaceful manner.⁶⁴ According to William and Heymann, earned sovereignty is an instrument for the conflict resolution process that provides a valuable window of opportunity for conflicting parties to collaborate, discuss, and achieve certain standards prior to the determination of a final status.⁶⁵ In the same way, Michael Scharf emphasised earned sovereignty as an instrument that seeks the reconciliation of “the principles of self-determination and humanitarian intervention with the principles of sovereignty and territorial integrity”.⁶⁶ Bolton and Visoka also consider earned sovereignty to be an approach to exercise the transfer of sovereign authority and functions from the parent state to the sub-state, resulting in either independence or autonomy.⁶⁷ In the context of the transfer of authority and functions, these are deemed as the way forward for enabling the sub-state entity to undertake several tasks including the ability to collect tax, take control over the development of natural resources, carry out a local policy, command a local army, negotiate on certain international treaties, manage representative offices overseas, and take part in some form in international bodies.⁶⁸ Apart from this, it is also worth noting that the role of an international institution like the UN is required to monitor implementation and to ensure the process of transformation is conducted in a timely manner.⁶⁹

⁶⁴ P. R. Williams, M. P. Scharf and J. R. Hooper, ‘Resolving Sovereignty Based Conflicts: The Emerging Approach of Earned Sovereignty’, *Denver Journal of International Law and Policy*, Vol. 31, No. 3, 2003, p. 350.

⁶⁵ P. R. Williams and K. Heymann, ‘Earned Sovereignty: An Emerging Conflict Resolution Approach’, *ILSA Journal of International and Comparative Law*, Vol. 10, No. 2, 2004, p. 438.

⁶⁶ Scharf, op. cit., p. 374.

⁶⁷ Bolton and Visoka, op. cit., p. 1.

⁶⁸ Williams, Scharf and Hooper, op. cit., p. 350.

⁶⁹ Ibid., p. 352.

In doing so, the sub-state entity could be given sovereign authority and functions by the parent state to apply for international recognition, otherwise it may only receive the authority to be able to work within the system by heightening its autonomy.⁷⁰ The most striking feature of earned sovereignty, according to Williams and Pecci, is to promote a sense of harmony or peaceful coexistence between the parent state and the sub-state entity through the creation of a fair and suitable power-sharing arrangement.⁷¹ They further consider earned sovereignty to be a fair-minded approach that not only attempts to provide the right for any people to self-determination, but also makes considerable efforts to end the conflict by ensuring peace and security as well as by advancement on the road to democracy and institution building.⁷² For that reason, the concept of earned sovereignty has been widely recognised by the public international law and conflict resolution communities as it has successfully proven itself to be the best approach in coping with sovereignty-based conflicts.⁷³ In the same way, Nathan Kirschner also acknowledges earned sovereignty as the most appropriate solution and with sophisticated tools for establishing peace between states and the sub-state.⁷⁴ He has even maintained that earned sovereignty (the three core elements) would perform even better without the use of the optional elements that are discussed further below.⁷⁵

The earned sovereignty approach has been the subject of considerable debate among states, sub-states, diplomats, and policy analysts, considering the outcome could be either sovereignty or self-determination.⁷⁶ On the one hand, those who take the sovereignty into

⁷⁰ Williams and Pecci, *op. cit.*, p. 355.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ Williams, *op. cit.*, p. 132.

⁷⁴ N. P. Kirschner, 'Making Bread from Broken Eggs: A Basic Recipe for Conflict Resolution Using Earned Sovereignty', *Whittier Law Review*, Vol. 28, No. 4, 2007, p. 1166.

⁷⁵ *Ibid.*

⁷⁶ Williams and Pecci, *op. cit.*, p. 350.

account have the propensity to discern earned sovereignty as a means of promoting the separation of a sub-state from its parent state, and, as a consequence, undermining the international order.⁷⁷ Others, on the other hand, who regard the right of self-determination as the most important part of the conflict resolution process, tend to perceive earned sovereignty as the way to prevent a sub-state entity from gaining independence.⁷⁸ Regarding these circumstances, Williams and Pecci point out that earned sovereignty essentially endeavours to fill the gap between those two perspectives by offering a comprehensive guide in which the sub-state entity is led to the process of conversion to statehood or an increase in autonomy. They further maintain that such a process is not aimed to jeopardise the interests of parent states, including maintaining territorial integrity, and not to threaten the legitimacy of the international community. In other words, it can go either way.⁷⁹

The Core and Optional Elements of Earned Sovereignty

The earned sovereignty approach comprises three core elements and three optional components. The first core element is shared sovereignty. This is very much considered to be an instrument to de-escalate the conflicts as well as build trust among the parties prior to the conflict resolution process.⁸⁰ This element is an initial stage where the parent state and sub-state entity exercise some sovereign authority and functions according to a defined territory.⁸¹ In certain circumstances, however, international organisations will probably be allowed to share sovereign authority and functions with the sub-state entity, instead of with the parent state.⁸² In this situation the role of the UN is fully expected to ensure the defined authority

⁷⁷ Ibid., pp. 350-351.

⁷⁸ Ibid., p. 351.

⁷⁹ Ibid.

⁸⁰ Williams, Avoryie, and Armstrong, *op. cit.*, p. 23.

⁸¹ Williams and Pecci, *op. cit.*, p. 355.

⁸² Ibid.

and functions exercised by the parties.⁸³ In this sense, the sub-state entity could obtain considerable components of self-government and it is expected to reduce the sense of independence and resolve the source of conflict with the offering of perpetual autonomy.⁸⁴

The second core element is institution building. This element is used to bridge the period of shared sovereignty and the determination of final status.⁸⁵ Here the international community will regularly assist the sub-state entity to establish institutions for self-government as well as ensure those organisations are able to enhance the sovereign authority and functions.⁸⁶ The construction of the institutions can also be undertaken by modifying those already in existence.⁸⁷ It has been widely believed that democratic institutions have played a pivotal role in forestalling renewed conflict in the near future, and, for that reason, they are considered as the fundamental component of modern peace-building.⁸⁸ In this context, institution building can be understood as a means to enable the sub-state entity to exercise sovereign authority and functions in order to form an autonomous entity or enter into a future independent state.⁸⁹ An example of this can be found in the proposed Roadmap for Peace in Israel and Palestine in which institution building is a prerequisite to any further dialogue on Palestinian provisional statehood.⁹⁰

The third core element is the determination of final status. In this section, the sub-state entity is allowed to make a final decision and to consider its relationship with the parent state.⁹¹ In many instances, this process will be through a referendum. Having said that, the

⁸³ Williams, *op. cit.*, p. 135

⁸⁴ *Ibid.*

⁸⁵ Williams and Heymann, *op. cit.*, p. 439

⁸⁶ *Ibid.*

⁸⁷ Williams and Pecci, *loc. cit.* (p. 355).

⁸⁸ Williams, *op. cit.*, p. 136.

⁸⁹ *Ibid.*

⁹⁰ Williams and Heymann, *loc. cit.*

⁹¹ *Ibid.*, p. 440

sub-state entity will occasionally call for international mediation to conduct a negotiated settlement between all parties to determine the final status, as occurred with the international conference in Kosovo.⁹² It is worth noting that the parties are fairly able to propose the willingness to make a final determination at the beginning of the negotiations, or, instead, are also able to express such a determination at a later date.⁹³ This stage also permits the parties to hold the determination of final status for a little while should the violence be ongoing or certain conditions agreed at the beginning are yet to be met.⁹⁴ Also, even though the referendum has been held in accordance with international practice, it is undeniable that the role of the international community to show international recognition is completely expected to strengthen the outcome.⁹⁵ Mostly, the outcome of this process is either to maintain the status quo and heighten autonomy, or proclaim independence.⁹⁶

While the three core elements above play a pivotal role in the peace process, the optional components of earned sovereignty are not always included in the peace process. It depends on the character of the conflict and the agreements reached by all parties. For example, while Kosovo and Bougainville applied the optional elements during the process, apparently Serbia and Montenegro did not.⁹⁷ There are three optional tools. The first is an optional component of phased sovereignty. This stage measures the transfer of sovereign functions and authority from the parent state or international organisations to the sub-state entity for a certain period of time during shared sovereignty and before the final determination.⁹⁸ In doing so, the accumulation of sovereign authority and functions are perceived as the ability of the sub-state entity to generate power and as a result of states'

⁹² Ibid. See also P. R. Williams 'Earned Sovereignty: The road to resolving the conflict over Kosovo's final status', *Denver Journal of International Law and Policy*, Vol. 31, No. 3, 2003, p. 425.

⁹³ Williams and Heymann, *op. cit.*, p. 440

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Williams, Avoryie, & Armstrong, *op. cit.*, p. 23

⁹⁷ Williams and Pecci, *op. cit.*, p. 367

⁹⁸ Williams, *op. cit.* (Earned Sovereignty: The Future of Sovereignty-Based Conflict Resolution), p. 136.

behaviour.⁹⁹ Williams observes that the nature and character of conflict will enormously influence the way in which the power-sharing arrangements are exercised.¹⁰⁰ Put differently, it is somehow difficult to ensure the transfer of power from the parent state to the sub-state entity at the beginning of the process. To respond to this, some earned sovereignty agreements have been integrated into the phased sovereignty component in order to strengthen the relationship between shared sovereignty and institution building.¹⁰¹ Owing to this, phased sovereignty is capable of being imposed on the parties that are unwilling to prompt the devolution of powers or, to a lesser extent, to ensure the smooth transition from the parent state to the sub-state entity.¹⁰²

The second optional component is conditional sovereignty. This conditionality could be given to the accumulation of increasing sovereign authority by the sub-state entity, or it may take place as certain prerequisites that the sub-state entity needs to accomplish prior to the final determination.¹⁰³ Again, these benchmarks are always based on the nature and character of the conflict. Mostly they include aspects such as the protection of human and minority rights, combatting terrorism, development of democratic organisations, the enactment of the rule of law, and the promotion of regional stability.¹⁰⁴ In practice, it has been found that the achievements of certain standards and the transfer of sovereignty are somewhat difficult to link.¹⁰⁵ Accordingly, the role of the international institution is crucial in these circumstances in order to monitor implementation as well as undertake a comprehensive evaluation of the issue.¹⁰⁶ Such actions may also be very helpful in enabling

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid., p. 137.

¹⁰⁴ Bolton and Visoka, *op. cit.*, p. 8.

¹⁰⁵ Williams, *op. cit.* (Earned Sovereignty: The Future of Sovereignty-Based Conflict Resolution), p. 137.

¹⁰⁶ Ibid.

the international organisation to find the right time to enforce the timely transfer of authority.¹⁰⁷

The last optional component is constrained sovereignty. This stage imposes a restriction on the way in which the sub-state entity exercises its sovereign authority and functions within the existing state.¹⁰⁸ In doing so, the parent state and the international community tend to perceive this constrained sovereignty as a guarantee for that process.¹⁰⁹ For instance, the sub-state entity may conduct a prolonged international administrative or military existence; and therefore it should be limited.¹¹⁰ Similarly, its sovereign authority should also be restricted to being able to undertake international relations.¹¹¹ In the same way, the existence of the new entity also has considerable potential to undermine the regional order, and, for that reason, the international community is expected to limit the sovereignty of the new state.¹¹² This destabilisation could appear for two reasons. First, even though institution building has taken place, the state's incapacity to exercise its sovereign authority in an effective way could still remain uneven. Second, it remains possible that the establishment of a new state could also produce a destabilising political dynamic to the region.¹¹³

¹⁰⁷ Ibid.

¹⁰⁸ J. Hooper and P. William, 'Earned Sovereignty: The political dimension', *Denver Journal of International Law and Policy*, Vol. 31, No. 3, 2003, p. 370.

¹⁰⁹ Williams, loc. cit.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

Successful Earned Sovereignty in Practice: Kosovo, East Timor, South Sudan, and Bougainville

According to recent international practice, a number of states have demonstrated a greater willingness to adopt the earned sovereignty approach in order to deal with the sovereignty-based conflicts they encounter.¹¹⁴ It is undeniable that in many cases, the application of earned sovereignty will differ between one another, depending on the nature and the character of the conflict. Accordingly, earned sovereignty can work in some conflicts while in other cases it is only a proposed solution. The following examples present brief overviews of the situations of Kosovo and East Timor, followed by South Sudan. All of these have been proven to be successful applications of the earned sovereignty approach. In addition, the earned sovereignty approach proposed for Bougainville to address its sovereignty-based conflict is also examined.

Kosovo is only one of a few case studies that show a successful and comprehensive application of the earned sovereignty approach to tackling a sovereignty-based conflict.¹¹⁵ The Kosovars and Balkan Peninsula suffered from the regional conflict and violence perpetrated by Yugoslav President Slobodan Milosevic. Accordingly, NATO launched airstrikes on Kosovo on 24 March 1999.¹¹⁶ In the light of the failed negotiated settlements between all parties, the UN Security Council approved Resolution 1244 on 10 June 1999 proposing earned sovereignty as the basis for resolution of the problem.¹¹⁷ Soon afterwards the UN set up the framework for Kosovo in which the UN Mission in Kosovo (UNMIK) and

¹¹⁴ Williams and Pecci, op. cit., p. 356.

¹¹⁵ Williams, op. cit (Earned Sovereignty: The Future of Sovereignty-Based Conflict Resolution), pp. 137-138.

¹¹⁶ Ibid, p. 138.

¹¹⁷ International Peacekeeping, 'Security Council Resolution 1244 (1999) outlining the international presence in Kosovo, 10 June 1999', *International Peacekeeping*, Vol. 6, No. 4, 1999, pp. 237-242.

the Kosovar entity would exercise sovereignty and functions.¹¹⁸ Basically, Resolution 1244 adopted the fundamental elements offered by the earned sovereignty approach. Indeed, it commenced with the replacement of Yugoslav sovereignty and was followed by institution building together with the order to allow the people of Kosovo to make a final determination.¹¹⁹

However the way in which the UN exercised transfer of sovereign functions to Kosovar institutions remained slow.¹²⁰ In response to this, the UN Secretary-General designated Martti Ahtisaari, the former President of Finland, to address this issue by working closely with both Kosovo and Serbia representatives.¹²¹ He finally came up with the comprehensive proposal for the Kosovo status settlement focusing on the protection of minority populations and securing Kosovo's independence.¹²² Afterwards, Ahtisaari submitted his proposal to the UN Security Council in 2007. This comprised several requirements including a multi-ethnic democracy supported by constitutions, the protection of minority rights and participation, the construction of an impartial and professional justice system, the protection of refugee rights, economic development, and security.¹²³ Kosovo finally declared its independence on 17 February 2008. As soon as the declaration came into force, the UN administration greatly reduced its involvement.¹²⁴ Despite the fact that the UN had made a slow transfer of power and had a disorganized plan for the determination of final status, the Kosovo case has proven to be a successful application of earned sovereignty approach.

¹¹⁸ R. Lineham, 'The UN's new approach to post-conflict governance – implications for accountability', *Australasian Journal of Human Security*, Vol. 1, No. 3, 2005, p. 29.

¹¹⁹ *Ibid.*, pp. 29-30. See also Williams, *loc. cit.*

¹²⁰ *Ibid.* (Williams).

¹²¹ J. Daspremont, 'Regulating statehood: The Kosovo status settlement', *Leiden Journal of International Law*, Vol. 20, No. 3, p. 650.

¹²² *Ibid.* p. 651.

¹²³ Williams, *op. cit.* (Earned Sovereignty: The Future of Sovereignty-Based Conflict Resolution), p. 139.

¹²⁴ *Ibid.*

The case of East Timor is quite different to that of Kosovo due to the referendum carried out at the beginning.¹²⁵ In the light of the increasing amount of violence committed by the Indonesian military and paramilitary groups against the people of East Timor, the Indonesian government was forced by the international community to acknowledge the rights of the East Timorese to self-determination.¹²⁶ At the same time, the East Timorese also rejected the proposal of autonomy offered by Jakarta. Following this, the UN Security Council adopted Resolution 1272, which established the United Nations Administration in East Timor (UNTAET).¹²⁷ Subsequently, the resolution enabled the UN to share sovereignty with East Timor for a two and a half year period followed by the construction of institutions for the purpose of self-government.¹²⁸ In doing so, the UN officials had control over the Ministries of Internal Security, Justice, Political Affairs, Constitutional and Electoral Affairs and Finance, while the East Timorese took up positions in the Ministries of Internal Administration, Infrastructure, Economic Affairs, Foreign and Social Affairs.¹²⁹ After fulfilling several requirements for self-government, East Timor was admitted as a sovereign country and then acknowledged by the UN.¹³⁰

Whilst Kosovo and East Timor provide examples of shared sovereignty between the UN and the sub-state entity, South Sudan offers a different model in which the parent state exercises sovereignty with the sub-state entity. This country has experienced a bloody conflict between the majority Arab Muslim North and the majority Christian Black African South that has raged for more than 50 years, in which the South seeks secession.¹³¹ With the assistance of the international community, all parties finally entered into a number of peace

¹²⁵ Williams and Heymann, *op. cit.*, p. 440.

¹²⁶ Hooper and William, *op. cit.*, p. 363.

¹²⁷ Williams and Pecci, *op. cit.*, pp. 356-357.

¹²⁸ *Ibid*, p. 357.

¹²⁹ Hooper and William, *op. cit.*, p. 363.

¹³⁰ Williams and Pecci, *op. cit.*, p. 357.

¹³¹ Williams, *op. cit.* (Earned Sovereignty: The Future of Sovereignty-Based Conflict Resolution), p. 140.

settlements seeking construction of the Comprehensive Peace Agreements (CPA) in 2005.¹³² The CPA delivered a six-year interim period in which the South was enabled to increase its political economy and a few key border areas.¹³³ Notwithstanding the fact that the South was not immediately granted sovereign authority, the CPA allowed the Southerners to exercise self-government and take part in the central government situated in the North.¹³⁴ More importantly, the CPA opened up a window of opportunity for all parties including the North, the South, and the international community to conduct an assessment and evaluation of the type of independence implications for the parent state and the sub-state entities.¹³⁵ Eventually a referendum was held on 9 January 2011 in which the majority of South voted in favour of independence.¹³⁶ Since then, the people of South Sudan have enjoyed freedom but unfortunately faced a civil war in 2013 when President Salva Kiir Mayardit accused Vice-President Riek Machar of plotting a (failed) coup.¹³⁷

Lastly, Bougainville also provides a successful model of how the earned sovereignty approach has been proposed as a solution to a sovereign-based conflict. In doing so, it followed the pattern of South Sudan in which the parent state exercises sovereignty with the sub-state entity. In order to resolve the self-determination movement faced by Papua New Guinea (PNG), all parties were forced to enter into peace agreement known as the Bougainville Agreement, which was signed at Arawa in August 2001.¹³⁸ The agreement called for the establishment of autonomous interim preparations for Bougainville in which the two parties would share sovereign authority and functions over a defined territory.¹³⁹

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid, pp. 140-141.

¹³⁵ Ibid, p. 141.

¹³⁶ Ibid.

¹³⁷ BBC News, 'South Sudan country profile', *BBC News*, 2 August 2016, <<http://www.bbc.com/news/world-africa-14069082>> accessed 20 September 2016.

¹³⁸ William and Pecci, op. cit., p. 358.

¹³⁹ Ibid.

Accordingly, the agreement enabled Bougainville to assume control over certain powers, functions, personnel, and resources in accordance with the national constitution and enacted in a new Bougainville constitution.¹⁴⁰ However, Bougainville was forced to ensure the realisation of a weapons disposal plan and to achieve a specified rate of progress towards good governance over ten to 15 years in order to advance the transfer of sovereignty.¹⁴¹ Once Bougainville accomplishes the weapons disposal plan, it is expected to conduct a referendum on its future.¹⁴²

Why and How Earned Sovereignty Is Appealing

In the Papua Case

The West Papua conflict has been underway for many years. Thus far there are neither real solutions nor any intention initiated by the Indonesian Government or the international community to end this protracted conflict. This is because the Indonesian Government is unwilling to engage with Papuans in the peace process and does not welcome international intervention. A number of reports and media have actively released details of the way in which the Indonesian military has committed crimes in West Papua. One of these is the current report from the Human Rights Fact-Finding Mission to West Papua conducted by the Catholic Justice and Peace Commission of the Archdiocese of Brisbane on 1 May 2016. The report titled “We Will Lose Everything” provides a brief overview of past crimes perpetrated by the Indonesian military as well as current events in West Papua.¹⁴³ Therefore finding a better framework to resolve the conflict in West Papua is urgent, and earned

¹⁴⁰ J. Woodbury, ‘The Bougainville independence referendum: Assessing the risks and challenges before, during, and after the referendum’, *Indo-Pacific Strategic Papers*, January 2015, p. 3, <[http://www.defence.gov.au/ADC/Publications/IndoPac/Woodbury%20paper%20\(IPSD%20version\).pdf](http://www.defence.gov.au/ADC/Publications/IndoPac/Woodbury%20paper%20(IPSD%20version).pdf)> accessed 12 October 2016.

¹⁴¹ William and Pecci, loc. cit.

¹⁴² Ibid.

¹⁴³ The Catholic Justice and Peace Commission of the Archdiocese of Brisbane, ‘We Will Lose Everything: Human Rights Fact Finding Mission to West Papua’, 1 May 2016.

sovereignty looks like a good fit. The following reasons explain why and how earned sovereignty is appealing for West Papua.

Firstly, scholars have not yet applied the earned sovereignty approach, and neither have they proposed this approach to solving the Papuan conflict. For that reason, it would be interesting to discover the potential effectiveness of this approach. As previously discussed, earned sovereignty has proven successful in ending several sovereignty-based conflicts including Kosovo, East Timor, South Sudan, and Bougainville. Obviously, the Papua case is a sovereignty-based conflict that aims to secede from Indonesia. In this sense, the application of earned sovereignty would therefore be a good fit for the Papua case. However, it is of great importance to better understand the nature of the conflict in West Papua as it differs if compared to the examples given previously. Also, it is worth remembering that Papuans have suffered from human rights violations perpetrated by the Indonesian military since integration took place in the 1960s right through to the present.¹⁴⁴ Indeed, Martinkus observes that the Indonesian military killed about 100,000 Papuans in order to overcome any resistance.¹⁴⁵ For that reason, the sooner the earned sovereignty approach is proposed by the UN for the Papua case, the better this approach is likely to prove.

Secondly, many argue that as it is difficult to resolve the Papuan conflict, earned sovereignty could prove more effective in the matter. Charles Foster¹⁴⁶ has pointed out the Papua case is a forgotten conflict,¹⁴⁷ while some academics maintain that it is a hidden

¹⁴⁴ Budiardjo and Liong, op. cit., p. 78. See also D. Roden, 'West Papua: Reports detail genocide by Australian-backed occupiers', *Green Left Weekly*, 29 October 2013, <<https://www.greenleft.org.au/node/55243>> accessed 13 May 2016.

¹⁴⁵ J. Martinkus, *Paradise Betrayed: West Papua's struggle for independence*, Black Inc., Melbourne, 2002, pp. 1-2.

¹⁴⁶ Charles Foster is a spokesperson for International Lawyers for West Papua.

¹⁴⁷ New Internationalist Magazine, "West Papua: The Road to Freedom", *New Internationalist Magazine*, 4 August 2011, <<https://newint.org/features/web-exclusive/2011/08/04/west-papua-protests-independence/>> accessed 20 September 2016.

conflict, and a form of slow-motion genocide as the numbers of indigenous Papuans have significantly declined over the years.¹⁴⁸ On the one hand, the Indonesian government justifies its military approach as an act aimed at preserving its territorial integrity. Papuans, on the other hand, assert that Indonesia's dominance of West Papua is illegal by reason of the act of annexation and that therefore fighting for a return to independence will never end.¹⁴⁹ Given this situation, it is somehow difficult to bring all parties into negotiations as they each have different perspectives or ideology. Applying the earned sovereignty approach¹⁵⁰ will not only force all actors to enter into an agreement, but will also offer a valuable window of opportunity for Papuans to work with the international community and Indonesia to evaluate the implications of independence for the parent state and the sub-state entity. Moreover, it will also provide an opportunity to de-escalate the tensions, reconcile the difference perspectives, and enable the parties to trust one another on the road to peace.

Lastly, earned sovereignty is good for the Papua case due to the way in which it allows international intervention to come into play. This is really vital because the Indonesian government has demonstrated an unwillingness to address the Papuan conflict, and has even exacerbated the condition from time to time by continuing its military approach in Papua. Despite the fact that every single country should consider non-principle intervention, the involvement of outside actors is possible when a country fails to protect its people. Indeed, Bellamy maintains that a sovereign country should request and welcome international

¹⁴⁸ Indigenous Papuans have almost become a minority in their homeland today. This is mostly due to decades of transmigration. C. Webb-Gannon, 'Merdeka in West Papua: Peace, Justice, and Political Independence', *Anthropologica*, Vol. 56, No. 2, 2014, p. 354. See also A. Pemberton, 'West Papua: Uncovering the hidden conflict', *Green Left Weekly*, 28 November 2010, <<https://www.greenleft.org.au/node/46269>> accessed 2 April 2016.

¹⁴⁹ C. L. M. Penders, *The West New Guinea Debacle: Dutch Decolonization and Indonesia, 1945-1962*, Crawford House Publishing, Australia, 2002, p. 431.

¹⁵⁰ Persuading Indonesia to use earned sovereignty is discussed further in chapter 3.

assistance when it is incapable of protecting its citizens.¹⁵¹ Such assistance means a country should relinquish its sovereign responsibilities and consider itself as a member of the international community.¹⁵² In relation to earned sovereignty, it is worth remembering that this approach tends to be successful without the involvement of outside actors like the UN.

Conclusion

This chapter has argued that the application of earned sovereignty approach is absolutely crucial in order to resolve sovereignty-based conflicts. As previously discussed, one of the contributions this conflict has given the world is the creation of severe human rights violations resulting in the death of civilians. For that reason, this course of action should be taken to resolve this conflict as soon as possible. As some parts of the world have enjoyed peace and prosperity, it is certainly fair to do so in a region experiencing protracted sovereignty-based conflicts. To begin with, it is worthwhile to consider the nature and characteristic of a conflict before proposing the earned sovereignty approach. Such a consideration is vital to ensure a better outcome for the implementation. Applying this approach will not only end the protracted conflict and establish peace, but it will also guide the process of conflict resolution in a very peaceful way under international supervision.

The theoretical framework used is useful when it comes to examining the extent to which the Papua case can be resolved peacefully. Despite the fact that the Indonesian government may be unwilling to welcome the international community to take part in ending its internal conflict, the cosmopolitan public and international pressure have shown how powerful they are when it comes to weakening such a position. As a matter of fact, Jakarta acknowledged the rights of the East Timorese to conduct a referendum in 1999, and followed

¹⁵¹ A. J. Bellamy, 'The Responsibility to Protect and the Problem of Military Intervention', *International Affairs*, Vol. 84. No. 4, 2008, p. 619.

¹⁵² *Ibid.*

it by allowing the UN to exercise devolution of sovereignty and development of institution building. Moreover, the core and optional components of earned sovereignty are extremely fundamental as they attempt to lead the process step-by-step in accordance with the progress. This approach is also quite flexible as it allows the sub-state entity to ask for the making of a final determination at the beginning of the process. This can be seen in the case of East Timor in which the Timorese people conducted a referendum prior to the process, whereas Kosovo and South Sudan did so after shared sovereignty and institution building.

Finally, by looking at the application of earned sovereignty approach used in East Timor, Kosovo, and South Sudan, as well as proposing this approach in Bougainville, this chapter has examined the strengths and weaknesses of this approach. For example, although Kosovo obtained full sovereignty as soon as its independence was internationally recognised, it also demonstrated in some way the inability of the UN to make an effective transfer of sovereignty to Kosovar institutions. On the other hand, the earned sovereignty approach has also shown how successful it has been in ending the bloody conflict in South Sudan. This approach has not only imposed on all parties in conflict the need to work towards a peaceful agreement (CPA) but has also enabled the South to fully cooperate with the international community and the North to carry out an assessment of the impact of independence for the region, the parent state, and itself. Similarly, earned sovereignty has also established peace in PNG by allowing Bougainville the potential to achieve self-government and shared sovereignty with the parent state within a given time.

CHAPTER 2

The Nature of Conflict in West Papua and Alternative Solutions

Introduction

This chapter will recount a series of events that have taken place in West Papua over the last few decades. While the aim of this chapter is to outline the nature of the conflict in Papua, it is certainly not meant to examine the entirety of the events that have occurred there, but is intended as a means to a better understanding of the events. It is important to discern why the Papua case remains unresolved and contentious, and why the Papuan conflict differs from the others. This chapter will first detail the history of West Papua's incorporation into Indonesia, which is widely believed by academics to be the root of the conflict.¹⁵³ It commences with the profile of West Papua as Netherlands New Guinea and then reviews the New York Agreement as well as the act of self-determination, which President Suharto called the Act of Free Choice (Indonesian: *Penentuan Pendapat Rakyat* or PEPERA).¹⁵⁴ Next, this chapter will identify the sources of conflict in West Papua including the independence denied, the failure to harmonise Papuans and non-Papuans, the ongoing human rights violations, limited freedom of expression and the exploitation of Papuan natural resources. All of these concerns contribute to maintaining the chaotic situation in West Papua and are the kind of conditions that will keep the struggle for independence alive in the years to come.¹⁵⁵

¹⁵³ T. V. D. Broek., 'A Peace Mission: The Church response to conflict the West Papua case', in J. B. Hernawan (ed), *Papua Land of Peace: Addressing Conflict Building Peace in West Papua*, Office for Justice and Peace Catholic Diocese of Jayapura, West Papua, 2005, p. 62.

¹⁵⁴ T. V. D. Broek and A. Szalay, 'Raising the Morning Star: Six Months in the Developing Independence Movement in West Papua', *The Journal of Pacific History*, Vol. 36, No. 1, 2001, p. 77. See also G. Wuryandari, 'Human Rights in Australian Foreign Policy, with specific reference to East Timor and Papua', *Thesis submitted for the Degree of Doctor of Philosophy in Asian Studies, School of Social and Cultural Studies, The University of Western Australia*, 2006, p. 179.

¹⁵⁵ Greenleft, 'West Papua: Thousands March for Freedom', *Greenleft Weekly*, 15 May 2011, <<https://www.greenleft.org.au/content/west-papua-thousands-march-freedom>> accessed 20 September 2016. See also New Internationalist Magazine, 'West Papua: The road to Freedom', *New Internationalist Magazine*, 4

This chapter will also examine the alternative solutions that have been underway thus far in order to address the Papua case, and why such solutions are considered ineffective. First, a dialogue has been proposed by the Indonesian Institute of Science (Indonesian: *Lembaga Ilmu Pengetahuan Indonesia* or LIPI), which is the government authority for science and research in Indonesia. Although the central government has not yet responded, the Institute still highly recommends dialogue in the Papua case. Special autonomy has also been offered by the Indonesian government to not only undermine the willingness of Papuans calling for independence, but also to improve the quality of life and reduce the escalation of conflict in the province. Finally, there is the welfare approach. Initiated by former President Yudhoyono, this approach is more appealing and eye-catching under the current government of President Joko Widodo (Jokowi).

West Papua Profile, the New York Agreement, And the Act of Free Choice

West Papua has a long history of colonisation, which cannot be explored in detail here, as I will focus only on certain critical events. In particular, it is worth remembering that West Papua's incorporation into Indonesia differs from that of East Timor as well as from that of every other region in Indonesia.¹⁵⁶ Therefore, examining the integration process is absolutely crucial. Here, the problematic nature of the Act of Free Choice along with the New York Agreement will be scrutinised. Many academics and Papuans consider it to be the 'Act of No Choice'. This Act, initiated by the United States through the New York Agreement, is

August 2011, <<https://newint.org/features/web-exclusive/2011/08/04/west-papua-protests-independence/>> accessed 20 September 2016.

¹⁵⁶ Although many regions in Indonesia have been part of Indonesia since the declaration of independence in 1945, West Papua became part of Indonesia in 1969. East Timor was annexed by Indonesia in 1975 but the UN did not remove it from the decolonization list; meanwhile the UN removed West Papua from the decolonization list. See The West Papuan Community, "*West Papua*", a scandal in U.N. decolonization history: *The political status of West Papua as a recolonized territory in the U.N. international decade for the eradication of 'colonialism' by 2000*", WestPAC, Jakarta-Indonesia, 1999, p. 35.

a cornerstone in any understanding as to why Papuans are consistently demanding independence.

West Papua (Netherlands New Guinea)

The island of New Guinea is positioned to the north of Australia. This region has been settled by indigenous Papuans for thousands of years.¹⁵⁷ They identify themselves as Melanesians who are ethnically and culturally distinct from Asian ethnicities in appearance and from other Indonesians in particular.¹⁵⁸ In the 19th century, the island of New Guinea was divided by the colonial powers as a consequence of the colonisation period. The eastern part of New Guinea was colonised by the United Kingdom (British Papua) and Germany (German New Guinea).¹⁵⁹ Post-World War I, these two colonies were incorporated into a single League of Nations mandate administered by Australia.¹⁶⁰ In 1975, this territory gained independence and became a sovereign country known as Papua New Guinea (PNG).

Meanwhile the Dutch also gained control over the western part of New Guinea in the 19th century and went in to form a colonial administration,¹⁶¹ naming the territory Netherlands New Guinea. It was then made part of the Netherlands East Indies. Unlike PNG, the Netherlands New Guinea (West Papua) encountered a difficult situation at the time when

¹⁵⁷ M. Janki, 'West Papua and the Right to Self-Determination under International Law', *West Indian Law Journal*, Vol. 34, No. 1, 2010, p. 1. See also K. McKenna, 'Corporate security practices and human rights in West Papua', *Conflict and Security Development*, Vol. 15, No. 4, 2015, p. 6.

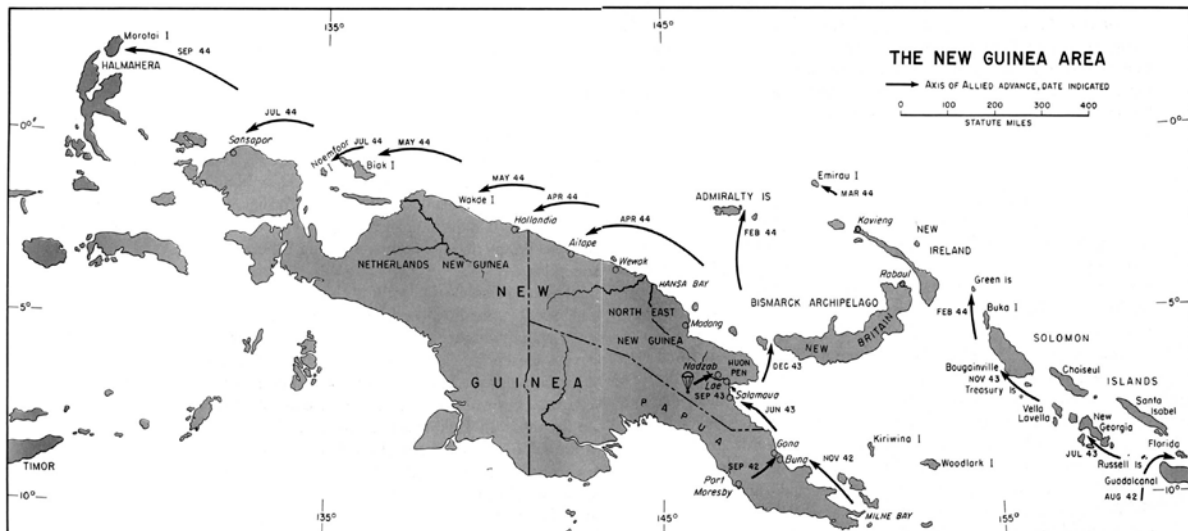
¹⁵⁸ The Melanesian nations consist of four countries: Papua New Guinea (PNG), Solomon Islands, Fiji, and Vanuatu. However there are also islands or a group of islands that are considered part of Melanesia: Maluku Islands, New Caledonia, New Guinea (West Papua and PNG), and the Torres Strait Islands. S. Lawson, 'Melanesia: The History and Politics of an Idea', *The Journal of Pacific History*, Vol. 48, No. 1, 2013, p. 4. See also New World Encyclopaedia, 'Melanesia', *New World Encyclopaedia (website)*, <<http://www.newworldencyclopedia.org/entry/Melanesia>> accessed 19 September 2016.

¹⁵⁹ Janki, op. cit., p. 1.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

it came to determining its future due to annexation by Indonesia and the entry of that country's military.¹⁶²



Map 1: Netherlands New Guinea (Irian Jaya/West Papua),
Source: <<http://www.vanderheijden.org/ng/maps/>> accessed 12 October 2016.

In 1949, an armed rebellion took place in parts of the Netherlands East Indies. As a consequence, a Round Table Conference was conducted in order to exercise Indonesian independence.¹⁶³ The conference produced the “Charter for the Transfer of Sovereignty”¹⁶⁴ in which the Netherlands agreed to give freedom to the regions consisting of the Netherlands East Indies, but excluding Netherlands New Guinea.¹⁶⁵ In December 1949, the Netherlands exercised a transfer of sovereignty to the Federal Republic of the United States of Indonesia. Soon afterwards, President Sukarno changed the name to the Unitary Republic of Indonesia

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Round Table Conference results as accepted in the 2nd plenary meeting held on 2 November 1949 in the “Ridderzaal” at The Hague (Draft Charter of Transfer of Sovereignty – page 13), <<http://oppb.org/wp-content/uploads/2015/11/KMB.pdf>> accessed 19 September 2016. See also I. A. A. G. Agung, *From the Formation of the state of East Indonesia towards the establishment of the United States of Indonesia*, Yayasan Obor Indonesia, Jakarta, 1996, p. 573.

¹⁶⁵ P. H. Kratoska, *South East Asia: Colonial History: Independence through revolutionary war*, Routledge, London, 2001, p. 32.

when Indonesia joined the UN in September 1950.¹⁶⁶ Meanwhile, the Netherlands New Guinea (West Papua) still remained under Dutch control. At the time, Indonesia's first Vice President, Mohammad Hatta, stated, "Papuan are Melanesian (not Asians), and have the right to be an independent people".¹⁶⁷ Owing to this, Netherlands New Guinea should therefore be excluded from Indonesia.¹⁶⁸ In April 1961, the Netherlands inaugurated the West New Guinea Council, which then adopted a national anthem and a national flag (the Morning Star) on 1 December 1961.¹⁶⁹ At the time, the Council also asserted that all countries acknowledge the right of Papuans to self-determination and to become a sovereign state.¹⁷⁰ However, President Sukarno responded to this differently, saying that "liberation" was required to relinquish West New Guinea from Dutch rule.¹⁷¹ He then delivered his famous *Trikora* order (English: three commands of the people) of the 19 December 1961.¹⁷² Consequently, a fight between Indonesia and the Netherlands erupted. However, in October 1962 the U.S. brokered an agreement known as the New York Agreement to settle the conflict.¹⁷³

West Papua under the New York Agreement (1962-1969)

The New York Agreement is a UN Treaty Series (a peace settlement) initiated by the U.S. in order to resolve the conflict between Indonesia and the Dutch over Netherlands New

¹⁶⁶ Janki, loc. cit..

¹⁶⁷ R. Chauvel and I. N. Bhakti, *The Papua Conflict: Jakarta's Perceptions and Policies*, the East-West Center Washington, Washington DC, 2004, p. 6.

¹⁶⁸ Ibid. See also the United Nations, 'West New Guinea – United Nations Security Force (UNSF): Background', *The United Nations (website)*, <<http://www.un.org/en/peacekeeping/missions/past/unsfbackgr.html>> accessed 27 June 2016.

¹⁶⁹ Janki, op. cit., pp. 1-2.

¹⁷⁰ Ibid., p. 2.

¹⁷¹ Ibid.

¹⁷² *Trikora* command called on the Indonesian people to: 1) prevent the Dutch from creating a Dutch puppet state in West Papua; 2) fly the red and white flag (Indonesian flag) in Papua; 3) defend Indonesia's independence and to free West Papua from the Netherlands. See E. Heidbuchel, *the West Papua Conflict in Indonesia: Actors, Issues, and Approaches*, Johannes Hermann and J&J-Verlag (Germany), 2007, p. 38.

¹⁷³ Ibid.

Guinea in the early 1900s.¹⁷⁴ The agreement was signed by Subandrio, on behalf of the Republic of Indonesia and J. H. van Roijen and C. Schurmann for the Kingdom of the Netherlands, at UN Headquarters in New York on 15 August 1962.¹⁷⁵ Under the treaty, the Netherlands was to transfer the administration of Netherlands New Guinea (West Papua) to a United Nations Temporary Executive Authority (UNTEA), giving it full authority as well as to take responsibility for its administration after 1 October 1962.¹⁷⁶ Subsequently, UNTEA would then hand over the administration to Indonesia on 1 May 1963, after which the Indonesian government was then responsible for preparing Papuans to exercise self-determination before 1969.¹⁷⁷ Article II of the New York Agreement stated:

After the adoption of the resolution referred to in article I, the Netherlands will transfer administration of the territory to a United Nations Temporary Executive Authority (UNTEA) established by and under the jurisdiction of the Secretary-General upon the arrival of the United Nations Administrator appointed in accordance with article IV. The UNTEA will in turn transfer the administration to Indonesia in accordance with article XII.¹⁷⁸

Article XVIII further stated:

Indonesia will make arrangements, with the assistance and participation of the United Nations Representative and his staff, to give the people of the territory the opportunity to exercise freedom of choice.¹⁷⁹

In pursuing Indonesia's interest over West Papua (integration), the Indonesian military was found to have treated Papuans badly. According to Budiardjo and Liong, following the transfer of administration in May 1963, the army started to commit crimes that resulted in the deaths of Papuans.¹⁸⁰ Likewise, Eliezer Bonay,¹⁸¹ in his testimony given in 1981 to 'The

¹⁷⁴ P. Drooglever, *An Act of Free Choice: Decolonization and the Right to Self-Determination in West Papua*, Oneworld, Oxford, 2009, p. 512.

¹⁷⁵ See Appendix (United Nations Treaty Series 1962, 1-6311) in Drooglever, p. 771.

¹⁷⁶ C. Budiardjo and L. S. Liong, *West Papua: The Obliteration of a People*, TAPOL, UK, 1988, p. 11.

¹⁷⁷ *Ibid.*

¹⁷⁸ See Appendix (United Nations Treaty Series 1962, 1-6311), Drooglever, *op. cit.*, p. 766.

¹⁷⁹ *Ibid.*, p. 769.

¹⁸⁰ Budiardjo and Liong, *op. cit.*, p. 77.

¹⁸¹ Eliezer Bonay went to prison about two years after his dismissal as Indonesia's first governor of West Papua. He delivered his testimony in PNG and gave an interview to TAPOL in September 1981. *Ibid.*, p. 78.

Tribunal on Human Rights in West Papua' that took place in PNG, estimated that 30,000 Papuans had been killed by the Indonesian military in the period from 1963 to 1969, prior to the Act of Free Choice.¹⁸² As a consequence, many Papuans fled to other countries including PNG, the Netherlands, Australia, Senegal, Sweden, and Vanuatu. By 1979 there were around 10,000 people in PNG claiming to be refugees from West Papua.¹⁸³

The Act of Free Choice (14 July to 2 August 1969)

In preparation for the Act of Free Choice, Indonesia was expected to implement the Act in accordance with international practice (one man, one vote) as in many other nations. Indeed, Article XVIII (d) of the New York Agreement stated that, "The eligibility of all adults, male and female, not foreign nationals, to participate in the act of self-determination to be carried out in accordance with international practice..."¹⁸⁴ However, the Indonesian officials ignored 'international practice'.¹⁸⁵ They maintained that the New York Agreement did not specifically set down the procedure and method to be used for the Act, nor did the agreement demand the implementation of one man, one vote.¹⁸⁶ Owing to this, in the framework of the bilateral meeting between Indonesia and the Netherlands conducted in Rome from 20 to 21 May 1969, the Indonesian Foreign Minister Adam Malik proposed the Indonesian system of deliberation which he considered as the best practice for the Act of Free Choice.¹⁸⁷ According to John Saltford, the Indonesian method for reaching consensus (referred to as 'deliberation'), known as *musyawarah* (Indonesian), enabled the senior

¹⁸² S. Lawson, 'West Papua, Indonesia and the Melanesian Spearhead Group: competing logics in regional and international politics', *Australian Journal of International Affairs*, 2016, p. 5.

¹⁸³ Tapol (Organisation), *West Papua: The Obliteration of a People*, London: Tapol, 1983, p. 84.

¹⁸⁴ See Appendix (United Nations Treaty Series 1962, 1-6311), Drooglever, op. cit., p. 770.

¹⁸⁵ Tapol (Organisation), op. cit., p. 30.

¹⁸⁶ T. E. Mulyani, 'The History of the Restoration of Irian Jaya Into the Republic of Indonesia' in N. H. Wirajuda, *Hubungan Internasional: Percikan pemikiran diplomat Indonesia*, PT Gramedia Pustaka Utama, Jakarta, 2004, p. 21. (Irian Jaya refers to West Papua)

¹⁸⁷ Ibid., p. 24.

Indonesian officials to ‘manage’ the Act and pressure Papuans to vote for Indonesia.¹⁸⁸ Likewise, Musgrave considered that *musyawarah* apparently allowed Indonesia to have a consultative process with the eight regional councils of West Papua. The use of *musyawarah* was considered appropriate by Indonesia as it perceived West Papua to be “one of the most primitive and undeveloped communities in the world” and therefore why the Western democratic procedures were unsuitable for West Papua.¹⁸⁹

Although there was a change in the way in which the Act was implemented, it was eventually exercised by the Indonesian government through *musyawarah*.¹⁹⁰ As a matter of fact, only 1,025 Papuans representing a population of 8,000,000 indigenous Papuans were handpicked by the Indonesian authority to participate in the Act.¹⁹¹ The result showed that they all voted 100% in favour of joining Indonesia. In response, most Papuans called this event an “Act of No Choice”.¹⁹² In the sense of the Indonesian system of *musyawarah*, Papuans believed it was utterly unfair as the practice allowed the idea of consultation to reach consensus, and therefore it should not be used to test a nation’s opinion.¹⁹³ Reporting on this, Ortiz Sanz (the UN representative) said, “I could suggest no other method for this delicate political exercise than the democratic, orthodox and universally accepted method of ‘one man, one vote’”.¹⁹⁴ By the same token, Papuans also expressed their disagreement in response to the result, saying the Act was delusional and violated their rights to self-

¹⁸⁸ J. Saltford, *The United Nations and The Indonesian Government Takeover of West Papua, 1962-1969: The Anatomy of Betrayal*, RoutledgeCurzon, London, 2003, p. 160.

¹⁸⁹ T. D. Musgrave, ‘An analysis of the 1969 Act of Free Choice in West Papua’, in C. Chinkin and F. Beatens, *Sovereignty, Statehood and State Responsibility*, Cambridge University Press, the UK, 2015, p. 220.

¹⁹⁰ *Ibid.*

¹⁹¹ K. Suter, ‘Independence for West Papua’, *Bulletin of the Atomic Scientists*, Vol. 57, No. 3, 2001, p. 16.

¹⁹² *Ibid.*, pp. 16-17.

¹⁹³ Tapol (Organisation), *op. cit.*, pp. 29-30.

¹⁹⁴ *Ibid.*, p. 30.

determination.¹⁹⁵ Having said that, the integration obviously occurred, and, from then onwards, Papuans began to fight to regain independence.

The Sources of Papuan Conflict

Although West Papua has remained part of Indonesia for many decades, the people of Papua continue to assert their independence. In May 2016, a series of peaceful demonstrations took place in eight different locations in Indonesia demanding independence and supporting full membership of an overseas movement known as the United Liberation Movement for West Papua (ULMWP) in the Melanesia Spearhead Group.¹⁹⁶ In this context, it can be said that the complexity of the Papua case and the unwillingness of the Indonesian government to take prompt action may have contributed to the chaotic situations there. Accordingly, it is fundamental to look at the factors that have created the prolonged conflict in Papua. The explanations below are intended to outline the sources of the Papuan conflict from the integration process through to the current situation.

First and foremost, the independence denied and the violations of Papuans' rights to the Act of Free Choice represent the main reasons why they continue to fight the Indonesians. According to the Papuan perspective, they were granted independence by the Netherlands on 1 December 1961.¹⁹⁷ The independence is considered as making sense as Papuans share

¹⁹⁵ Janki, op. cit., p. 2

¹⁹⁶ This movement is organised by Papuans living overseas. In 2015, the movement was granted status as an observer in the Melanesian Spearhead Group (MSG) - an intergovernmental organization whose members comprise Fiji, Papua, New Guinea, Solomon Island, Vanuatu and New Caledonia's independence movement FLNKS. See L. Fox, 'West Papuans given Melanesia, but not full membership', *ABC News (website)*, 27 June 2015, <<http://www.abc.net.au/news/2015-06-27/west-papuans-given-melanesia-bloc-access/6577722>> accessed 1 July 2016.

¹⁹⁷ D. Webster, 'Already sovereign as a people: A foundational moment in West Papuan nationalism', *Pacific Affairs*, Vol. 74, No. 4, 2001, p. 507. The Morning Star flag, was raised on 1 December 1961 in Hollandia City (Now: Jayapura City – the Capital City of West Papua), along with the anthem called, 'Oh My Land of Papua (Indonesian: *Hai Tanahku Papua*), composed by IS Kijne in 1923, a Dutch educator and missionary. See J. Macleod, *Merdeka and the Morning Star: Civil Resistance in West Papua*, University of Queensland Press, Australia, 2015, p. 51. See also Drooglever, op. cit., pp. 556-557.

neither culture nor history with Indonesians.¹⁹⁸ However, Indonesia views this in a different way. According to Indonesian officials, West Papua had to remain part of Indonesia as part of the claim that all Netherlands East Indies territories belong to Indonesia.¹⁹⁹ Despite the discrepancy, and as previously discussed, Indonesia successfully took control of the administration of West Papua. This led to the emergence of an armed guerrilla group calling themselves the Free Papua Movement (Indonesian: *Organisasi Papua Merdeka* or OPM) and representing a 'Papuan identity' to fight for the return of independence.²⁰⁰ In 1965, this organisation attacked the Indonesian security forces. The military responded by killing around 30,000 Papuans between 1965 and 1969.²⁰¹ Even after integration in 1969, the army still continued to launch attacks on Papuans in order to undermine the resistance movement. In fact Indonesia went on to declare West Papua a 'Military Operation Zone' in 1998²⁰² and continued to carry out a range of operations that included 'operation clean sweep', arrests, detentions, disappearances and executions of Papuans.²⁰³

Secondly, the Indonesian government seems to have demonstrated an inability to promote a sense of harmony between indigenous Papuans and non-Papuans. A case in point is the transmigration programme based on a presidential instruction in 1977.²⁰⁴ This programme promotes the movement of large number of poor families from other islands in

¹⁹⁸ MacLeod, op. cit., p. 50.

¹⁹⁹ R. Day, 'West Papua and the Australia-Indonesia Relationship: A case study in diplomatic difficulty', *Australian Journal of International Affairs*, 2015, p. 8.

²⁰⁰ McKenna, op. cit., p. 9. See also S. E. Kirksey and J. A. D. Roemajauw, 'The Wild Terrorist Gang: The semantics of violence and self-determination in West Papua', *Oxford Development Studies*, Vol. 30, No. 2, 2002, pp. 191-192.

²⁰¹ . McKenna, loc. cit.

²⁰² C. Scott and N. Tebay, 'The West Papua conflict and its consequences for the Island of New Guinea: Root causes and the campaign for Papua, land of peace', *The Round Table*, Vol. 94, No. 382, 2005, p. 602.

²⁰³ Tapol (Organisation), op. cit., pp. 74-77.

²⁰⁴ C. Fernandes, *Reluctant Indonesians: Australia, Indonesia, and the future of West Papua*, Carlton North, Victoria, Australia, 2006, p. 71.

Indonesia to Papua²⁰⁵ and has apparently led to clashes and conflicts between Papuans and migrants. Indeed, in 2000 indigenous Papuans became angry about the huge amounts of arable land given by the government to transmigrants (2.15 hectares per family head – over 160,000 hectares of arable land in total).²⁰⁶ They argued that this not only reduced the size of the harvested area of sweet potatoes (the staple food of Papuans), but also led to a decline in the income they obtained from traditional hunting activities.²⁰⁷ Human Rights Watch (HRW) also reported that this programme has not only made considerable changes in the demographic composition of the population in Papua, but has also enabled non-Papuans to dominate the government bureaucracy and job access.²⁰⁸ Consequently indigenous Papuans have felt marginalised in their homeland. Another recent example related to this disharmony is the large-scale demonstration carried out by non-Papuan transmigrants that took place in 2016, in Jayapura, the capital city of Papua.²⁰⁹ Protestors called for Indonesia to maintain its sovereignty over West Papua and not to acknowledge the Papuan declaration of independence of 1 December 1961.²¹⁰ They also requested the Indonesian government arrest Papuan freedom fighters living overseas such as Benny Wenda.²¹¹ Clearly, this issue implies a widening of the gap between Papuans and non-Papuans, and could lead to a greater conflict in the near future.

²⁰⁵ Human Rights Watch, Out of sight: Endemic abuse and impunity in Papua's central highlands, *Human Rights Watch Report*, Vol. 19, No. 10 (C), 2007, p. 12.

²⁰⁶ Fernandes, loc. cit.

²⁰⁷ Ibid.

²⁰⁸ Human Rights Watch, loc. cit.

²⁰⁹ Radio New Zealand, Anti-independence rally in West Papua', *Radio New Zealand*, 6 June 2016, <<http://www.radionz.co.nz/international/pacific-news/305726/anti-independence-rally-in-west-papua>> accessed 3 July 2016. The writer uses this qualifier to show the response of indigenous Papuans and non-Papuans in terms of their political perspectives.

²¹⁰ Tempo. co, 'Demo dukung NKRI di Papua, pasar dan swalayan sempat tutup' (English: Demonstration to support Indonesia's sovereignty over West Papua, markets and supermarkets closed), *Tempo. co (website)*, 2 June 2016, <<https://m.tempo.co/read/news/2016/06/02/078776214/demo-dukung-nkri-di-papua-pasar-dan-swalayan-sempat-tutup>> accessed 3 July 2016.

²¹¹ Ibid.

Thirdly, there have been massive human rights violations underway carried out by the Indonesian security forces in West Papua. This chapter highlights three of the many human rights abuses, the Biak Massacre, the assassination of Theys Hiyo Eluay, and the Paniai shootings. On 6 July 1998, the people of Byaki in the northern part of Papua organised a peaceful demonstration and raised the flag of West Papua.²¹² The Indonesian military then responded by firing shots into the crowd resulting in the deaths of 150 people; others including woman and children, were arrested and raped. Thus far no proper investigation has been launched to bring the perpetrators to court.²¹³ Similarly, there has been no follow up in the case of Theys Eluay, the leader of the Papua Presidium Council of the Papuan Congress in 2000, who was murdered by Indonesian Special Forces Command (*Kopassus*) on 10 November 2001 on his way home,²¹⁴ even though many parties condemned his killing including Human Rights Watch and urged the Indonesian government to fully investigate the case.²¹⁵ Likewise, on 8 December 2014, the Indonesian military opened fire on around 800 peaceful demonstrators, including woman and children, in Paniai district. According to Human Rights Watch reports, five Papuan youths died at the time and 17 others were wounded.²¹⁶ Although there has been an attempt to investigate this tragedy, to date, the perpetrators still enjoy impunity. All three cases illustrate how the Indonesian military treats Papuans and how the system of impunity works in Indonesia.

²¹² M. Peacock, 'West Papua massacre: University of Sydney citizen's tribunal call for Indonesia to investigate Biak slaughter', *ABC News (website)*, 17 December 2013, <<http://www.abc.net.au/news/2013-12-16/citizen-tribunal-calls-for-investigation-into-biak-massacre/5160134>> accessed 3 July 2016.

²¹³ J. Elmslie, 'The Biak Massacre Citizen's Tribunal: evidence brief and tribunal verdict', *West Papua Project Centre of Peace and Conflict Studies University of Sydney*, 2014, p. 7. <http://sydney.edu.au/arts/peace_conflict/docs/Biak_Tribunal_Brief_four.pdf> accessed 4 July 2016.

²¹⁴ D. Kingsbury, *Power politics and the Indonesian military*, RoutledgeCurzon, London; New York, 2003, p. 104.

²¹⁵ Human Rights Watch, 'Indonesia: Investigate Death of Papuan Leader', *Human Rights Watch (website)*, 11 November 2001, <<https://www.hrw.org/news/2001/11/11/indonesia-investigate-death-papuan-leader>> accessed 4 July 2016.

²¹⁶ Human Rights Watch, 'Indonesia: Security forces kill five in Papua', *Human Rights Watch (website)*, 10 December 2014, <<https://www.hrw.org/news/2014/12/10/indonesia-security-forces-kill-five-papua>> accessed 4 July 2016. See also Jakarta Globe, 'Jokowi breaks silence on killings in Paniai, pledges to resolve shootings', *Jakarta Globe (website)*, 28 December 2014, <<http://jakartaglobe.beritasatu.com/news/joko-breaks-silence-security-force-killings-paniai/>> accessed 4 July 2016.

Fourthly, the Indonesian government continues to disregard Papuan cultural development and offers limited freedom of expression. There have been considerable concerns that the creation of culture in Papua is linked to the struggle for independence.²¹⁷ In the 1980s, Arnold Ap, a West Papuan leader, anthropologist, and musician, attempted to revive Papuan cultures, including traditional tunes and songs, but was killed by *Kopassus* forces following his arrest for suspected production of art related to the resistance movement.²¹⁸

Over the years Papuans have also not enjoyed freedom of expression in their motherland. In 2015 Amnesty International recommended President Widodo take action to stop the attacks conducted by Indonesian security forces in Papua on the freedom of expression of political activists and foreign journalists.²¹⁹ There is the expectation that the Indonesian government should respect the right to freedom of expression, including the call for independence, as indicated by Indonesia's constitution and the International Covenant on Civil and Political Rights that it has ratified.²²⁰ Even so, such respect is non-existent on the ground.²²¹ For example, on 15 June 2016 the National Committee for West Papua (KNPB) organised a peaceful demonstration to reject the human rights investigation team formed by

²¹⁷ M. S. Widjojo et al., *Papua Road Map: Negotiating the past, improving the present, and securing the future*, LIPI, Yayasan Tifa, and Yayasan Pustaka Obor Indonesia, Jakarta, 2010, p. 56.

²¹⁸ *Ibid.*, p. 16.

²¹⁹ Amnesty International Australia, 'Indonesia: End attacks on freedom of expression in Papua', *Amnesty International Australia (website)*, 8 May 2015, <<http://www.amnesty.org.au/news/comments/37148/>> accessed 4 July 2016.

²²⁰ Amnesty International Australia, 'Indonesia must end attacks on freedom of expression in Papua', *Amnesty International Australia (website)*, 30 August 2014, <<http://www.amnesty.org.au/news/comments/35426/>> accessed 4 July 2016.

²²¹ A situation that indicates that it has been common for Indonesia to ignore its human rights commitments across the entirety of its political life. In this regard, West Papua is not an isolated case.

Indonesia. By way of response, over 1,000 of its members were later arrested by Indonesian national police.²²²

Finally, one of the biggest companies in West Papua, PT Freeport Indonesia, owned by Freeport-McMoRan of the U.S., also played a pivotal role in provoking conflict. While it is true that the island of Papua is immensely rich in natural resources,²²³ Papuans seem not to be able to enjoy the wealth of their country and it remains one of the poorest regions in Indonesia.²²⁴ The presence of this mining company has been contentious right from the time it arrived in Papua.²²⁵ In 1967 the governments of Indonesia and the U.S. signed a contract endorsing the exploration activities of the mining company.²²⁶ Many people questioned the deal as the contract was signed two years before the Act of Free Choice in 1969. Put differently, the Indonesian government was not supposed to enter into the contract because Papua had not yet been integrated into Indonesia in 1967 (it was still a disputed territory).²²⁷ In addition, in 1966, riots were taking place around the location of Freeport's mining operations. Many Papuans believe that the riots were sparked by the Indonesian military, but were then blamed on the Free Papua Movement (OPM).²²⁸ According to McKenna, the actions were apparently driven by the willingness of the military to have more external

²²² Radio New Zealand, 'West Papuan activists claim more big arrest numbers', *Radio New Zealand*, 20 June 2016, <<http://www.radionz.co.nz/international/pacific-news/306866/west-papuan-activists-claim-more-big-arrest-numbers>> accessed 5 July 2016.

²²³ West Papua is extremely rich in natural resources including oil and gas, gold, fisheries, land for palm oil farming. It is also home to several large companies including PT Freeport (U.S.) and British Petroleum.

²²⁴ Tempo. co, 'Papua remains Indonesia's poorest region', *Tempo. co (website)*, 14 August 2012, <<http://en.tempo.co/read/news/2012/08/14/055423519/Papua-Remains-Indonesias-Poorest-Region>> accessed 5 July 2016. See also L. E. Visser, 'Remaining poor on natural riches? The fallacy of community development in Irian Jaya/Papua', *The Asia Pacific Journal of Anthropology*, Vol. 2, No. 2, 2001, p. 84.

²²⁵ D. Robie, 'Conflict reporting in the South Pacific: A critical reflexive approach to Timor-Leste and West Papua', *Media Asia*, Vol. 40, No. 2, 2013, p. 155.

²²⁶ W. Peter, *Arbitration and renegotiation of international investment agreements: A study with particular reference to means of conflict avoidance under natural resources investment agreements*, The Hague; Boston: Kluwer Law International, 1995, p. 67.

²²⁷ Widjojo, op. cit., p. 26. See also J. Kyriakakis, 'Freeport in West Papua: Bringing corporations to account for international human rights abuses under Australian criminal and tort law', *Monash university Law Review*, Vol. 31, No. 1, 2005, p. 97.

²²⁸ K. McKenna, op. cit., p. 12.

funding. By doing that and making the OPM a scapegoat, the military was not only able to justify its actions, but was also able to ensure the future of their well-paid contracts in the years to come.²²⁹ This seems to imply that the Indonesian military is also maintaining the conflict in Papua. Therefore, effective solutions need to be considered in order to solve the Papua case.

Alternative Solutions to the Papuan Conflict And Their Weaknesses

After the East Timor and Aceh conflicts, West Papua remains the region that is still unresolved by the Indonesian government. While the East Timorese participated in a referendum and the Acehnese engaged in a dialogue, the people of West Papua have had no such opportunity. It is undeniable that the Papua case has grown significantly over time, forcing Indonesian policy-makers to take action. For the Indonesians, there appear to be three principle alternative solutions: special autonomy, dialogue, and a welfare approach. These are discussed below.

Special Autonomy

In 1999, a group consisting of the leaders from West Papua called 'Team 100' took up the invitation to visit President B.J. Habibie for a special meeting (The Jakarta Informal Meetings).²³⁰ The aim of that meeting was to discuss the injustice experienced by Papuans and to achieve a peaceful resolution to the Papua case. Prior to the talks, the Papuan representatives had agreed to narrow the conversation to the matter of development in Papua.²³¹ However it seems that several of the Papuan participants had earlier obtained information that certain members of the U.S. Congress had conveyed a message to President

²²⁹ Ibid.

²³⁰ MacLeod, op. cit., p. 126.

²³¹ Ibid.

Habibie requesting him to hold dialogues to end the Papuan and East Timor conflicts at the same time. For that reason, many of them altered their intentions regarding the outcome of the meeting. Instead of a call for development matters, they espoused independence.²³² Indeed, Tom Beanal, the leader of Team 100, stated during the meeting that, ‘the Nation of Papua wishes to secede from the Unitary Republic of Indonesia for independence and to have complete sovereignty’.²³³ In response, President Habibie strongly encouraged them to reconsider their plea to secede from Indonesia and promised to offer an answer.²³⁴ Seven months later, President Habibie ratified Law No 45 of 1999 concerning the partitioning of Papua into two new provinces.²³⁵ In 2001, the administration of President Megawati followed this up with the offer of a special autonomy status for both Papua and Aceh.²³⁶ In this sense, it could be said that while the Papuans were essentially asking for freedom, the central government’s answer and decision was different: they were only willing to grant special autonomy.

Despite this, it seems that even the prospect of special autonomy could not change the stance of Papuans when it came to calling for independence, nor did it settle the conflict or ensure the well-being of Papuans. Many academics maintain that special autonomy only works in Aceh, and not in West Papua due to the difference in the role of the security forces.²³⁷ Indeed, while significant progress occurred in Aceh, this did not happen in Papua.

²³² Ibid.

²³³ Widjojo, op. cit., p. 130.

²³⁴ MacLeod, loc. cit.

²³⁵ Along with the partitioning of West Papua into two new provinces: Central Irian Jaya and West Irian Jaya (Irian Jaya refers to West Papua), new regencies were also established: Paniai, Mimika, and Jayapura. See Widjojo, op. cit., p. 92.

²³⁶ E. McWilliams, ‘Hope dashed: Special autonomy in West Papua’, *Arena Magazine*, 2008, p. 8. See also M. Y. Halmin, ‘The implementation of special autonomy in West Papua: Indonesia: problems and recommendations’, *Thesis submitted for the Degree of Master of Arts in National Security Affairs*, Naval Postgraduate School, California, 2006, p. 28.

²³⁷ One of the many differences between Aceh and Papua in the implementation of the special autonomy relates to the role of the military. While special autonomy gives power to the local police in Aceh to establish the peace, this does not work in Papua as the national security forces come from outside Papua and thus exacerbates

The LIPI team observed that, based on statistics from the Central Bureau Statistics (BPS), the rates of economic growth prior to the introduction of special autonomy in 1995, 1996, 1997, and 1998 reached 20.18%, 13.87%, 7.42%, and 12.72% respectively; while after implementation in 2002, 2003, and 2004, it only reached 8.7%, 2.96%, 0.53% respectively.²³⁸ Notwithstanding the central government's attempts to improve the way in which special autonomy works, it will probably not lead to any significant changes whatsoever on the ground. The reason is that special autonomy has been mostly enjoyed by Papuan elites, and that stakeholders in Papua also lack the ability to ensure and oversee the implementation of special autonomy.²³⁹ In this respect, one church leader quoted an OPM commander as stating:

Special autonomy is a big cake offered by Jakarta out of pressure from the international community. There are two parties trying to get this cake. One is Papua; the other is Jakarta. Jakarta knows better how to get at the cake and they eat it up.²⁴⁰

Another reason why autonomy may not work is because Jakarta is extremely suspicious and sceptical about the priorities of Papuan government spending. For instance, former Governor Jaap Sallosa was accused of giving an amount of money to support the self-determination movement.²⁴¹ Although such an allegation was eventually proven false, it seems to imply that the Indonesian government does place its trust in Papuans.

Dialogue

A dialogue has also been proposed as a means to address the prolonged conflict in Papua, a strategy actively promoted by the Indonesian Institute of Sciences (LIPI) based on

the situation. See B. Padden, 'Special autonomy works in Indonesia's Aceh province, but not Papua', *Voice of America (news)*, 21 December 2011, <<http://www.voanews.com/content/special-autonomy-works-in-indonesias-aceh-province-but-not-papua-136097288/168310.html>> accessed 5 July 2016.

²³⁸ Widjojo, op. cit., p. 13

²³⁹ J. Braithwaite et al., *Anomie and Violence: Non-truth and reconciliation in Indonesian peacebuilding*, ANU E Press, Australia, 2010, p. 91.

²⁴⁰ Ibid.

²⁴¹ Widjojo, op. cit., p. 28.

its research on West Papua. Even so, the LIPI team recognised that the proposal for a dialogue is not a new idea, having been previously raised by other people such as Theo Van Den Broek, Phil Errari, Timo Kivimaki, and John Ondawame.²⁴² However the LIPI team believed that the dialogue might play a pivotal role in ending the prolonged conflict in West Papua. According to the research report undertaken by the LIPI Papua Team in 2005, there are four different levels by which all stakeholders can enter into dialogue.²⁴³ First, a national dialogue involving the central government in Jakarta and representatives of Papuans. Second, a dialogue between all representatives of the people of West Papua. Third, an informal dialogue embracing all decision-makers (Papuan political elites) with the power to make decisions in Papua. Last, an international dialogue between people's representatives in West Papua and people's representatives in Jakarta with third party intervention via an international mediator.²⁴⁴ In the sense of dialogue, the LIPI team acknowledges that achieving a successful outcome for the dialogue entails a better understanding of the meaning of dialogue, as well as the way in which it works.²⁴⁵

However, it seems that the central government became reluctant to follow up LIPI's idea for a dialogue. Widjojo et al., observed that some Indonesian officials apparently have different perceptions of the term 'dialogue', which they link to a 'demand for a referendum and an independent Papua'.²⁴⁶ They believe that if the dialogue were to take place, it would open up certain avenues for Papuans to call for independence.²⁴⁷ A few Papuans on the other hand, like Neles Tebai, perceived the dialogue as a peaceful resolution to the Papuan conflict.

²⁴² Ibid., pp. xxvi-xxvii.

²⁴³ Ibid., p., 132.

²⁴⁴ Ibid.

²⁴⁵ Ibid., p. 129.

²⁴⁶ Ibid., p.122.

²⁴⁷ N. Tebai, 'Dialogue between Jakarta and Papua: A perspective from Papua', *Pontifical Mission Society – Human Rights Office*, 2009, p. 18, <https://sydney.edu.au/arts/peace_conflict/docs/Neles%20DIALOGUE%20PAPER%20FOR%20WPP.pdf> accessed 5 July 2015.

He argued that the independence of Papua would not be on the dialogue agenda; the focus instead would be to ensure the principle of humanity, such as 'Papua, Land of Peace'.²⁴⁸ In this sense, Tebay was trying to say that resolving the Papuan conflict does not mean achieving independence. Rather, he emphasised that ending human suffering and improving the well-being of Papuans remains crucial. Although this view may encourage the central government to engage in dialogue, it could not work as the dialogue involves more than one person, and, therefore, the likelihood of changing perceptions could happen, similar to the Jakarta Informal Meeting of 1999. Also, because there has been no response from the central government to address the Papuan conflict through the dialogue, it has created a climate of distrust among Papuans regarding Jakarta. In 2015 Papuan students rejected the dialogue, saying it would not settle the Papuan conflict, as Papuans had been always been suspicious of Jakarta.²⁴⁹ Similarly, the deputy chairman of the West Papua National Committee (KNPB) for the Sorong Raya region also asserted that the Jakarta-Papua dialogue was not a solution; it was just a political game to enable few Papuans to have political positions.²⁵⁰

Welfare Approach

Like special autonomy and dialogue, the welfare approach is also considered as one of the alternative solutions to the Papua case. Basically, President Widodo's predecessor, Susilo Bambang Yudhoyono, introduced this approach when he came to power in 2004.²⁵¹ In doing so, Yudhoyono collaborated on affirmative action and welfare policies in which he appointed three Papuan ministers and established a unit for the Acceleration of Development in Papua

²⁴⁸ Ibid., p. 22.

²⁴⁹ A. Yoku, 'Mahasiswa Papua Tolak Dialog Jakarta Papua' (Papua Students Reject Jakarta-Papua Dialogue), 30 August 2015, *Tabloid Jubi*, <<http://tabloidjubi.com/2015/08/30/mahasiswa-papua-tolak-dialog-jakarta-papua/>> accessed 5 July 2016.

²⁵⁰ N. Makuba, 'KNPB Sorong Raya strongly rejects dialogue with Jakarta', *Tabloid Jubi*, 16 February 2015, <<http://tabloidjubi.com/eng/KNPB-sorong-raya-strongly-reject-dialogue-with-jakarta/>> accessed 5 July 2016.

²⁵¹ H. Y. R. Wangge, 'Will Jokowi be a truly great leader for the Papuans?', *The Jakarta Post*, 1 December 2014, <<http://www.thejakartapost.com/news/2014/12/01/will-jokowi-be-a-truly-great-leader-papuans.html>> accessed 5 July 2016.

(UP4PB) during his two terms in office.²⁵² Unfortunately, he was unsuccessful when it came to reviewing the security approach that has taken place in Papua since integration in 1969. The UP4PB unit he created also offered no significant change to Papuan lives.²⁵³ As observed by Antonius Made, there has been no change in military reform under the Yudhoyono government. Indeed, there have been military deployments related to the high-level of human-rights violations, and military intervention in both local politics and business in Papua under his government.²⁵⁴ Unlike Yudhoyono, President Widodo has devoted more attention to the welfare approach than the security approach.²⁵⁵ This implies that more infrastructure and greater access to health care and education would be provided for Papuans in the near future. He has also encouraged Indonesian security forces to take a softer approach in Papua.²⁵⁶

Nevertheless, the welfare approach proposed by President Widodo may not be working in Papua. First, even though his government has provided different types of cards designed to improve the quality of life of Papuans, namely the Prosperous Family Card (KKS), the Indonesia Health Card (KIS) and the Indonesia Smart Card (KIP), the cards cannot be used properly in Papua because they require infrastructure preparedness and stakeholders.²⁵⁷ Human resources in Papua and supporting infrastructure are inadequate, and are yet to run the programmes. As stated by Bobby Anderson, hospitals and schools in Papua are not sufficiently ready to serve all the programmes, and there is also a lack of doctors, nurses, and teachers to support them.²⁵⁸ Second, President Widodo offers several

²⁵² Ibid.

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ I. Parlina, 'Doubts linger over Jokowi's call for Papuan development', *Jakarta Post*, 13 March 2016, <<http://www.thejakartapost.com/news/2016/03/13/doubts-linger-over-jokowi-s-call-papuan-development.html>> accessed 5 July 2016.

²⁵⁷ Wange, op. cit.

²⁵⁸ Ibid.

programmes that may not take into account the situations and advantages for many Papuans. For example, researcher Budi Hernawan asserts that the railway project in Sorong could not offer benefits for local Papuans, as there are only around 800,000 people in the region.²⁵⁹ It is also crucial, Hernawan further comments, to involve Papuans in the decision-making and monitoring of development programmes in Papua.²⁶⁰ Third, in conjunction with the security arena, there have been are no changes under President Widodo as human-rights violations still continue to take place.²⁶¹ In addition, President Widodo has included several people in his government whose human rights records are poor. One example is the recent appointment, via a decree of the Indonesian Defence Forces (TNI) Commander, of Major General Hartomo as head of the Strategic Intelligence Agency (BAIS).²⁶² In 2003, as a lieutenant colonel, Hartomo was sentenced to a jail term of 3 years and 6 months for his involvement in the murder of Theys Eluay, the chairman of the Papua Presidium Council. Papuans later perceived this appointment as an act of impunity, with Papuans being a victim of injustice.²⁶³

Conclusion

This chapter has provided an overview of the nature of the conflict in West Papua from integration to the present. West Papua's incorporation with Indonesia is unfair because injustice, poor treatment, and human suffering have also taken place in that region. The Act of Free Choice in 1969 was expected to allow the people of West Papua to exercise their right to self-determination (one man, one vote), but this has failed to take place. Instead, only a few

²⁵⁹ Parlina, op. cit.

²⁶⁰ Ibid.

²⁶¹D. Heriyanto, 'Can Jokowi assuage Papuan woes?', *The Jakarta Post*, 1 June 2016, <<http://www.thejakartapost.com/academia/2016/06/01/can-jokowi-assuage-papuan-woes.html>> accessed 5 July 2016.

²⁶² Tempo.Co, 'Terlibat bunuh Theys dan dipecat, Hartomo kini jadi kabais (English: Involved in and fired over murder of Theys, Hartomo is now head of Strategic Intelligence Agency)', *Tempo.Co (news)* 21 September 2016, <<https://m.tempo.co/read/news/2016/09/21/078806134/terlibat-bunuh-theys-dan-dipecat-hartomo-kini-jadi-kabais>> accessed 22 September 2016.

²⁶³ Ibid.

Papuans represented the population, hand-picked by Indonesian officials to participate in the Act. The situation at the time has also led to chaos as the Indonesian military went on to commit human rights violations resulting in the deaths of Papuans and the flight of Papuan refugees to other countries. Despite the existence of a resistance movement aimed at fighting Indonesia, the integration took place and West Papua remains part of Indonesia. Even so, the conflict continues, and Papuans are still calling for independence. The denial of Papuans' rights to self-determination is not only the source of the protracted conflict in West Papua today, but is also behind a number of issues that have taken place on the ground following integration in 1969; all of which represent the failure to harmonise Papuans and non-Papuans, ongoing human rights violations, a misunderstanding of Papuan culture, limited freedom of speech, and the exploitation of Papuan natural resources.

Furthermore, the three alternative solutions for the Papua case have not shown significant success in settling the conflict and preventing Papuans from calling for independence. First, while it is true that special autonomy could improve the well-being of indigenous Papuans, it has been mostly enjoyed by the Papuan elites who are quite unable to monitor the implementation. Also, the autonomy is basically not what Papuans were asking for; it was given by the central government as a response to demands for independence by Team 100. Second, even though the dialogue might play a pivotal role in creating peace for Papua, it is likely to be unsuccessful as the Indonesian government is sceptical about engaging in genuine dialogue with Papuans. Having a dialogue is perceived as being equivalent to opening the door to Papuans' call for independence; and thus Jakarta may not consider the dialogue. Third, the welfare approach offered by the President Widodo may also not work to end the Papuan conflict. Admittedly, it may bring some level of prosperity, but it does not deal with the root of the conflict and does not involve Papuans in decision-making.

President Widodo has also failed to improve the military's performance in Papua following the inclusion in his government of several people with poor human rights' records, including Major General Hartomo. To some extent, these three alternatives solutions may work for the Papua case, but they cannot solve the conflict completely as it needs a comprehensive approach if it is to address the root causes of the conflict. In the next chapter, I will discuss the reasons and justifications why the earned sovereignty approach is more effective in the Papua case.

CHAPTER THREE

Earned Sovereignty As a Good Fit for the Papua Case

Introduction

Working from the findings of the previous chapters, this chapter will argue that the earned sovereignty approach is a more effective solution for ending the prolonged conflict in West Papua. As previously discussed, the alternatives such as the special autonomy, dialogue, and welfare approaches do not completely address the roots of conflict in Papua. Accordingly, it is crucial to put forward a workable solution. Resolving the Papuan conflict is absolutely not an easy task, as it has been ongoing for decades since the integration with Indonesia. Even though Indonesian Coordinating Political, Legal and Security Affairs Minister, Luhut Pandjaitan,²⁶⁴ maintains that West Papua is an integral part of Indonesia and therefore it should not be internationalised, Papuans living in their homeland are still calling for independence.²⁶⁵ The people of West Papua are principally demanding justice and for their right to proper self-determination with regard to the Act of Free Choice (PEPERA), which was considered unfair in the past.²⁶⁶ Bearing in mind that some sovereignty based-conflicts have been resolved by the international community over the past few years, it is then

²⁶⁴ CNN Indonesia, 'Pesan Luhut ke Pasifik Selatan: Papua milik Indonesia (English: Luhut's message to Pacific Nations: Papua belongs to Indonesia)', *CNN Indonesia (news)*, 4 April 2016, <<http://www.cnnindonesia.com/nasional/20160404073157-20-121435/pesan-luhut-ke-pasifik-selatan-papua-milik-indonesia/>> accessed 16 September 2016.

²⁶⁵ Tempo. Co. Nasional, 'Demo Besar, Pesepakbola dan Dosen Teriak Papua Merdeka (English: Big Demonstration, Soccer Players and Lecturers Call for Independence)', *Tempo. Co. Nasional (News)*, 13 April 2016, <<https://nasional.tempo.co/read/news/2016/04/13/078762431/demo-besar-pesepakbola-dan-dosen-teriak-papua-merdeka>> accessed 16 September 2016. See also Papua Post, 'Tuntut Papua Merdeka: Bendera Bintang Kejora berkibar di Solo (English: Demands for Papuan Independence: Morning Star flag raised in Solo)', *Papua Post (news)*, 20 December 2013, <<http://papuapost.com/2013/12/tuntut-papua-merdeka-bendera-bintang-kejora-berkibar-di-solo/>> accessed 16 September 2016.

²⁶⁶ Free West Papua Campaign, 'Rallies for West Papua held across the world on the Day of Broken Promise', *Free West Papua Campaign (website)*, 23 August 2016, <<https://www.freewestpapua.org/2016/08/23/rallies-for-west-papua-held-across-the-world-on-the-day-of-broken-promise/>> accessed 4 September 2016.

crucial to consider whether the conflict in Papua can be settled in a similar manner, as Papuans have continued to suffer human rights abuses over a long period of time.

This chapter will offer a number of reasons why the earned sovereignty approach is good for the Papua case. It commences by looking at the similarity of the Papuan conflict and others in terms of sovereignty-based conflicts, then examines the analogy of earned sovereignty ('baking bread from broken eggs'), the dual approach to earned sovereignty focusing at the domestic level, and the relationship to remedial secession. Admittedly, applying earned sovereignty to the Papua case will need the effective role of the Indonesian government, Papuans, and the international actor (UN) to ensure effective implementation. Having said that, the author acknowledges that Indonesia may not readily allow the UN intervention in the Papua conflict; that is why several important considerations will be offered to Indonesia to consider welcoming international intervention into West Papua. Next, this chapter will illustrate the use of core elements of earned sovereignty (phased sovereignty, institution building, and the determination of final status) for the case of West Papua by referring to other conflicts including Bougainville, East Timor, and South Sudan. Last, this chapter will propose practical details to make the earned sovereignty approach work in West Papua and present a brief discussion of why it is so important for Indonesia to keep Papua.

Reasons for the Use of Earned Sovereignty

In the Papua Case

As previously discussed, the earned sovereignty approach has proven successful in ending several sovereignty-based conflicts including Serbia and Montenegro, Kosovo, East Timor, Northern Ireland, Bougainville, and others.²⁶⁷ Regarding the Papuan conflict, it is obviously a sovereignty-based conflict aimed at seceding from Indonesia in a way similar to

²⁶⁷ P. R. Williams, A. J. Avoryie, and C. J. Armstrong, 'Earned Sovereignty Revisited: Creating a strategic framework for managing self-determination based conflicts', *ILSA Journal of International and Comparative Law*, Vol. 21, No. 2, 2015, p. 23.

the other conflicts discussed. Those conflicts threaten the sovereignty of countries and thus lead states to use violence against their citizens. In this context, earned sovereignty is believed to be an idea that is capable of harmonising the principles of self-determination and humanitarian intervention with the principles of sovereignty and territorial integrity.²⁶⁸ Williams and Pecci point out that the notion of earned sovereignty has arisen through a wide-ranging discussion among academics and is ultimately recognised as the best approach to tackle sovereignty-based conflicts.²⁶⁹ Having said that, they also admit that having consent from the sub-state and the parent state is very important because they are the main actors in the conflict.²⁷⁰ Put differently, if the sub-state entity or the parent state does not provide endorsement for the earned sovereignty, it will never work.

Furthermore, earned sovereignty will also offer a holistic approach to fully address the Papuan conflict. The conflict has taken place for more than 50 years and it will therefore require a comprehensive solution. According to Nathan Kirschner, the way in which earned sovereignty approach works by accumulating sovereignty, is very effective for the conflict resolution process.²⁷¹ This approach remains critically important in guiding the peace process step by step in accordance with its elements. In doing so, Kirschner analogised the whole process of earned sovereignty as being like ‘baking bread from broken eggs’. The three core elements: shared sovereignty, institution building, and determination of final status are considered as eggs, flour, with bread being the end product.²⁷² The eggs (shared sovereignty) take place as an initial stage to make it clear about the sovereignty authority and functions the

²⁶⁸ M. P. Scharf, ‘Earned Sovereignty: Juridical Underpinnings’, *Denver Journal of International Law and Policy*, Vol. 31, No. 3, 2003, p. 374.

²⁶⁹ P. R. Williams and F. J. Pecci, ‘Earned Sovereignty: Bridging the Gap between Sovereignty and Self-Determination’, *Stanford Journal of International Law*, Vol. 40, No. 2, 2004, p. 350.

²⁷⁰ *Ibid*, p. 351.

²⁷¹ N. P. Kirschner, ‘Making Bread from Broken Eggs: A Basic Recipe for Conflict Resolution Using Earned Sovereignty’, *Whittier Law Review*, Vol. 28, No. 4, 2007, p. 1135.

²⁷² *Ibid*, p. 1137.

sub-state would exercise.²⁷³ In this sense, the question is whether West Papua would share sovereignty with either the Indonesian government or the UN. The flour (institution building) is also important to give strength to the sub-state entity (West Papua) for self-government.²⁷⁴ Last but not least, the bread as the end product (final status) is the way to decide the relationship between West Papua and Indonesia in the future. The time may be decided during the peace process similar to other cases.²⁷⁵

It can also be argued that all actors involved in the Papuan conflict have never come together for the conflict resolution process. As previously discussed, the Indonesian government remains sceptical about engaging with the Papuans, and, vice versa, the people of Papua are also losing their trust for the government to address the problem. Concerning this, the earned sovereignty approach may enable these two main actors to seek reconciliation with the assistance of the international actors (UN) as the mediator and to create a climate of trust. According to Williams, Avoryie, and Armstrong, there is a course of action prior to the application of earned sovereignty to manage the self-determination movement internally and externally. This is the so-called dual approach to earned sovereignty.²⁷⁶ Its purpose is to give a sort of freedom for the parent-state and the sub-state entity to consider the shared autonomy or full independence. Even so, the writer admits that Indonesia could only participate in this if it has received considerable pressure from the international community to internationalise the Papuan conflict. Otherwise, if Indonesia still maintains its stance not to internationalise Papua, it would never happen. Such an approach also empowers Indonesia and Papua to cooperate with the international community in regard to management requirements.²⁷⁷ In doing so, the dual approach to earned sovereignty commences with the consideration at

²⁷³ Ibid, p. 1138.

²⁷⁴ Ibid, p. 1138.

²⁷⁵ Ibid, p. 1139.

²⁷⁶ Williams, Avoryie, and Armstrong, *op. cit.*, p. 24.

²⁷⁷ Ibid.

domestic levels. Williams, Avoryie, and Armstrong have expressed three concerns in this respect. Firstly, getting started from the domestic level becomes crucially important to show respect for the existing regulations or democratic process in a country.²⁷⁸ Clearly, this way fits exactly into the Papuan context, as Indonesia is one of the world's democratic countries. This stage will also allow smooth management of the process of managing self-determination in respect to a domestic law.

Secondly, commencing the process domestically enables the parent state and the sub-state entity to build mutual trust before moving into the next stages.²⁷⁹ It will be a cornerstone event to convince other actors including the UN to come into play as well as to create a friendly atmosphere for both Indonesia and Papua before coming to an agreement. In practice, such good faith efforts might be actualised as having a national dialogue to let all parties take part in addressing the issue of a self-determination movement in a peaceful and meaningful way. In the Papuan context, this stage is fundamental to enabling the Indonesian government and the representatives of Papuans to develop mutual trust. The writer admits that conflict and distrust already exists in Papua, which may lead to difficulties in this process. Therefore, this may work if the Indonesian Government intends to make peace and restore trust in Papuans. Without Indonesia's consent, an agreement would never be reached and conflict resolution would never take place on the ground. The show of peaceful intentions, according to Williams, Avoryie, and Armstrong, also allows the parent state to propose a high degree of autonomy to the sub-state entity.²⁸⁰ This could not work for West Papua as it has been granted autonomy since 2001.²⁸¹ Otherwise, this stage may be useful to make a break in assessing the progress of autonomy in conjunction with the application of

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ R. Chauvel and I. N. Bhakti, *The Papua Conflict: Jakarta's Perceptions and Policies*, the East-West Center Washington, Washington DC, 2004, p. 32.

earned sovereignty. The process can start by considering whether or not such autonomy should be increased in the future.

Thirdly, the kickoff process at the domestic level also allows both the parent-state and the sub-state entity to lead and set up the process prior to the involvement of the international actors (UN).²⁸² For example, these two actors can undertake an assessment of the institutions, procedures, and considerations, and then come up with priorities that need to be evolved in respect of a successful secession or a full integration. By beginning the process domestically, it not only enables the parties to start enhancing capacity for institution building, but also to create a space to bargain positions between one another on certain benchmarks for earned sovereignty.²⁸³ This practice would be good for the Papua case as it lets the Indonesian government and Papuan representatives figure out what sort of interests they come up with prior to the arrival of the international actors. Indeed, it will provide a room for Papuans to speak up for what they want as well as give the Indonesian government an occasion to protect its national interest. Undeniably, Papuans' freedom of expression and Indonesian national interests are opposed to one another. The fact is that Papuan freedom of expression is a problem for the Indonesian government. This can be seen in the peaceful demonstrations organized by Papuans, which are always dispersed by the Indonesian police as they call for independence.²⁸⁴ Essentially, Papuans already have representatives to foster Papuan values as part of the given special autonomy, the Papuan People's Council (Indonesian: *Majelis Rakyat Papua – MRP*).²⁸⁵ This institution is thus expected to become a formal organisation in the fight for Papuan interests in the context of earned sovereignty. In addition to the dual approach framework, Williams, Avoryie, and Armstrong also emphasise that the international

²⁸² Williams, Avoryie, and Armstrong, op. cit., p. 24.

²⁸³ Ibid.

²⁸⁴ Amnesty International, 'Indonesia: End police violence against demonstrators in Papua', *Amnesty International*, 25 October 2012, <<https://www.amnesty.org/en/press-releases/2012/10/indonesia-end-police-violence-against-demonstrators-papua/>> accessed 5 September 2016.

²⁸⁵ E. Aspinall, M. Mietzner, and D. Tomsa, *The Yudhoyono Presidency: Indonesia's Decade and Stagnation*, Institute of Southeast Asian Studies, Singapore, 2015, p. 144.

community must play a pivotal role in managing self-determination and taking the responsibility to be proactive in this matter.²⁸⁶

Last but not least, the use of earned sovereignty can also function as an act of remedy for Papuans. Indeed, the people of West Papua have suffered from human rights violations perpetrated by the Indonesian military over the years.²⁸⁷ Many of them have even fled to other countries to seek protection and have never come back due to security concerns. This situation surely stimulates Papuans to consider separation from Indonesia. Danilyn Rutherford, mentions Papuans (particularly those coming from the northern part of Papua – Biak) as believing that, “the achievement of what they call ‘full sovereignty’ for their homeland as bringing them efficacy and potency”.²⁸⁸ When Indonesia is out of West Papua, is precisely the time when Papuans would be able to enjoy permanent peace and take control over their lives.²⁸⁹ This means that Papuans already have a firm belief in their future. In the sense of secession, Scharf examined the appearance of the remedial right to secession as evidently emanating from current events such as academic papers, UN General Assembly Resolutions, declarations from international conferences, and the endorsement of certain countries.²⁹⁰ Scharf further stated that the support from some states to the rights of non-colonial peoples to separate from the parent state is driven by the unfair treatment of their civil and political rights and the experience of human rights abuses.²⁹¹ By the same token, Nanda pointed out that the group or sub-entity tends to take secession into account as the only way to remedy themselves of the human rights abuses conducted by the parent state.²⁹² Allen

²⁸⁶ Williams, Avoryie, and Armstrong, op. cit., p. 25.

²⁸⁷ C. Budiardjo and L. S. Liong, *West Papua: The Obliteration of a People*, TAPOL, UK, 1988, p. 78.

²⁸⁸ D. Rutherford, *Laughing at Leviathan: Sovereignty and Audience in West Papua*, the University of Chicago Press, the USA, 2012, p. 3.

²⁸⁹ Ibid.

²⁹⁰ Scharf, op. cit., p. 381.

²⁹¹ Ibid.

²⁹² V. Nanda, ‘Self-Determination under International Law: Validity of Claims to Secede’, *Case Western Journal of International Law*, Vol. 13, No. 2, p. 265.

Buchanan went on to examine three forms of injustices that have given rise to the remedial right to secede: 1) serious violations of basic individual human rights; 2) unjust annexation of a legitimate state's territory or 3) a state's persistent violations of intrastate autonomy.²⁹³ In the Papuan context, these forms of ill treatment obviously match the Papua case. According to Human Rights Watch Report 2016, although President Widodo has adopted a new approach to West Papua by releasing several political prisoners, oppression still takes place regarding the freedom of expression in relation to basic human rights, including the arrest of several activists during peaceful demonstrations.²⁹⁴ Indonesian authorities have not properly investigated many human rights violations in Papua, including past events, and neither have they been resolved. In relation to this, David Raic argues that human rights violations play an important role as the 'catalytic agent' that can trigger remedial secession.²⁹⁵ In this sense, the more Indonesian military violates human rights in Papua, the greater the chance Papuans will call for independence. Demanding independence can be undertaken by organising demonstrations similar to those carried out before.²⁹⁶

Regarding the unjust annexation of a legitimate state's territory, this again matches the Papuan context as previously discussed in chapter two regarding the act of annexation by the Indonesian military. The case of Papua can be described as an 'unrecognised state'. Nina Caspersen, in analysing several examples of unrecognised states including Chechnya, Northern Cyprus, Somaliland, Taiwan, and others, has argued that unrecognised states are the

²⁹³ A. Buchanan, *Justice, Legitimacy, and Self-Determination: Moral foundation for international law*, Oxford University Press, the US, 2004, pp. 351-352.

²⁹⁴ Human Rights Watch, 'Indonesia Events of 2015', *Human Rights Watch World Report 2016*, <<https://www.hrw.org/world-report/2016/country-chapters/indonesia>> accessed 5 September 2016.

²⁹⁵ D. Raic, *Statehood and the Law of Self-Determination*, Kluwer Law International, the Netherlands, 2002, p. 372.

²⁹⁶ The Jakarta Post, 'Papua Police chief denies detaining pro-independence group', *the Jakarta Post (news)*, 15 June 2016, <<http://www.thejakartapost.com/news/2016/06/15/papua-police-chief-denies-detaining-pro-independence-group.html>> accessed 17 September 2016. In contrast, see Radio New Zealand, 'Arrests as thousands demonstrate in West Papua', *Radio New Zealand*, 14 April 2016, <<http://www.radionz.co.nz/international/pacific-news/301484/arrests-as-thousands-demonstrate-in-west-papua>> accessed 17 September 2016.

countries that have gained de facto independence but which have apparently been unsuccessful in achieving international recognition. Notwithstanding that they always demand the right to self-determination, the concept of territorial integrity always becomes the biggest challenge they encounter.²⁹⁷ Last, the state's persistent violations of intrastate autonomy have also clearly occurred in Papua. Indeed, the poorly organised Free Papua Movement (OPM) still operates today and is certainly perceived as a threat to Indonesian sovereignty.²⁹⁸ Consequently, the use of violence was unavoidable and thus Indonesian security forces continued to commit crimes in Papua.²⁹⁹ Regarding the past violence, many Papuans experiencing atrocities within their family have tended to pass down stories to the next generation. The question is to what extent will this continue? Of course this is something that should be stopped and healed someday, and probably by secession. In this respect, Bolton and Visoka maintain that while it is true that the remedial secession is able to offer a good model to use to examine the root of conflict committed by the state in the past, including human rights abuses, it apparently offers a minor contribution to resolution of the entire problem.³⁰⁰ Hence they believe that earned sovereignty can perform well in order to fill this gap.

In relation to remedial secession, Bolton and Visoka have further endeavoured to better use earned sovereignty in tandem with remedial secession, and finally came up with the so-called concept of remedial sovereignty.³⁰¹ This approach is still exactly the same as adopting the core and optional elements of earned sovereignty in the process. Bolton and

²⁹⁷ N. Caspersen, *Unrecognized States: The struggle for sovereignty in the modern international system*, Polity Press, England, 2012, p.

²⁹⁸ Human Rights Watch, 'Letter to President-elect Joko Widodo Re: Human Rights Concerns in Indonesia', *Human Rights Watch*, 28 August 2014, <<https://www.hrw.org/news/2014/08/28/letter-president-elect-joko-widodo-re-human-rights-concerns-indonesia>> accessed 5 September 2016.

²⁹⁹ *Ibid.*

³⁰⁰ G. Bolton and G. Visoka, 'Recognizing Kosovo's independence: Remedial secession or earned sovereignty?', *South East European Studies at Oxford*, Occasional paper No. 11/10 October 2010, pp. 21-22.

³⁰¹ *Ibid.*, p. 22.

Visoka defined remedial sovereignty as a means utilised by those who have experienced violence, to pursue statehood by appealing to remedial secession as well as recognising the intervention of international actors in the matter of administration according to earned sovereignty components.³⁰² Again, this approach will be better off for the Papua case as part of the healing process. In this sense, it is fair to say that the Indonesian government may not agree with this. However, the writer predicts that if the people of Papua continue to call for secession and even more so in the future, this would probably happen. This is because once Papuans' voices are being heard in the international arena, then international solidarity may grow even further to pressure Indonesia. As Filep Karma maintains, the issue of Papua deserves to be echoed at the international level because the way in which Papua was incorporated into Indonesia was through the intervention of the UN and other countries (the U.S. and the Netherlands), a process Karma considered to be illegal (referring to PEPERA).³⁰³ Apart from the remedial secession related to human rights violations, the contemporary issues discussed in chapter two, such as the exploitation of Papuan natural resources (Freeport), the failure to harmonise Papuans and non-Papuans, and the ban on foreign journalists from entering Papua, are all reasons to call for separation.

Some Considerations for Indonesia to Welcome International Intervention in West Papua in the Future

It could be argued that the parties can carry out a comprehensive evaluation of the implications of independence on the parent state as well as on a new state as part of earned sovereignty. Indeed, in the case of South Sudan, the CPA Chapter 1 Part B (2.4) states, "An Independent Assessment and Evaluation Commission shall be established during the pre-

³⁰² Ibid.

³⁰³ BBC Indonesia, 'Pertemuan bahas Papua merdeka bakal di gelar di London (English: Meeting to discuss Papua independence planned to take place in London), *BBC Indonesia*, 3 May 2016, <http://www.bbc.com/indonesia/berita_indonesia/2016/05/160502_indonesia_papua_ipwp> 13 October 2016.

transition period... The composition of the commission shall consist of equal representations from the Government of Sudan and Sudan People's Liberation Movement Army and other representatives".³⁰⁴ The assessment worked well as the government of Sudan was one of the first countries to acknowledge the result of the final status (the majority voted for secession).³⁰⁵ The writer suggests that such an assessment would also work well if done similarly for Papua. Allowing all the actors to conduct an assessment of Papuan independence would be a good idea because it would enable examination of the extent to which Papuans would be ready for a new country. The assessment can be based on human resource readiness, including education, economy, politics, security, and so forth. Moreover, the assessment would also be very useful to address concerns that West Papua might become a failing state. David Stott, in researching Papuan independence, maintained that failed states can be measured by high political instability, rampant corruption, dysfunctional economies, the collapse of government services, the breakdown of law and order, internal conflicts, and the loss of state authority and legitimacy.³⁰⁶ From the point of view of non-Papuans, the culture of Papua, particularly "ethnic conflict", is considered as likely to bring about a state of chaos once Papua obtains independence.³⁰⁷ Papuans, on the other hand, maintain that the assumption of "ethnic war" is wrong. Commander of the Free Papua Movement, Amungut Tabi, argues that the people of Papua, whose majority are Christians, will preserve a sense of

³⁰⁴ Other representatives in the assessment include: Member states of the IGAD Sub Committee on Sudan (Djibouti, Eritrea, Ethiopia, Kenya, and Uganda) and Observer states (Italy, Norway, UK, and U.S.). See A. Breidlid, *A concise history of South Sudan*, Fountain Publishers, Uganda, 2010, p. 363.

³⁰⁵ P. R., Williams, 'Earned Sovereignty: The Future of Sovereignty-Based Conflict Resolution', *Denver Journal of International law and Policy*, Vol. 40, 2011, p. 141.

³⁰⁶ D. A. Stott, 'Would an independent West Papua be a failing state?', *the Asia Pacific Journal*, Vol. 9, No. 1, 2011, p. 5.

³⁰⁷ PapuaPost.com, 'Orang Papua masih perang suku jadi merdeka nanti perang suku terus menerus (English: Papuans still fighting ethnic war, will continue if Papua achieves independence)', *PapuaPost.com*, 12 August 2016, <<https://papuapost.wordpress.com/2016/08/12/orang-papua-masih-perang-suku-jadi-merdeka-nanti-perang-suku-terus-menerus/>> 13 October 2016.

harmony in the new state, and that the “ethnic war” is actually the war against the Indonesian military.³⁰⁸ To sum up, the independence assessment is vital as a part of earned sovereignty.

However, the writer admits that the Indonesian government will probably not be interested in the earned sovereignty approach and will never allow the UN to come into play in the Papuan conflict due to the dual concerns of national interest and territorial integrity. For that reason, this section offers a few considerations to Indonesian decision makers when thinking about UN intervention in Papua within the next 10 or 20 years, in which the intervention might be to send a UN fact-finding mission, propose resolutions or peacekeeper operations. First, the Indonesian military has committed severe human rights violations against Papuans, and moreover with the culture of impunity.³⁰⁹ One analogy for Indonesia’s actions is that ‘a leopard cannot change its spots’. As reported by John Wing with Peter King from the University of Sydney, the survival of indigenous Papuans is under threat from the Indonesian military and an assessment is needed on this.³¹⁰ Likewise, Elizabeth Brundige et al, from Yale School also delivered a report about Indonesian human rights abuses in West Papua in connection with the 1948 Genocide Convention.³¹¹ Nevertheless, the International Crisis Group (ICG) in its 2006 report concluded, “Neither of the reports (Sydney and Yale) provide any evidence of intent on the part of the Indonesian government or military to

³⁰⁸ PapuaPost.com, ‘Papua merdeka tidak untuk mewujudkan masyarakat Papua yang adil dan makmur (English: An independent Papua will not lead to a just and prosperous Papua society)’, *PapuaPost.com*, 16 June 2016, <<http://papuapost.com/2016/06/papua-merdeka-tidak-untuk-mewujudkan-masyarakat-papua-yang-adil-dan-makmur/>> 13 October 2016.

³⁰⁹ J. Wing and P. King, ‘Genocide in West Papua: The role of the Indonesian state apparatus and a current needs assessment of the Papuan people’, *Centre for Peace and Conflict Studies the University of Sydney*, A report prepared for the West Papua Project at the Centre for Peace and Conflict Studies, University of Sydney, and ELSHAM Jayapura, Papua, August 2005, <http://sydney.edu.au/arts/peace_conflict/docs/WestPapuaGenocideRpt05.pdf>, accessed 7 September 2015, p. V.

³¹⁰ Ibid.

³¹¹ E. Brundige et. al, ‘Indonesian Human Rights Abuses in West Papua: Application of the Law of Genocide to the History of Indonesian Control’, *The Allard K. Lowenstein International Human Rights Clinic Yale Law School* (A paper prepared for the Indonesia Human Rights Network), April 2004, <https://www.law.yale.edu/system/files/documents/pdf/Intellectual_Life/West_Papua_final_report.pdf> accessed 7 September 2016.

destroy the ethnic Papuan population as such in whole or in part”.³¹² At the UN Human Rights Council in 2016, Indonesia also reiterated its refusal of any statements connected with human rights abuses in Papua conducted by its military forces.³¹³ On the contrary the Indonesian National Commission on Human Rights (Indonesian: *Komnas HAM*) in its 2016 report, indicates that uncontrolled human rights violations have occurred in Papua during the administration of President Widodo, including the detention, torture and killing of about 700 people.³¹⁴ The report also criticised President Widodo who had visited Papua several times, yet made no changes on human rights matters. In addition, *Komnas HAM* also organized a public discussion, ‘*Jokowi, Kenapa (Tak) urus HAM Papua?* (English: Jokowi, why don’t you resolve human rights violations in Papua?).³¹⁵

Second, if Indonesia refuses to come and participate in the earned sovereignty approach, Papuans can argue that the central government has failed to protect them in the context of Responsibility to Protect (R2P). This is a new doctrine that emphasises the duty of states and then the international community to end violence towards civilians including genocide, war crimes, ethnic cleansing, and crimes against humanity.³¹⁶ Although this norm

³¹² International Crisis Group (ICG), ‘Papua: Answers to Frequently Asked Questions’, *International Crisis Group (Update briefing – report)*, Jakarta/Brussels 5 September 2006, <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4517d6884&skip=0&query=yale%20report&coi=PNG>> accessed 15 September 2016, pp. 8-9. See also The Jakarta Post, ‘Papua is already free, rights protected’, *The Jakarta Post*, 9 May 2016, <<http://www.thejakartapost.com/academia/2016/05/09/papua-is-already-free-rights-protected.html>> accessed 15 September 2016.

³¹³ Radio New Zealand, ‘Jakarta slams Solomons and Vanuatu over human rights’, *Radio New Zealand (news)*, 27 June 2016, <<http://www.radionz.co.nz/international/pacific-news/307394/jakarta-slams-solomons-and-vanuatu-over-human-rights>> accessed 15 September 2016.

³¹⁴ The Jakarta Post, ‘Police, military pose problem in attempt to solve Papua rights abuse cases’, *The Jakarta Post*, 24 May 2016, <<http://www.thejakartapost.com/news/2016/05/24/police-military-pose-problem-in-attempt-to-solve-papua-rights-abuse-cases-kontras.html>> accessed 15 September 2016. See also Komnas HAM Indonesia, ‘Meningatkan (kembali) Jokowi Untuk Prioritaskan HAM Papua (English: Reminding Jokowi to prioritize human rights issues in Papua)’, *Komnas HAM Indonesia (report 2016)*, <<http://www.komnasham.go.id/sites/default/files/dokumen-siaran-pers/4%20Maret%202016%20-%20Papua.pdf>> accessed 15 September 2016.

³¹⁵ Ibid (Komnas HAM).

³¹⁶ C. Sampford and R. Thakur, *Responsibility to Protect and Sovereignty*, Ashgate Publishing Limited, England, 2013, p. 1. See also Global Center for the Responsibility to Protect, ‘About R2P’, *Global Center for the Responsibility to Protect*, <http://www.globalr2p.org/about_r2p> accessed 13 October 2016.

underscores the role of states to prevent such crimes, it also does justify an act of intervention by the international community in a country that cannot be prevented in respect of sovereignty.³¹⁷ This doctrine matches the situation of Papua. As stated by church leaders in Papua, Benny Giay and Socratez Sofyan Yoman, “we are deeply concerned about the state violence which is occurring in our sacred motherland”.³¹⁸ They further said that these concerns had been delivered several times, including within the 11 recommendations made as a result of the consultation with the Papuan People’s Council and the Indigenous Papuan Communities on 9-10 June 2010; the Joint Communiqué of Church Leaders on 10 January 2011; the Theological Declaration of Church Leaders on 26 January 2011, and the Prophetic Message from Papuan Church Leaders to the President of Indonesia on 16 December 2011.³¹⁹

While it is true that the international community must acknowledge the non-principle intervention and respect for a sovereign nation, UN interference remains possible when a state fails to protect its people. Even so, it would happen if Indonesia allows international interference in Papua; if not, this would never occur. According to the consensus of the United Nation’s 192 members at the 2005 Summit, a country is responsible for protecting its citizen from such things mentioned below:³²⁰

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it.

³¹⁷ The UN, ‘The Responsibility to Protect’, *the UN Website*, <<http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>> 13 October 2016.

³¹⁸ Tapol, ‘Church Leaders: State violence intensifying in Papua’, *Tapol (news)*, 6 March 2013, <<http://tapol.org/news/church-leaders-state-violence-intensifying-land-papua>> accessed 17 September 2016.

³¹⁹ Ibid,

³²⁰ M. W. Doyle, ‘International Ethics and the Responsibility to Protect’, *International Studies Review*, Vol. 13, No. 1, 2011, p. 72. (72-84). See also Resolution adopted by the General Assembly 60/1. 2005 World Summit Outcome, p. 30. (The responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity), <<http://www.un.org/en/preventgenocide/adviser/pdf/World%20Summit%20Outcome%20Document.pdf#page=30>> accessed 8 September 2016.

The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity...

Even though it might be still impossible to allow the UN into Papua, at least the explanation above can be a consideration for the Indonesian government in relation to the genocide it has carried out. As previously reported by some researchers concerning the acts of genocide in Papua committed by military forces, this could also become the concern of the international community (countries, NGOs, INGOs, etc.) and subsequent recommendation for UN intervention in West Papua.

Third, it is undeniable that Indonesia is one of the world's many democratic states. Such a country would be better off listening to what its people wish, and to let such people take action for what they believe to be their own future. For example, the British government allowed the people of Scotland to conduct a referendum in 2014 in order to permit self-determination. Although the result showed the majority preferred to remain within the U.K., at least the government gave its people the opportunity to make such a decision.³²¹ By the same token, the PNG government is also preparing for a referendum to let the people of Bougainville make decisions concerning their own future by 2020.³²² This is the kind of democratic process that democratic countries should take into consideration. These two examples are expected to become models for the Indonesian government to consider in regard to the wish of Papuans to determine their own future. In fact, the Indonesian

³²¹ BBC News, 'Scotland decides', *BBC News*, 19 September 2014, <<http://www.bbc.com/news/events/scotland-decides>> accessed 9 September 2016.

³²² Bougainville News, 'Bougainville independence referendum 2019: What are the risks and challenges-report', *Bougainville News*, 27 July 2015, <<https://bougainvillenews.com/2015/07/27/bougainville-independence-referendum-2019-what-are-the-risks-and-challenges-report/>> accessed 9 September 2016.

government carried out such a referendum when it allowed the people of East Timor to determine their own future, and welcomed the UN to take part in the earned sovereignty process.³²³ Additionally, Jakarta has also trusted the international community to become involved in the peace process to settle the Aceh conflict when it allowed Martii Ahtisaari, the UN diplomat and mediator, to lead the peace negotiations between the Free Aceh Movement (GAM) and the Indonesian government through his non-governmental organisations (CMI).³²⁴ Although the nature of Aceh and Papua conflicts differ from one another in certain aspects, they both share a similarity in their resolve to pursue separation from Indonesia (the Free Aceh Movement and the Free Papua Movement). In this sense, it could be argued that if the Indonesian government had trusted foreign actors to come into play in addressing Aceh conflict, it would then be possible to do the same thing in the Papua case. It is to be hoped that, in the future, the Indonesian government can consider the role of foreign actors in the Papua case.

Last, the Indonesian government should also consider the unwavering support from Melanesian countries for the struggle of West Papua.³²⁵ Indeed, the Melanesian Spearhead group (MSG) has recognised Papuans' struggle with the grant of an observer status to the United Liberation Movement for West Papua (ULMWP). At the same time, Indonesia's status was also upgraded to associate member.³²⁶ As stated by Benny Wenda, an international

³²³ ABC News, 'East Timor marks referendum vote', *ABC News*, 30 August 2004, <<http://www.abc.net.au/news/2004-08-30/east-timor-marks-referendum-vote/2035284>> accessed 9 September 2016.

³²⁴ BBC News, 'Aceh rebels sign peace agreement', *BBC News*, 15 August 2005, <<http://news.bbc.co.uk/2/hi/asia-pacific/4151980.stm>> accessed 9 September 2016.

³²⁵ J. Blades, 'Melanesia's test: The political quandary of West Papua', *Pacific Journal Review*, Vol. 20, No. 2, 2014, p. 24.

³²⁶ Melanesian identity and solidarity has been established within the Melanesian Spearhead group (MSG). Melanesian states also identify themselves as being different than Polynesia and Micronesia as well as also possessing the notion of a Melanesian way and a Melanesian brotherhood. See S. Lawson, 'West Papua, Indonesia and the Melanesian Spearhead Group: Competing logic in regional and international politics', *Australian Journal of International Affairs*, 2016, p. 1. See also Radio New Zealand, 'West Papua group welcomes MSP appreciation', *Radio New Zealand*, 26 June 2015,

lobbyist for the independence of West Papua from Indonesia, “You know, for 53 years our voice was never recognised in regional and international fora. This is why this is the first step for West Papua to become an observer in the Melanesian Spearhead Group.”³²⁷ In this context, Indonesia should not underestimate the support from the Melanesian states. In the future, if they all stand together to support the struggle of Papuans and then embrace support from all Pacific nations, it would be a disaster for Indonesia. In fact, Vanuatu’s Deputy Prime Minister, Joe Natuman, stated that the support from the people of Melanesia for the Papuan struggle should be transformed into a regional response.³²⁸ If this happens, the writer predicts, it is possible that the issue of Papua will be brought by Melanesian states to the UN General Meetings in order to oppose Indonesia. The issue of human rights violations and state violence could thus precisely become the main issues to encourage UN members to vote and allow UN intervention. Also, they can also call upon the UN to review the Act of Free Choice (PEPERA) in West Papua, which is considered illegal as it denies the rights of all Papuans to self-determination. If the UN, and many states, call for UN intervention in Papua, then Indonesia may have to welcome the international community.

Illustration of the Use of Core Elements of Earned Sovereignty in The Papua Case

As previously discussed in chapter one, the first core element (phased sovereignty) represents the initial stage in letting the sub-state entity perform a transfer of sovereignty and functions over a defined territory; with either the parent state or an international organisation like the UN. In this context, Williams maintains that if the phased sovereignty were

<<http://www.radionz.co.nz/international/pacific-news/277316/west-papua-group-welcomes-msg-appreciation>> accessed 9 September 2016.

³²⁷ Ibid.

³²⁸ Radio New Zealand, ‘Melanesians’ support for West Papua strong – Natuman’, *Radio New Zealand*, 13 September 2016, <<http://www.radionz.co.nz/international/pacific-news/313117/melanesians'-support-for-west-papua-strong-natuman>> accessed 14 September 2016.

conducted in a practical and effective way, it could be capable of discontinuing the conflict and earning the trust of the central government and a disadvantaged group of people to have a sense of loyalty concerning the peace process.³²⁹ It can also reduce the willingness for independence and the source of conflict through self-government. According to Theo van den Broek, Papuans have very fundamental attitudes, namely the willingness to “govern themselves” as indicated in the “process of freedom” organised by Dutch in 1961.³³⁰ In the sense of earned sovereignty, West Papua can follow the pattern of Northern Ireland, Bougainville, South Sudan, and the Western Sahara, in which they shared some sovereignty authority with the central government. Yet, although they exercised sovereignty with the parent state, Kirschner observed that the role of the international community is still required in order to monitor the peace process.³³¹ On the other hand, Kosovo and East Timor provide different examples for West Papua in which the sovereignty and the functions they exercised were with the UN. To sum up, the model of shared sovereignty for the Papua case, whether with the Indonesian government or the UN, would entirely depend on the agreement of all parties, similar to the Bougainville Agreement in PNG, the Comprehensive Peace Agreement (CPA) in South Sudan, the Rambouillet in Kosovo, and so forth.

The second core element is institution building. In general, this aims to enable the sub-state entity to exercise its sovereign authority and functions for the creation of a self-governing institution in the short-term, or a future sovereign country in the long-term.³³² In this stage, even though the international community (UN) is responsible for assisting the sub-

³²⁹ Williams, op. cit., p. 135.

³³⁰ T. V. D., Broek, ‘A Peace Mission: The Church response to conflict in the West Papua case’, in J. B. Hernawan (ed), *Papua Land of Peace: Addressing Conflict Building Peace in West Papua*, Office for Justice and Peace Catholic Diocese of Jayapura, West Papua, 2005, p. 63.

³³¹ Kirschner, op. cit., p. 1138. Kirschner gives the example of the Aceh conflict. Although the central government exercised sovereignty with the sub-state, the Indonesian government still needed intervention from an international organization (Crisis Management Initiative-CMI) in order to broker the conflict through the Helsinki MOU.

³³² Williams and Pecci., op. cit., p. 363.

state entity to create local organisations, it seems to act in part as a supporter for enforcing the parties to achieve certain responsibilities, including disarmament and demobilisation, capacity building, promotion and monitoring of elections, human rights monitoring and transitional justice, refugee return, and the related settlement of land disputes. In the Papuan context, those tasks are very useful. Indeed, it is good to encourage the Free Papua Movement (OPM) to disarm itself, to reduce the level of human rights abuses, and to call for refugee return as many Papuans have settled in PNG, Australia, and around the world. Institution building is also helpful in establishing political institutions and self-government. In the case of Northern Ireland, for instance, even though the creation of administrative institutions was considered unnecessary, the Good Friday Agreement offered the establishment of the Northern Ireland Assembly in order to exercise a transfer of sovereignty from the UK to Northern Ireland. By signing the Union Treaty, the Montenegrin government also received support from the U.S. and the European Union to form a Foreign Ministry with unofficial diplomatic offices overseas, a Ministry of Finance, and a Central Bank.³³³ Therefore, West Papua needs to establish political organisations in conjunction with self-government.

Last but not least is the determination of final status. As previously discussed that this stage is crucial to allow the sub-state entity to make the decision for their own future, ranging from substantial autonomy to full independence.³³⁴ In doing so, this can be carried out through a referendum similar to East Timor, South Sudan, and Bougainville, or by international mediations similar to that of the final status of Kosovo through the Rambouillet Accords (an international conference). Again, in the case of West Papua, it would be very much based on the agreement between all parties involved during the peace process: the Indonesian government, Papuans, and probably the UN. Generally, the date for a referendum

³³³ Ibid., p. 365

³³⁴ Ibid.

would be arranged after the sub-state entity exercises its share of sovereignty and begins institution building. For instance, the Machakos Protocol provided the rights for the people of Southern Sudan to take part in a referendum after a six-year interim period, whilst the Baker Peace Plan set up the determination of the final status of Western Sahara for up to five years after the peace plan was adopted.³³⁵ It is worth noting that the Papuan final status can also be postponed if the Papuan self-government is yet to meet certain criteria such as disarmament. Accordingly, the final status will be based on the performance of West Papua as the sub-state entity during the phased sovereignty and institutions building. Most importantly, once Papuans have determined their final status, the result has to be acknowledged by the international community.³³⁶

Practical Details: Making the Earned Sovereignty Approach Happen in West Papua

Apart from the core elements mentioned above, the writer suggests that some procedures must be taken on the ground to make this proposal work in Papua. First, all the parties involved in the conflict need to express the willingness to enter into the peace process. According to Widjojo, there are seven important actors in the Papuan conflict, namely; *Pemerintah Pusat* (English: the Indonesian Government), *Organisasi Papua Merdeka* (English: Free Papua Movement), *Presidium Dewan Papua* (English: Papua Presidium Council), *Dewan Adat Papua* (English: Papua Customary Council), *Gereja dan Lembaga Keagamaan* (English: Churches and Religious Institutions), *Lembaga Swadaya Masyarakat* (English: Non-Governmental Organisations), and *Ketua-Ketua Suku* (English: Tribal

³³⁵ Ibid.

³³⁶ P. R. William and K. Heymann, K., 'Earned Sovereignty: An Emerging Conflict Resolution Approach', *ILSA Journal of International and Comparative Law*, Vol. 10, No. 2, 2004, p. 440.

Chiefs).³³⁷ Nevertheless the writer believes that another important actor: the United Liberation Movement for West Papua (ULMWP) should also be considered as a main party in the Papuan conflict. This is because this organisation has been recognised by MSG in 2015, and unites three different groups that have been striving for Papuan independence for long time, namely: the Federal Republic of West Papua (NRFPB), the National Coalition for Liberation (WPNCL), and the National Parliament of West Papua (NPWP).³³⁸ Without their involvement and their commitment to the peace process, it may be difficult to get the earned sovereignty approach off the ground.

Second, if all the actors mentioned above agree to enter the peace process, a peace agreement could then be negotiated and signed. For example, it could be the West Papua Peace Agreement (WPPA) or the Comprehensive Agreement for West Papua (CAWP). This agreement is crucial to the setting up the peace process with regard to the core elements of the earned sovereignty approach. It would also arrange details of its implementation, such as disarmament, interim period (shared sovereignty), referendum, and so on. In this section, even though the Indonesian government is able to reach the agreement with all parties in the Papuan conflict, it would be better off involving an international actor such as INGOs or IGOs (the UN) in order to acknowledge or mediate the agreement. This is similar to the Bougainville Agreement in PNG, the Good Friday Agreement in Northern Ireland, and the Comprehensive Peace Agreements in South Sudan. Again, Indonesia may, or, may not agree with this, but with the pressure from the UN and other countries and its intention to establish peace in Papua, this could happen.

³³⁷ M. S. Widjojo et. al (Indonesian Version), *Papua Road Map: Negotiating the Past, Improving the Present, and Securing the Future*, LIPI, Yayasan Tifa, dan Yayasan Obor Indonesia, Jakarta, 2009, pp. 21-22.

³³⁸ United Liberation Movement for West Papua, 'About ULMWP', *United Liberation Movement for West Papua (website)*, <<https://www.ulmwp.org/about-ulmwp>> accessed 13 September 2016.

Last, UN intervention is also important when it comes to monitoring implementation of earned sovereignty in the Papua case. As Williams and Pecci mention, a monitoring instrument is required not only to develop the trust among all parties but also to help in any disputes that may appear, as well as force the parties to fulfil any agreed to requirements.³³⁹ Even though this monitoring element is not part of the core elements of earned sovereignty, it is able to vigorously ensure that implementation is on the right track and to make sure the process gets underway effectively.³⁴⁰ For example, the PNG and Bougainville governments established an intergovernmental supervisory agency responsible for ensuring the implementation of the agreement as well as forming the new Autonomous Bougainville Government.³⁴¹ Similarly, the Baker Peace Plan for Western Sahara formed a special UN monitoring and enabled the Secretary General to take action regarding any disputes that may appear related to the agreement, whereas in the case of Northern Ireland, the parties created a specialised Northern Ireland Human Rights Commission.³⁴² In the Papuan context, the writer believes that in order to achieve successful outcomes, it would be very important to invite the UN to monitor the application of earned sovereignty. In other words, all actors in the Papuan conflict should establish a special UN monitoring team to oversight the peace process.

In addition to international intervention, the UN could also take several steps to pressure Indonesia. Indeed, the UN can put forward a resolution for self-determination or a referendum in West Papua. As stated by the International Parliamentarians for West Papua (IPWP) during its meeting in London in May 2016, the UN should resolve the matter of

³³⁹ Williams and Pecci, p. 370.

³⁴⁰ Ibid.

³⁴¹ Ibid.

³⁴² Ibid, pp. 370-371.

Papua by organising ‘an international supervised vote for independence in West Papua’.³⁴³ In this sense, Papuans deserve to have a new referendum with regard to their self-determination (PEPERA) in 1969, which was considered to be unfair. In the same way, the Papuan Reverend, Socrates Sofyan Yoman, and an international law and political observer at the University of Cenderawasih,³⁴⁴ Marinus Yaung, have pointed out that the time has come to talk about a referendum in Papua. Yoman maintains that the Indonesian government should not prevent churches from talking about the future of Papua, including a referendum,³⁴⁵ whilst Yaung has challenged the Papuan People’s Representative Council (Indonesian: *Dewan Perwakilan Rakyat Papua - DPRP*) to call for a referendum in order to resolve the prolonged conflict in Papua.³⁴⁶ Additionally, the Pacific nations have also pressured Indonesia at the international level. During the general debate of the Assembly’s 71st session in September 2016, Vanuatu, the Solomon Islands, Tonga, Nauru, the Marshall Islands, and Tuvalu expressed their concern over allegations of human rights violations taking place in the Indonesian province of Papua.³⁴⁷ Solomon Islands Prime Minister, Manasseh Sogavare, stated said “human rights violations in West Papua and the pursuit for self-determination of West Papua are two sides of the same coin”,³⁴⁸ while Marshall Islands President, Hilda

³⁴³ H. Davidson, ‘West Papua: UN must supervise vote on independence, says coalition’, *The Guardian*, 3 May 2016, <<https://www.theguardian.com/world/2016/may/03/west-papua-un-must-supervise-vote-on-independence-says-coalition>> accessed 11 October 2016.

³⁴⁴ The University of Cenderawasih is a State University located in Jayapura, West Papua. It is the oldest University in Papua. See Universities, ‘Cenderawasih University (Uncen), *Universities (search universities worldwide)*, <<http://www.univerzities.com/indonesia/cenderawasih-university/>> accessed 11 October 2016.

³⁴⁵ M. Pangaribuan, ‘Pendeta Papua: Pemerintah jangan larang gereja bicara referendum’ (English: West Papuan Church leader: Government should not prevent churches from talking about referendum), *SatuHarapan.com*, 9 April 2016, <<http://www.satuharapan.com/read-detail/read/pendeta-papua-pemerintah-jangan-larang-gereja-bicara-referendum>> accessed 11 October 2016.

³⁴⁶ PapuaPost.com, ‘Marinus: DPRP harus berani usul referendum ke pusat’ (English: Papuan People’s Representative Council must have the courage to propose referendum to the central government), *PapuaPost.com*, 23 August 2014, <<http://papuapost.com/2014/08/marinus-dprp-harus-berani-usul-referendum-ke-pusat/>> accessed 11 October 2016.

³⁴⁷ Radio New Zealand, ‘Pacific leaders raised West Papua at the UN’, *Radio New Zealand*, 26 September 2016, <<http://www.radionz.co.nz/international/programmes/datetimepacific/audio/201817600/pacific-leaders-raise-west-papua-at-the-un>> accessed 11 October 2016.

³⁴⁸ Radio New Zealand, ‘Indonesia accuses Pacific countries of interference’, *Radio New Zealand*, 27 September 2016, <<http://www.radionz.co.nz/international/pacific-news/314234/indonesia-accuses-pacific-countries-of-interference>> accessed 11 October 2016.

Heine, called on the UN to intervene in Papua. “Given the importance of human rights to my country, I request that the UN Human Rights Council initiate a credible and independent investigation into the alleged human rights violations in West Papua”.³⁴⁹ Indonesia’s response was fiercely defensive, arguing that the six countries were intervening in Indonesian domestic affairs.³⁵⁰

Apart from the practical details mentioned above, it is also vital to address the question of why it is so important for Indonesia to retain Papua and why it is so difficult for Papua to become independent. Resource economics appears to be the compelling reason behind the defence of Papua. As observed by Bruche Vaughn, the Papua region is very rich in terms of natural resources,³⁵¹ and it provides an enormous contribution to the Indonesian government. It would therefore seem impossible for the Indonesian government to allow the secession to take place.³⁵² Similarly Esther Heidbuchel found that Indonesia considered “the idea of an independent West Papua” as a worst-case scenario because it would lose control over the business environment in Papua.³⁵³ In the same vein, a prominent Indonesian Suharto-era general, Ali Murtopo, once stated:

³⁴⁹ The Fiji Times Online, ‘Indonesia levels accusation’, *The Fiji Times Online*, 27 September 2016, <<http://www.fijitimes.com/story.aspx?id=372437>> accessed 11 October 2016.

³⁵⁰ Indonesian diplomat Nara Rakhmatia accused Pacific countries of intervening in Indonesia’s sovereignty over Papua. See UN Web TV, “Indonesia – First Right of Reply”, *UN Web TV (Website)*, <<http://webtv.un.org/meetings-events/watch/indonesia-first-right-of-reply/5139655009001>> accessed 11 October 2016. However Indonesia does intervene other countries’ issues even though this was not echoed at the UNGA. Indeed, in June 2016 Foreign Minister, Retno Marsudi, reaffirmed Indonesia’s position in favour of Palestine at a high level meeting in Paris for a two-state solution to end the Israeli-Palestinian conflict. Clearly, the way in which Indonesia has intervened in the Israel-Palestine issue is analogous to the way in which the Pacific countries have become involved in Indonesia’s West Papua problem. See L. Yosephine, ‘Indonesia reaffirms support for Palestine at Paris meeting’, *The Jakarta Post*, 7 June 2016, <<http://www.thejakartapost.com/news/2016/06/07/indonesia-reaffirms-support-for-palestine-at-paris-meeting.html>> accessed 20 October 2016.

³⁵¹ Natural resources include gold and gas (referring to Freeport McMoRan, a mining company, and British Petroleum).

³⁵² G. Vaughn, *The Unravelling of Island Asia? Governmental, Communal, and the Regional Instability*, Praeger Publishers, the USA, 2002, p. 26.

³⁵³ E. Heidbuchel, *The West Papua Conflict in Indonesia: Actors, Issues, and Approaches*, Johannes Hermann and J&J-Verlag (Germany), 2007, p. 152.

Indonesia tidak menginginkan orang Papua, Indonesia hanya menginginkan tanah dan sumber daya alam yang terdapat di dalam pulau Papua. Kalau orang Papua ingin merdeka, silahkan cari pulau lain di Pasifik untuk merdeka. Atau meminta orang Amerika untuk menyediakan tempat di bulan untuk orang-orang Papua menempati di sana

(English: Indonesia never wanted the people of Papua, Indonesia only wanted the land and resources obtainable from the island of Papua. If the Papuans want independence, let them look for another island in the Pacific. Or ask the Americans to provide a place on the moon to settle the Papuans there).³⁵⁴

In response to this, I would like to highlight the perspectives of several Papuans.

First, Benny Wenda, who argues that West Papua will never be part of Indonesia, noting, “Indonesia is the problem. Independence for West Papua is the solution”.³⁵⁵ Wenda clearly opposes Indonesia’s presence in Papua because he knows Indonesia only takes advantages of Papua. His thoughts were delivered in response to the statement made by Indonesian Defence Minister, Ryamizard Ryacudu, that ‘Papua is (part) of the United Republic of Indonesia’ and then went on to remind other states not to intervene in Indonesia’s domestic issues.³⁵⁶ Obviously, Indonesia is playing for high-level diplomacy stakes at international level, which is why the people of Papua find it difficult to achieve freedom.

Second, Filep Karma, a Papuan independence activist, also points out that Indonesia derives much in the way of benefits from Freeport and gives little in return to Papuans.³⁵⁷ The way in which Indonesian security forces treat Papuans is also cruel, he says. His book, “It’s as we’re half animals (Indonesian: *Seakan kitorang setengah binatang*)”, underlines the

³⁵⁴ S. Yoman, *Pemusnahan etnis Melanesia: Memecah kebisuan sejarah kekerasan di Papua Barat (English: Extermination of Melanesians: Breaking the silence on the history of violence in West Papua)*, Percetakan GalangPress, Yogyakarta, Indonesia, 2007, pp. 222-223.

³⁵⁵ Free West Papua Campaign, ‘Benny Wenda responds to Indonesian government, West Papua will never be part of Indonesia’, *Free West Papua Campaign (website)*, 28 December 2015, <<https://www.freewestpapua.org/2015/12/28/benny-wenda-responds-to-the-indonesian-government-west-papua-will-never-be-part-of-indonesia/>> accessed 12 October 2016.

³⁵⁶ The Guardian, ‘Indonesia warns other countries to respect its sovereignty over Papua’, *the Guardian*, 21 December 2015, <<https://www.theguardian.com/world/2015/dec/21/indonesia-warns-other-countries-to-respect-its-sovereignty-over-papua>> accessed 12 October 2016.

³⁵⁷ R. Henschke, ‘Filep Karma: Pembangunan Papua bukan untuk rakyat Papua (English: Filep Karma: Papua development is not for the people of Papua)’, *BBC Indonesia*, 3 May 2016, <http://www.bbc.com/indonesia/berita_indonesia/2016/05/160503_bincang_filepkarma> accessed 12 October 2016.

mistreatment meted out by the Indonesian government to the inhabitants of the island of West Papua for more than 52 years.³⁵⁸

Last, Papua Governor, Lukas Enembe, has also acknowledged that the extraction of Papuan natural resources has been one of the reasons why Papuans fight for independence.³⁵⁹ In relation to this, he maintains that ‘No Papuan has an Indonesian soul’. He adds that Indonesia thinks Papuans are silly, and then goes on to marginalise them in the community. But, he says, this is wrong because Papuans are smart enough and they do understand their history.³⁶⁰

Conclusion

This chapter has identified several reasons for the justification of the use of earned sovereignty to resolve the Papuan conflict. First, it is obvious that the Papua case is a sovereignty-based conflict similar to those of Kosovo, Bougainville, and East Timor, in which earned sovereignty has been applied. This approach is more effective than any others as it leads the peace process step-by-step (‘baking bread from broken eggs’) through the accumulation of sovereignty, which is very useful in conflict resolution. Second, it is worth noting that the Indonesian government and Papuans have not yet come together to settle the conflict; they remain sceptical of one another. Accordingly, earned sovereignty could provide room for both the Indonesian government and Papuans to reconcile their differences. Last, this approach can also be a part of the healing process for Papuans, who have experienced human rights violations over the years. Even so, applying earned sovereignty needs active cooperation, not only between the parent state and the sub-state entity, but also between those

³⁵⁸ F. Karma, *Seakan kitorang setengah binatang: Rasialisme Indonesia di tanah Papua* (English: It’s as if we’re half animals: Indonesian racialism in Papua), Deiyai, Jayapura, 2014, p. x.

³⁵⁹ This can be seen in Freeport’s contract, which was already in existence in 1967, two years before Papua was integrated into Indonesia. See Tabloid Jubi, ‘No Papuan has an Indonesian soul: Papua Governor’, *West Papua Daily English Version of TabloidJubi.com*, 13 January 2016, <<http://tabloidjubi.com/eng/no-papuan-has-indonesian-soul-papua-governor/>> accessed 12 October 2016.

³⁶⁰ Ibid.

two actors together with an international intervention (UN). Further, the practical details to make earned sovereignty approach work in the case of West Papua are also clear enough. As discussed, all eight actors should have agreed to come to the peace process, and then establish a peace agreement, such as the West Papua Peace Agreement (WPPA). Apart from undertaking the monitoring process, the UN could also force the Indonesian government's hand by proposing a referendum for Papua, or by sending peacekeeping forces.

There are also other considerations why earned sovereignty is a good fit for the Papua case. As previously mentioned, it will allow the central government, Papuans, and the UN (monitor) to assess and evaluate in a peaceful way, the effect of independence on Indonesia and on West Papua prior to the determination of final status. It will also enable the UN involvement to fully address the Papuan conflict, as the Indonesian government seems not to have intended to settle the conflict. Indeed, to date, no conflict resolution mechanism has been proposed by Jakarta. However, the writer recognises that the Indonesian government will never allow UN intervention in the Papuan conflict, nor will it accept the earned sovereignty application to some extent. Therefore, several concerns have been proposed to convince Indonesian decision makers to consider UN intervention in the future.

First, the Indonesian government is still applying the military approach, considered an act of genocide in Papua. Second, Indonesia is a democratic country, and should also consider the people as holding the supreme power. In this sense, if the people of West Papua call for a determination of their future, along the lines of similar calls from Scotland and Bougainville, the Indonesian government should take it into consideration. Last, the Indonesian government should not underestimate the support from the Pacific nations for the struggle of West Papua, which over the past few years has clearly advocated the issue of

Papua and challenged Indonesia at UN meetings. If they continue to do so in the future and embrace other countries and urge them to speak up, the pressure on Indonesia would be greater than ever before, thus forcing Jakarta to internationalise the Papua case. In addition, the strongest reason why it has become very important to Indonesia to keep Papua is simply due to resource economics. This is really opposed by Papuans, who then consider separation to be a sound idea.

CONCLUSION

In this thesis, I have conducted literature reviews in order to better understand the earned sovereignty approach and how it has been applied in real-life situations. I consider this approach to be the way forward in the resolution of the prolonged conflict in West Papua because the alternative solutions currently proposed (special autonomy, dialogue, and welfare approach) are unable to work effectively to end the conflict. This approach also provides a window of opportunity for Indonesia and Papua to carry out an assessment as to whether or not Papua merits status as an independent country. Yet, this could happen should Indonesia intend to make peace and welcome international intervention. In particular, I propose the earned sovereignty approach because no other academics have ever proposed this framework to settle the Papuan conflict. Accumulating sovereignty through the three different stages of the approach, shared sovereignty, institutions building, and determination of final status, will prove very useful for conflict resolution in West Papua. While it is true that earned sovereignty has been successfully adopted in East Timor, Kosovo, South Sudan, and Bougainville, it is vitally important to scrutinize the genesis of the conflict in Papua in order to produce a better outcome. As discussed, the Papuan conflict has been ongoing for many years and resolving the conflict in a timely manner thus remains crucial. In summary, this thesis concludes that the theoretical framework of the earned sovereignty approach affords a good fit to address the sovereignty-based conflict in West Papua, Indonesia.

Following an examination of the Papua case, this thesis also concludes that the collaboration between the Indonesian Government and the Papuan people, together with intervention from the United Nations, is fundamental to the successful implementation of earned sovereignty in West Papua. Again, I acknowledge that the earned sovereignty

approach will not work without the consent of all parties particularly from the parent state. As long as the Indonesian government expresses its unwillingness for earned sovereignty, this approach will never take place in Papua. For this reason, this thesis has developed several arguments to convince Indonesia on the merits of earned sovereignty as well as challenge its stance to allow the UN intervention as part of earned sovereignty. First, the Indonesian government must acknowledge that its military approach has inflicted severe human rights abuses in Papua over the years. If Jakarta has no intention to cease this, then it could spell disaster in the future. Indeed, academics and INGOs worldwide have released a number of human rights reports highlighting the atrocities carried out against Papuans by the Indonesian military. Undeniably, this activity could continue to occur in the coming years, which will certainly damage Indonesia's international reputation. Thus, working with the UN through earned sovereignty to establish peace in Papua should be taken into account. Second, I also emphasise that many scholars have elaborated on indications that the Indonesian military is carry out slow genocide in Papua. This is related to the norm of Responsibility to Protect (R2P), which is used by the international community to intervene in a country when it fails to protect its people. With the increasing number of Pacific countries raising the issue of Papua at the UN meetings, this could pressure the UN into approving a resolution to send peacekeeping troops, or proposing a referendum on self-determination for Papuans sometime in the future. Hence, Indonesia should consider accepting the earned sovereignty approach in a timely manner in order to end the prolonged conflict in Papua and proceed to establish peace there.

BIBLIOGRAPHY

PRIMARY SOURCES

Official Reports and Publications

- Amnesty International, 'Amnesty International Report 2015/16: The State of the World's Human Rights', <<https://www.amnesty.org/en/countries/asia-and-the-pacific/indonesia/report-indonesia/>> accessed 20 September 2016.
- Bolton, G and Visoka, G., 'Recognizing Kosovo's independence: Remedial secession or earned sovereignty?', *South East European Studies at Oxford*, Occasional paper No. 11/10 October 2010, pp. 1-24.
- Brundige, E et. al, 'Indonesian Human Rights Abuses in West Papua: Application of the Law of Genocide to the History of Indonesian Control', *The Allard K. Lowenstein International Human Rights Clinic Yale Law School* (A paper prepared for the Indonesia Human Rights Network), April 2004, <https://www.law.yale.edu/system/files/documents/pdf/Intellectual_Life/West_Papua_final_report.pdf> accessed 7 September 2016.
- Elmslie, J., 'The Biak Massacre Citizen's Tribunal: evidence brief and tribunal verdict', *West Papua Project Centre of Peace and Conflict Studies University of Sydney*, 2014, <http://sydney.edu.au/arts/peace_conflict/docs/Biak_Tribunal_Brief_four.pdf> accessed 4 July 2016.
- Human Rights Watch, 'Indonesia Events of 2015', *Human Rights Watch World Report 2016*, <<https://www.hrw.org/world-report/2016/country-chapters/indonesia>> accessed 5 September 2016.
- International Crisis Group (ICG), 'Papua: Answers to Frequently Asked Questions', *International Crisis Group (Update briefing – report)*, Jakarta/Brussels 5 September 2006, <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4517d6884&skip=0&query=yale%20report&coi=PNG>> pp. 1-15, accessed 15 September 2016.
- Komnas HAM Indonesia (National Commission on Human Rights), 'Mengingatkan (kembali) Jokowi Untuk Prioritaskan HAM Papua (English: Reminding Jokowi to Prioritize Human Rights Issues in Papua)', *Komnas HAM Indonesia (report 2016)*, <<http://www.komnasham.go.id/sites/default/files/dokumen-siaran-pers/4%20Maret%202016%20-%20Papua.pdf>> accessed 15 September 2016.
- Resolution adopted by the General Assembly 60/1. 2005 World Summit Outcome: the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, <<http://www.un.org/en/preventgenocide/adviser/pdf/World%20Summit%20Outcome%20Document.pdf#page=30>> accessed 8 September 2016.
- The West Papuan Community, '“West Papua”, a scandal in the U.N. decolonization history:

the political status of West Papua as a recolonized territory in the U.N. international decade for the eradication of "colonialism" by 2000, WestPAC, Jakarta-Indonesia, 1999.

Tebai, N., 'Dialogue between Jakarta and Papua: A perspective from Papua', *Pontifical Mission Society – Human Rights Office*, 2009, pp. 1-40, <https://sydney.edu.au/arts/peace_conflict/docs/Neles%20DIALOGUE%20PAPER%20FOR%20WPP.pdf> accessed 5 July 2015.

The Catholic Justice and Peace Commission of the Archdiocese of Brisbane (Report), 'We Will Lose Everything: Human Rights Fact-Finding Mission to West Papua', 1 May 2016.

Wing, J and King, P., 'Genocide in West Papua: The role of the Indonesian state apparatus and a current needs assessment of the Papuan people', *Centre for Peace and Conflict Studies the University of Sydney*, A report prepared for the West Papua Project at the Centre for Peace and Conflict Studies, University of Sydney, and ELSHAM Jayapura, Papua, August 2005, <http://sydney.edu.au/arts/peace_conflict/docs/WestPapuaGenocideRpt05.pdf>, pp. 1-52, accessed 7 September 2015.

Woodbury, J., 'The Bougainville independence referendum: Assessing the risks and challenges before, during, and after the referendum', *Indo-Pacific Strategic Papers*, January 2015, pp. 1-32, <[http://www.defence.gov.au/ADC/Publications/IndoPac/Woodbury%20paper%20\(IPSD%20version\).pdf](http://www.defence.gov.au/ADC/Publications/IndoPac/Woodbury%20paper%20(IPSD%20version).pdf)> accessed 12 October 2016.

Newspaper Sources

ABC News, 'East Timor marks referendum vote', *ABC News*, 30 August 2004, <<http://www.abc.net.au/news/2004-08-30/east-timor-marks-referendum-vote/2035284>> accessed 9 September 2016.

ABC Radio Australia, 'Bougainville confirms independence referendum before 2020', *ABC Radio Australia*, 24 January 2013, <<http://www.radioaustralia.net.au/international/radio/program/pacific-beat/bougainville-confirms-independence-referendum-before-2020/1077886>> accessed 7 September 2016.

ABC News, 'Bougainville and Papua New Guinea set target date for independence referendum', *ABC News*, 23 May 2016, <<http://www.abc.net.au/news/2016-05-23/bougainville-referendum-set-for-2019/7436566>> accessed 7 September 2016.

Amnesty International, 'Indonesia: End police violence against demonstrators in Papua', *Amnesty International*, 25 October 2012, <<https://www.amnesty.org/en/press-releases/2012/10/indonesia-end-police-violence-against-demonstrators-papua/>> accessed 5 September 2016.

- Amnesty International Australia, 'Indonesia: End attacks on freedom of expression in Papua', *Amnesty International Australia (website)*, 8 May 2015, <<http://www.amnesty.org.au/news/comments/37148/>> accessed 4 July 2016.
- Amnesty International Australia, 'Indonesia must end attacks on freedom of expression in Papua', *Amnesty International Australia (website)*, 30 August 2014, <<http://www.amnesty.org.au/news/comments/35426/>> accessed 4 July 2016.
- Amnesty International New Zealand, 'Indonesia: End mass arrests and crackdowns on peaceful protests', *Amnesty International New Zealand (website)*, 5 May 2016, <<https://www.amnesty.org.nz/indonesia-end-mass-arrests-and-crackdowns-peaceful-protests>> accessed 1 July 2016.
- BBC Indonesia, 'Pertemuan bahas Papua merdeka bakal di gelar di London (English: Meeting to discuss Papua independence to take place in London)', *BBC Indonesia*, 3 May 2016, <http://www.bbc.com/indonesia/berita_indonesia/2016/05/160502_indonesia_papua_ipwp> 13 October 2016.
- BBC News, 'Aceh rebels sign peace agreement', *BBC News*, 15 August 2005, <<http://news.bbc.co.uk/2/hi/asia-pacific/4151980.stm>> accessed 9 September 2016.
- BBC News, 'Scotland decides', *BBC News*, 19 September 2014, <<http://www.bbc.com/news/events/scotland-decides>> accessed 9 September 2016.
- BBC News, 'South Sudan country profile', *BBC News*, 2 August 2016, <<http://www.bbc.com/news/world-africa-14069082>> accessed 20 September 2016.
- Bougainville News, 'Bougainville independence referendum 2019: What are the risks and challenges-report', *Bougainville News*, 27 July 2015, <<https://bougainvillenews.com/2015/07/27/bougainville-independence-referendum-2019-what-are-the-risks-and-challenges-report/>> accessed 9 September 2016.
- Davidson, H., 'West Papua: UN must supervise vote on independence, says coalition', *The Guardian*, 3 May 2016, <<https://www.theguardian.com/world/2016/may/03/west-papua-un-must-supervise-vote-on-independence-says-coalition>> accessed 11 October 2016.
- Fox, L., 'West Papuans given Melanesia, but not full membership', *ABC News*, 27 June 2015, <<http://www.abc.net.au/news/2015-06-27/west-papuans-given-melanesia-bloc-access/6577722>> accessed 1 July 2016.
- Free West Papua Campaign, 'Rallies for West Papua held across the world on the Day of Broken Promise', *Free West Papua Campaign (website)*, 23 August 2016, <<https://www.freewestpapua.org/2016/08/23/rallies-for-west-papua-held-across-the-world-on-the-day-of-broken-promise/>> accessed 4 September 2016.
- Free West Papua Campaign, 'Benny Wenda responds to Indonesian government, West Papua will never be part of Indonesia', *Free West Papua Campaign (website)*, 28 December 2015, <<https://www.freewestpapua.org/2015/12/28/benny-wenda-responds-to-the->

- [indonesian-government-west-papua-will-never-be-part-of-indonesia/](#)> accessed 12 October 2016.
- Global Center for the Responsibility to Protect, ‘About R2P’, *Global Center for the Responsibility to Protect*, <http://www.globalr2p.org/about_r2p> accessed 13 October 2016.
- Greenleft, ‘West Papua: Thousands March for Freedom’, *Greenleft Weekly*, 15 May 2011, <<https://www.greenleft.org.au/content/west-papua-thousands-march-freedom>> accessed 20 September 2016.
- Henschke, H., ‘Filep Karma: Pembangunan Papua bukan untuk rakyat Papua (English: Filep Karma: Papua development is not for the people of Papua)’, *BBC Indonesia*, 3 May 2016, <http://www.bbc.com/indonesia/berita_indonesia/2016/05/160503_bincang_filepkarma> accessed 12 October 2016.
- Heriyanto, D., ‘Can Jokowi assuage Papuan woes?’, *The Jakarta Post*, 1 June 2016, <<http://www.thejakartapost.com/academia/2016/06/01/can-jokowi-assuage-papuan-woes.html>> accessed 5 July 2016.
- Human Rights Watch, ‘Letter to President-elect Joko Widodo Re: Human Rights Concerns in Indonesia’, *Human Rights Watch*, 28 August 2014, <<https://www.hrw.org/news/2014/08/28/letter-president-elect-joko-widodo-re-human-rights-concerns-indonesia>> accessed 5 September 2016.
- Human Rights Watch, ‘Indonesia: Investigate Death of Papuan Leader’, *Human Rights Watch (website)*, 11 November 2001, <<https://www.hrw.org/news/2001/11/11/indonesia-investigate-death-papuan-leader>> accessed 4 July 2016.
- Human Rights Watch, ‘Indonesia: Security forces kill five in Papua’, *Human Rights Watch (website)*, 10 December 2014, <<https://www.hrw.org/news/2014/12/10/indonesia-security-forces-kill-five-papua>> accessed 4 July 2016.
- Jakarta Globe, ‘Jokowi breaks silence on killings in Paniai, pledges to resolve shootings’, *Jakarta Globe (website)*, 28 December 2014, <<http://jakartaglobe.beritasatu.com/news/joko-breaks-silence-security-force-killings-paniai/>> accessed 4 July 2016.
- Makuba, N., ‘KNPB Sorong Raya strongly rejects dialogue with Jakarta’, *Tabloid Jubi*, 16 February 2015, <<http://tabloidjubi.com/eng/knpb-sorong-raya-strongly-reject-dialogue-with-jakarta/>> accessed 5 July 2016.
- Mining Global, ‘Grasberg: The World’s Largest Gold Mine’, *Mining Global*, 24 February 2015, <<http://www.miningglobal.com/miningsites/796/Grasberg:-The-World's-Largest-Gold-Mine>> accessed 18 September 2016.
- New Internationalist Magazine, ‘West Papua: The Road to Freedom’, *New Internationalist*

Magazine, 4 August 2011, <<https://newint.org/features/web-exclusive/2011/08/04/west-papua-protests-independence/>> accessed 20 September 2016.

New World Encyclopaedia, 'Melanesia', *New World Encyclopaedia (website)*, <<http://www.newworldencyclopedia.org/entry/Melanesia>> accessed 10 September 2016.

Padden, B., 'Special autonomy works in Indonesia's Aceh province, but not Papua', *Voice of America (news)*, 21 December 2011, <<http://www.voanews.com/content/special-autonomy-works-in-indonesias-aceh-province-but-not-papua-136097288/168310.html>> accessed 5 July 2016.

Pangaribuan, M., 'Pendeta Papua: Pemerintah jangan larang gereja bicara referendum' (English: West Papuan Church leader: Government should not prevent churches from talking about referendum), *SatuHarapan.com*, 9 April 2016, <<http://www.satuharapan.com/read-detail/read/pendeta-papua-pemerintah-jangan-larang-gereja-bicara-referendum>> accessed 11 October 2016.

PapuaPost.com, 'Marinus: DPRP harus berani usul referendum ke pusat' (English: Marinus, an international law and political observer: the Papuan People's Representative Council must have the courage to propose a referendum to the central government), *PapuaPost.com*, 23 August 2014, <<http://papuapost.com/2014/08/marinus-dprp-harus-berani-usul-referendum-ke-pusat/>> accessed 11 October 2016.

PapuaPost.com, 'Orang Papua masih perang suku jadi merdeka nanti perang suku terus menerus' (English: Papuans still fighting ethnic war, will continue if Papua achieves independence), *PapuaPost.com*, 12 August 2016, <<https://papuapost.wordpress.com/2016/08/12/orang-papua-masih-perang-suku-jadi-merdeka-nanti-perang-suku-terus-menerus/>> 13 October 2016.

PapuaPost.com, 'Papua merdeka tidak untuk mewujudkan masyarakat Papua yang adil dan makmur' (English: An independent Papua will not lead to a just and prosperous Papua society)', *PapuaPost.com*, 16 June 2016, <<http://papuapost.com/2016/06/papua-merdeka-tidak-untuk-mewujudkan-masyarakat-papua-yang-adil-dan-makmur/>> 13 October 2016.

Parlina, I., 'Doubts linger over Jokowi's call for Papuan development', *Jakarta Post*, 13 March 2016, <<http://www.thejakartapost.com/news/2016/03/13/doubts-linger-over-jokowi-s-call-papuan-development.html>> accessed 5 July 2016.

Peacock, M., 'West Papua massacre: University of Sydney citizen's tribunal calls for Indonesia to investigate Biak slaughter', *ABC News (website)*, 17 December 2013, <<http://www.abc.net.au/news/2013-12-16/citizen-tribunal-calls-for-investigation-into-biak-massacre/5160134>> accessed 3 July 2016.

Pemberton, P., 'West Papua: Uncovering the hidden conflict', *Green Left Weekly*, 28 November 2010, <<https://www.greenleft.org.au/node/46269>> accessed 1 May 2016.

Radio New Zealand, 'West Papuan activists claim more big arrest numbers', *Radio New*

- Zealand*, 20 June 2016, <<http://www.radionz.co.nz/international/pacific-news/306866/west-papuan-activists-claim-more-big-arrest-numbers>> accessed 5 July 2016.
- Radio New Zealand, 'Anti-independence rally in West Papua', *Radio New Zealand*, 6 June 2016, <<http://www.radionz.co.nz/international/pacific-news/305726/anti-independence-rally-in-west-papua>> accessed 3 July 2016.
- Radio New Zealand, 'Pacific leaders raised West Papua at the UN', *Radio New Zealand*, 26 September 2016, <<http://www.radionz.co.nz/international/programmes/datelinepacific/audio/20181760/pacific-leaders-raise-west-papua-at-the-un>> accessed 11 October 2016.
- Radio New Zealand, 'Indonesia accuses Pacific countries of interference', *Radio New Zealand*, 27 September 2016, <<http://www.radionz.co.nz/international/pacific-news/314234/indonesia-accuses-pacific-countries-of-interference>> accessed 11 October 2016.
- Radio New Zealand, 'Arrest as thousands demonstrate in West Papua', *Radio New Zealand*, 14 April 2016, <<http://www.radionz.co.nz/international/pacific-news/301484/arrests-as-thousands-demonstrate-in-west-papua>> accessed 17 September 2016.
- Radio New Zealand, 'West Papua group welcomes MSP appreciation', *Radio New Zealand*, 26 June 2015, <<http://www.radionz.co.nz/international/pacific-news/277316/west-papua-group-welcomes-msg-appreciation>> accessed 9 September 2016.
- Radio New Zealand, 'Rally in Fiji for West Papua', *Radio New Zealand*, 16 May 2015, <<http://www.radionz.co.nz/international/pacific-news/273780/rally-in-fiji-for-west-papua>> accessed 7 September 2016.
- Radio New Zealand, 'Jakarta slams Solomons and Vanuatu over human rights', *Radio New Zealand (news)*, 27 June 2016, <<http://www.radionz.co.nz/international/pacific-news/307394/jakarta-slams-solomons-and-vanuatu-over-human-rights>> accessed 15 September 2016.
- Roden, D, 'West Papua: Reports detail genocide by Australian-backed occupiers', *Green Left Weekly*, 29 October 2013, <<https://www.greenleft.org.au/node/55243>> accessed 13 May 2016.
- Tabloid Jubi, 'No Papuan has an Indonesian soul: Papua Governor', *West Papua Daily English Version of TabloidJubi.com*, 13 January 2016, <<http://tabloidjubi.com/eng/no-papuan-has-indonesian-soul-papua-governor/>> accessed 12 October 2016.
- Tapol, 'Church Leaders: State violence intensifying in Papua', *Tapol (news)*, 6 March 2013, <<http://tapol.org/news/church-leaders-state-violence-intensifying-land-papua>> accessed 17 September 2016.

Tempo.co, 'Terlibat bunuh Theys dan dipecat, Hartomo kini jadi kabais (English: Involved in and fired over murder of Theys, Hartomo is now head of Strategic Intelligence Agency', *Tempo.co (news)* 21 September 2016, <<https://m.tempo.co/read/news/2016/09/21/078806134/terlibat-bunuh-theys-dan-dipecat-hartomo-kini-jadi-kabais>> accessed 22 September 2016.

Tempo.co, 'Demo dukung NKRI di Papua, pasar dan swalayan sempat tutup' (English: Demonstration to support Indonesia's sovereignty over West Papua, markets and supermarkets are closed), *Tempo.co (website)*, 2 June 2016, <<https://m.tempo.co/read/news/2016/06/02/078776214/demo-dukung-nkri-di-papua-pasar-dan-swalayan-sempat-tutup>> accessed 3 July 2016.

Tempo.co, 'Papua remains Indonesia's poorest region', *Tempo.co (website)*, 14 August 2012, <<http://en.tempo.co/read/news/2012/08/14/055423519/Papua-Remains-Indonesias-Poorest-Region>> accessed 5 July 2016.

The Fiji Times Online, 'Indonesia levels accusation', *The Fiji Times Online*, 27 September 2016, <<http://www.fijitimes.com/story.aspx?id=372437>> accessed 11 October 2016.

The Guardian, 'Indonesia warns other countries to respect its sovereignty over Papua', *the Guardian*, 21 December 2015, <<https://www.theguardian.com/world/2015/dec/21/indonesia-warns-other-countries-to-respect-its-sovereignty-over-papua>> accessed 12 October 2016.

The Jakarta Post, 'Papua Police chief denies detaining pro-independence group', *the Jakarta Post (news)*, 15 June 2016, <<http://www.thejakartapost.com/news/2016/06/15/papua-police-chief-denies-detaining-pro-independence-group.html>> accessed 17 September 2016.

The Jakarta Post, 'Papua is already free, rights protected', *The Jakarta Post*, 9 May 2016 <<http://www.thejakartapost.com/academia/2016/05/09/papua-is-already-free-rights-protected.html>> accessed 15 September 2016.

The Jakarta Post, 'Police, military pose problem in attempt to solve Papua rights abuse cases', *The Jakarta Post*, 24 May 2016, <<http://www.thejakartapost.com/news/2016/05/24/police-military-pose-problem-in-attempt-to-solve-papua-rights-abuse-cases-kontras.html>> accessed 15 September 2016.

The United Nations, 'West New Guinea – United Nations Security Force (UNSF): Background', *The United Nations (website)*, <<http://www.un.org/en/peacekeeping/missions/past/unsfbackgr.html>> accessed 27 June 2016.

The UN, 'The Responsibility to Protect', the UN Website, <<http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>> 13 October 2016.

United Liberation Movement for West Papua, 'About ULMWP', *United Liberation*

Movement for West Papua (website), <<https://www.ulmwp.org/about-ulmwp>> accessed 13 September 2016.

Universities, 'Cenderawasih University (Uncen), *Universities (search universities worldwide)*, <<http://www.univerzities.com/indonesia/cenderawasih-university/>> accessed 11 October 2016.

UN Web TV, "Indonesia–First Right of Reply", *UN Web TV (Website)*, <<http://webtv.un.org/meetings-events/watch/indonesia-first-right-of-reply/5139655009001>> accessed 11 October 2016.

Wangge, H. Y. R., 'Will Jokowi be a truly great leader for the Papuans?', *The Jakarta Post*, 1 December 2014, <<http://www.thejakartapost.com/news/2014/12/01/will-jokowi-be-a-truly-great-leader-papuans.html>> accessed 5 July 2016.

Yoku, A., 'Mahasiswa Papua Tolak Dialog Jakarta Papua (Papua students reject Jakarta-Papua Dialogue)', *Tabloid Jubi*, 30 August 2015, <<http://tabloidjubi.com/16/2015/08/30/mahasiswa-papua-tolak-dialog-jakarta-papua/>> accessed 5 July 2016.

Other Primary Sources

Hill, S., 'Papuans and Jokowi are hostage to Indonesian politics', 2015, University of Wollongong research online.

International Peacekeeping, 'Security Council Resolution 1244 (1999) outlining the international presence in Kosovo, 10 June 1999', *International Peacekeeping*, Vol. 6, No. 4, 1999, pp. 237-242.

McWilliams, E., 'Hope dashed: Special autonomy in West Papua', *Arena Magazine*, 2008, pp. 8-9.

Peter, W., *Arbitration and renegotiation of international investment agreements: A study with particular reference to means of conflict avoidance under natural resources investment agreements*, The Hague; Boston: Kluwer Law International, 1995.

Robie, D., 'Conflict reporting in the South Pacific: A critical reflexive approach to Timor-Leste and West Papua', *Media Asia*, Vol. 40, No. 2, 2013, pp. 147-161.

Sampford, C and Thakur, R., *Responsibility to Protect and Sovereignty*, Ashgate Publishing Limited, England, 2013.

Simpson, B., 'Indonesia's 1969 Takeover of West Papua Not by "Free Choice"', *The National Security Archive – Document Release Marks 35th Anniversary of Controversial Vote and Annexation*, 9 July 2004, <<http://nsarchive.gwu.edu/NSAEBB/NSAEBB128/>> accessed 18 September 2016.

Suter, K., 'Independence for West Papua', *Bulletin of the Atomic Scientists*, Vol. 57, No. 3, 2001, pp. 16-18.

SECONDARY SOURCES

Books

- Agung, I. A. A. G., *From the Formation of the state of East Indonesia towards the establishment of the United States of Indonesia*, Yayasan Obor Indonesia, Jakarta, 1996.
- Aspinall, E, Mietzner, M, and Tomsa, D., *The Yudhoyono Presidency: Indonesia's Decade and Stagnation*, Institute of Southeast Asian Studies, Singapore, 2015.
- Braithwaite, J, et al., *Anomie and Violence: Non-truth and reconciliation in Indonesian peacebuilding*, ANU E Press, Australia, 2010.
- Buchanan, A., *Justice, Legitimacy, and Self-Determination: Moral foundation for international law*, Oxford University Press, the US, 2004.
- Budiardjo, C and Liong, L. S., *West Papua: The Obliteration of a People*, TAPOL, UK, 1988.
- Breidlid, A., *A concise history of South Sudan*, Fountain Publishers, Uganda, 2010.
- Caspersen, N., *Unrecognized States: The struggle for sovereignty in the modern international system*, Polity Press, England, 2012.
- Chauvel, R and Bhakti, I. N., *The Papua Conflict: Jakarta's Perceptions and Policies*, the East-West Center Washington, Washington DC, 2004.
- Drooglever, P., *An Act of Free Choice: Decolonization and the Right to Self-Determination in West Papua*, Oneworld, Oxford, 2009.
- Elmslie, J., *Irian Jaya under the Gun: Indonesian Economic Development versus West Papuan Nationalism*, University of Hawai'i Press, North America, 2002.
- Fernandes, C., *Reluctant Indonesians: Australia, Indonesia, and the future of West Papua*, Carlton North, Victoria, Australia, 2006.
- Francis, C., *Conflict resolution and Status: the case of Georgia and Abkhazia (1989-2008)*, VubPress Brussels University Press, Brussels, 2011.
- Heidbuchel, E., *the West Papua Conflict in Indonesia: Actors, issues, and Approaches*, Johannes Hermann and J&J-Verlag (Germany), 2007.
- Karma, F., *Seakan kitorang setengah binatang: rasialisme Indonesia di Tanah Papua* (English: It's as if we're half animals: Indonesian racialism in Papua), Deiyai, Jayapura, 2014.
- King, P., *West Papua and Indonesia since Suharto: independence, autonomy, or chaos?* University of New South Wales Press, Sydney, 2004.

- Kingsbury, D., *Power politics and the Indonesian military*, RoutledgeCurzon, London; New York, 2003.
- Kratoska, P. H., *South East Asia: Colonial History: Independence through revolutionary war*, Routledge, London, 2001.
- Martinkus, J., *Paradise Betrayed: West Papua's struggle for independence*, Black. Inc, Melbourne, 2002.
- Macleod, J., *Merdeka and the Morning Star: Civil Resistance in West Papua*, University of Queensland Press, Australia, 2015.
- Penders, C. L. M., *The West New Guinea Debacle: Dutch Decolonization and Indonesia, 1945-1962*, Crawford House Publishing, Australia, 2002.
- Raic, D, *Statehood and the Law of Self-Determination*, Kluwer Law International, the Netherlands, 2002.
- Rutherford, D, *Laughing at Leviathan: Sovereignty and Audience in West Papua*, the University of Chicago Press, the USA, 2012.
- Saltford, J., *The United Nations and The Indonesian Government Takeover of West Papua, 1962-1969: The anatomy of Betrayal*, RoutledgeCurzon, London, 2003.
- Tapol (Organisation), *West Papua: The Obliteration of a People*, London: Tapol, 1983.
- Tebay, N., *West Papua: The struggle for peace with justice*, Catholic Institute for International Relations, London, 2005.
- Vaughn, G., *The Unravelling of Island Asia? Governmental, Communal, and the Regional Instability*, Praeger Publishers, the USA, 2002.
- Widjojo, M. S, et al., *Papua Road Map: Negotiating the past, improving the present, and securing the future*, LIPI, Yayasan Tifa, and Yayasan Pustaka Obor Indonesia, Jakarta, 2010.
- Widjojo, M.S et. al (Indonesian Version), *Papua Road Map: Negotiating the Past, Improving the Present, and Securing the Future*, LIPI, Yayasan Tifa, dan Yayasan Obor Indonesia, Jakarta, 2009.
- Yoman, S., *Pemusnahan etnis Melanesia: Memecah kebisuan sejarah kekerasan di Papua Barat (English: Extermination of Melanesians: Breaking the silence on the history of violence in West Papua)*, Percetakan GalangPress, Yogyakarta, Indonesia, 2007.

Chapters in Edited Collections

- Broek, T. V. D., 'A Peace Mission: The Church response to conflict the West Papua case', in

J. B. Hernawan (ed), *Papua Land of Peace: Addressing Conflict Building Peace in West Papua*, Office for Justice and Peace Catholic Diocese of Jayapura, West Papua, 2005, pp. 61-81.

Musgrave, T. D., 'An analysis of the 1969 Act of Free Choice in West Papua', in C. Chinkin and F. Beatens, *Sovereignty, Statehood and State Responsibility*, Cambridge University Press, the UK, 2015.

Mulyani, T. E., 'The History of the Restoration of Irian Jaya Into the Republic of Indonesia' in N. H. Wirajuda, *Hubungan Internasional: Percikan pemikiran diplomat Indonesia*, PT. Gramedia Pustaka Utama, Jakarta, 2004, pp. 17-25.

Journal Articles

Broek, T. V. D and Szalay, A., 'Raising the Morning Star: Six Months in the Developing Independence Movement in West Papua', *the Journal of Pacific History*, Vol. 36, No. 1, 2001, pp. 77-92.

Bellamy, A. J., 'The Responsibility to Protect and the Problem of Military Intervention', *International Affairs*, Vol. 84. No. 4, 2008, pp. 615-639.

Blades, J., 'Melanesia's test: The political quandary of West Papua', *Pacific Journal Review*, Vol. 20, No. 2, 2014, pp. 23-39.

Clark, R., 'Self-Determination and Free Association: Should the United Nations Terminate the Pacific Islands Trust?', *Harvard International Law Journal*, Vol. 21. No. 1, 1980, pp. 1-86.

Day, R., 'West Papua and the Australia-Indonesia Relationship: A case study in diplomatic difficulty', *Australian Journal of International Affairs*, 2015, pp. 1-22.

Doyle, M. W., 'International Ethics and the Responsibility to Protect', *International Studies Review*, Vol. 13, No. 1, 2011, pp. 72-84.

Daspremont, J., 'Regulating statehood: The Kosovo status settlement', *Leiden Journal of International Law*, Vol. 20, No. 3, pp. 649-668

Graham, L., 'Self-Determination for Indigenous Peoples after Kosovo: Translating Self-Determination "Into Practice" and "Into Peace"', *ILSA Journal of International & Comparative Law*, Vol. 6, No. 2, 2000, pp. 455-465.

Hooper, J and William, P., 'Earned Sovereignty: The political dimension', *Denver Journal of International Law and Policy*, Vol. 31, No. 3, 2003, pp. 355-372.

Janki, M., 'West Papua and the Right to Self-Determination under the International Law', *West Indian Law Journal*, Vol. 34, No. 1, 2010, pp. 1-33.

Joseph, S., 'Resolving conflicting claims of territorial sovereignty and external self-

- determination, part 2', *The International Journal of Human Rights*, Vol. 3, No. 2, 1999, pp. 49-68.
- Kirksey, S. E and Roemajauw, J. A. D., 'The Wild Terrorist Gang: The semantics of violence and self-determination in West Papua', *Oxford Development Studies*, Vol. 30, No. 2, 2002, pp. 189-203.
- Kirschner, N. P., 'Making Bread from Broken Eggs: A Basic Recipe for Conflict Resolution Using Earned Sovereignty', *Whittier Law Review*, Vol. 28, No. 4, 2007, pp. 1131-1166.
- Kyriakakis, J., 'Freeport in West Papua: Bringing corporations to account for international human rights abuses under Australian criminal and tort law', *Monash university Law Review*, Vol. 31, No. 1, 2005, pp. 95-119.
- Lawson, S., 'Melanesia: The History and Politics of an idea', *the Journal of Pacific History*, Vol. 48, No. 1, 2013, pp. 1-22.
- Lawson, S., 'West Papua, Indonesia and the Melanesian Spearhead Group: competing logics in regional and international politics', *Australian Journal of International Affairs*, 2016, pp. 1-19.
- Lineham, R., 'The UN's new approach to post-conflict governance – implications for accountability', *Australasian Journal of Human Security*, Vol. 1, No. 3, 2005, pp. 27-41.
- McKenna, K., 'Corporate security practices and human rights in West Papua', *Conflict and Security Development*, Vol. 15, No. 4, 2015, pp. 1-27.
- Nanda, V., 'Self-Determination under International Law: Validity of Claims to Secede', *Case Western Journal of International Law*, Vol. 13, No. 2, pp. 257-280.
- Scharf, M. P., 'Earned Sovereignty: Juridical Underpinnings', *Denver Journal of International Law and Policy*, Vol. 31, No. 3, 2003, pp. 373-385.
- Scott, C and Tebay, N., 'The West Papua conflict and its consequences for the Island of New Guinea: Root causes and the campaign for Papua, land of peace', *The Round Table*, Vol. 94, No. 382, 2005, pp. 599-612.
- Stott, D. A., 'Would an independent West Papua be a failing state?', *the Asia Pacific Journal*, Vol. 9, No. 1, 2011, pp. 1-40.
- Visser, L. E., 'Remaining poor on natural riches? The fallacy of community development in Irian Jaya/Papua', *The Asia Pacific Journal of Anthropology*, Vol. 2, No. 2, 2001, pp. 68-88.
- Webster, D., 'Already sovereign as a people: A foundational moment in West Papuan nationalism', *Pacific Affairs*, Vol. 74, No. 4, 2001, pp. 507-528.
- Webb-Gannon, C., 'Merdeka in West Papua: Peace, Justice, and Political Independence',

Anthropologica, Vol. 56, No. 2, 2014, pp. 353-367.

Williams, P. R and Heymann, K., 'Earned Sovereignty: An Emerging Conflict Resolution Approach', *ILSA Journal of International and Comparative Law*, Vol. 10, No. 2, 2004, pp. 437-445.

Williams, P. R., Scharf, M. P and Hooper, J. R., 'Resolving Sovereignty Based Conflicts: The Emerging Approach of Earned Sovereignty', *Denver Journal of International Law and Policy*, Vol. 31, No. 3, 2003, pp. 349-353.

Williams, P. R., 'Earned Sovereignty: The road to resolving the conflict over Kosovo's final status', *Denver Journal of International Law and Policy*, Vol. 31, No. 3, 2003, pp. 387-425.

Williams, P. R., 'Earned Sovereignty: The Future of Sovereignty-Based Conflict Resolution', *Denver Journal of International Law and Policy*, Vol. 40, 2011, pp. 128-143.

Williams, P. R and Pecci, F. J., 'Earned Sovereignty: Bridging the Gap between Sovereignty and Self-Determination', *Stanford Journal of International Law*, Vol. 40, No. 2, 2004, pp. 347-386.

Williams, P. R., Avoryie, A. J and Armstrong, C. J., 'Earned Sovereignty Revisited: Creating a strategic framework for managing self-determination based conflicts', *ILSA Journal of International and Comparative Law*, Vol. 21, No. 2, 2015, pp. 1-26.

Theses and other Unpublished Material

Halmin, M. Y., 'The implementation of special autonomy in West Papua: Indonesia: problems and recommendations', *Thesis submitted for the Degree of Master of Arts in National Security Affairs*, Naval Postgraduate School, California, 2006, pp. 1-77.

Wuryandari, G., 'Human Rights in Australian Foreign Policy, with specific reference to East Timor and Papua', *Thesis submitted for the Degree of Doctor of Philosophy in Asian Studies*, School of Social and Cultural Studies, The University of Western Australia, 2006, pp. 1-387.