

REPUBLIK MALUKU:

The Case for Self-determination

A Briefing Paper

OF

**HUMANITARIAN LAW PROJECT
INTERNATIONAL EDUCATIONAL DEVELOPMENT**

AND

ASSOCIATION OF HUMANITARIAN LAWYERS

**Prepared by
Karen Parker, J.D.**

**Presented to
The United Nations
Commission on Human Rights
1996 Session
March
Geneva**

Humanitarian Law Project
International Educational Development
8124 West Third Street
Los Angeles, California 90048
tel. (213) 653-6583
fax. (213) 653-2741

Humanitarian Law Project/International Educational Development (HLP/IED) is a non-sectarian, non-governmental organization granted consultative status at the United Nations by Dag Hammarskjold. IED was originally founded by Jesuit fathers to assist hospitals and schools in developing countries. In 1989 IED merged with the Los Angeles-based Humanitarian Law Project (HLP) and broadened its scope to advocate and promote world-wide compliance with human rights and humanitarian law.

Karen Parker, a director of HLP/IED, is an attorney at law specializing in human rights and humanitarian law. She is the organization's chief representative to the United Nations, Geneva and New York.

This report was funded by a grant from the Association of Humanitarian Lawyers.

REPUBLIK MALUKU: THE CASE FOR SELF-DETERMINATION

INTRODUCTION AND BACKGROUND.....	4
THE LINGGADJATI AGREEMENT.....	6
THE RENVILLE AGREEMENT.....	7
THE PROVISIONAL CONSTITUTION.....	8
UNITED NATIONS ACTION UP TO ROUND TABLE CONFERENCE.....	9
THE ROUND TABLE CONFERENCE.....	10
INDONESIA VIOLATES THE ROUND TABLE CONFERENCE AGREEMENTS...	12
THE REPUBLIK MALUKU SELATAN DECLARED.....	13
MALUKAN SELF-DETERMINATION.....	14
OPINIONS ON MALUKAN SELF-DETERMINATION.....	15
INTERNATIONAL ACTION.....	18
CONCLUSION.....	19
BIBLIOGRAPHY.....	20

INTRODUCTION AND BACKGROUND

Republik Maluku (the Moluccan Islands or the Maluku) form an island group off the eastern-most part of the present-day Indonesia. The Malukan (Moluccan) people are part of the Melanesian people called Alifoeroes and have occupied the islands since at least 1000 B.C.

The Maluku were famed since the early centuries B.C. for their spices which brought many nations to seek trading relations with them. In the early 1600's, the Netherlands colonized the islands, beginning with the seizure of Ambon in 1605. The Netherlands ultimately seized all of the area and what is presently known as Indonesia. Revolts by the Malukan people in 1636 and 1646 were severely put down by the Dutch administrators. During World War II, the whole of the Netherlands East Indies were seized by the Japanese forces and held from 1942 to 1945. However, in Maluku, the Malukan people fled to the mountains and maintained a continual war of resistance by what became known as the South Moluccan Brigade against the Japanese occupiers.

In the post-war period, the Netherlands and political leaders from the islands of the Netherlands East Indies met to work out independence plans. The Moluccan people viewed the process with favor because it was thought that independence from the Dutch would mean sovereignty for the Moluccas.

After a series of interim agreements, the Round Table Conference Agreements were signed in 1949 which were to settle the handing over of power to the new state, the United States of Indonesia, and which provided mechanisms for the component areas to chose or opt out of the new Indonesia. The Agreements granted the Malukans the right to determine their ultimate sovereignty: Malukans were to have a choice whether to join with the new state Indonesia or whether to reestablish their historic independent status.

The Round Table Agreements were violated within a year of signing. In response, the Moluccan people severed ties with East Indonesia and from the United States of Indonesia. On April 25, 1950, they declared the Republik Maluku Selatan (South Moluccas Republic), comprising the historic islands of the Malukan people: Amboina, Buru, Ceram and the adjoining islands. At this time, the United States of Indonesia did not yet formally exist, not becoming fully independent until August 17, 1950.

Indonesian forces initially invaded the islands on July 13, 1950. A major invasion began on Ambon on September 25, 1950 and cost the Indonesian forces 15,000 casualties before finally they were able to seize control of Ambon city. The forces of Republik Maluku Selatan withdrew to Ceram. Armed rebellion and political opposition continues against Indonesian rule today. From the beginning of the withdrawal, the Malukans formed the Homeland Mission with J. Alvarez Manusam as political leader and Izzak Tamaela as military leader. Indonesia meets this opposition with repression of human rights and wholesale decimation of Malukan lands and resources. Indonesia has relocated many Javanese into the Moluccas as part of a strategy to undermine the self-determination claim of the Malukans. Lastly, the Indonesian government carries out overt policies to break down the Malukan culture.

This briefing paper describes the agreements leading to the Round Table Conference and then discusses the Round Table process and relevant terms of the Round Table Agreements. It then sets out the law and facts of the Malukan claim to self-determination. It concludes with a brief review of Indonesian violations of the rights of Malukans and an action plan for the international community, especially the United Nations, to assure the realization of the right to self-determination of the Malukan people.

THE LINGGADJATI AGREEMENT

The first major decolonization instrument between the Government of the Netherlands and the Government of the Republic of Indonesia is the Linggadjati Agreement of 25 March 1947. The parties agreed that the new state of Indonesia "was to be a sovereign democratic state on a federal basis." The new state, to be called the United States of Indonesia, would comprise the entire territory of the Netherlands Indies, but the people of each component part were to be given the right to decide "by democratic process" whether or not to join the new state. Those parts that did not agree by vote to become part of the United States of Indonesia had the right to form a special relationship with the Indonesian state and Netherlands. The United States of Indonesia was defined as having three distinct parts: the Republik Indonesia comprised of Java, Madura and Sumatra; Borneo; and East Indonesia (called "the Great East"). The three parts were to be co-equal. Delineation of the three parts was made "without prejudice to the right of the population of any territory to decide by the democratic process that its position in the United States of Indonesia shall be arranged otherwise." Key provisions of the agreement include the following: Article 3: The United States of Indonesia shall comprise the entire territory of the Netherlands Indies with the provision, however, that in the case the population of any territory, after due consultation with the other territories, should decide by democratic process that they are not, or not yet, willing to join the United States of Indonesia, they can establish a special relationship for such a territory to the United States of Indonesia and to the Kingdom of the Netherlands.

Article 4: (1) The component parts of the United States of Indonesia shall be the Republic of Indonesia, Borneo, and the Great East without prejudice to the right of the population of any territory to decide by democratic process that its position in the United States of Indonesia shall be arranged otherwise.

Article 5: (1) The constitution of the United States of Indonesia shall be determined by a constituent assembly composed of the democratically nominated representatives of the Republic and of the future partners of the United States of Indonesia to which the following paragraph of this article shall apply.

(2) Both parties shall consult each other on the method of participation in this constituent assembly by the Republic of Indonesia, by the territories not under the authority of the Republic and by the groups of the population not, or insufficiently, represented with due observance of the responsibility of the Netherlands Government and the Government of the Republic, respectively.

Under the Linggadjati Agreement, Maluku became part of the State of East Indonesia, which also included Celebes and the northern islands in the Moluccas (predominantly Muslim).

THE RENVILLE AGREEMENT

The Renville Agreement of 1948 affirmed the Linggadjati Agreement and further delineated boundaries of the as-yet Netherlands controlled territories and those already under Indonesian authority. This Agreement very clearly stated the duties of the parties to ensure application of the principle of self-determination regarding all the territories:

Point 2. It is understood that neither party has the right to prevent the free expression of popular movements looking toward political organizations which are in accord with the principles of the Linggadjati Agreement. (Underlining added).

Point 3. It is understood that decisions concerning changes in administration of territory should be made only with the free and full consent of the populations of those territories....

x x x

Point 11. A sovereign State on a federal basis under a Constitution which will be arrives at by democratic process.

Additional Principles:

Point 6. Should any state decide not to ratify the Constitution and desire in accordance with the principles of articles 3 and 4 of the Linggadjati Agreement, to negotiate a special relationship with the United States of Indonesia and the Kingdom of the Netherlands, neither party will object. (Underlining added).

Between the time of the Renville Agreement and the Round Table Conference, there were accusations on both sides of violations of the Linggadjati and Renville Agreements. For example, the government of Indonesia considered that the formation of component states (called "negaras") West and East Java, Madura and East and South Sumatra in the area controlled by the Netherlands was done in contradiction of the Renville Agreement. The government of the Netherlands, with the help of the South Moluccan Brigade, repulsed a Javanese invasion of East Indonesia.

THE PROVISIONAL CONSTITUTION

In line with the Linggadjati and Renville Agreements, the Provisional Constitution was drafted by the Federal Constituent Assembly (FCA) and the Republic of the United States of Indonesia. Prior to its final drafting, the Inter-Indonesian Conference (19 - 22 July 1949) provided guidance, giving particular importance to clear statement of what territories would be component parts of the Republic of the United States of Indonesia (Republic Indonesia Serikat).

The Provisional Constitution addressed the issue of "internal self-determination" by which was understood to mean the right of the different peoples to decide on their status within a federal structure. The Constitution expressly establishes the federal form of government. However, the Provisional Constitution, as presented at the Round Table Conference made no provision for the opting-out measures agreed upon by the parties in the Linggadjati and Renville Agreements.

UNITED NATIONS ACTION UP TO ROUND TABLE CONFERENCE

The United Nations became involved in the situation through a Committee of Good Offices on the Indonesian Question of the Security Council. From its formation in 1947 until it was disbanded in 1949, the Committee of Good Offices sought peaceful resolution of all conflicts arising in the decolonization process, and was called upon during times of armed actions between the Netherlands forces and those called "Republican" forces of the various component parts of the area. For example, following military action beginning on 19 December 1948 and based in part by the efforts of the Committee of Good Offices, the Security Council adopted a resolution calling on the Government of the Netherlands and the Government of the Republic to cease armed conflict and calling on the Government of the Netherlands to release political prisoners and to facilitate the return of Indonesian authorities. At the time of the Round Table Conference, the Committee of Good Offices had been replaced, and the Security Council authorized a Commission for Indonesia.

Both the Committee of Good Offices and the Commission met in private, but some information was made public through information releases. For example, following investigation of armed activity in North Sumatra, West, Central and East Java, the Commission issued an information release describing the military situation, the position of the Commission's Military Observers and its conclusions regarding military action. Another of the Commission's releases addressed the wounding of one of its Military Observers on 5 June 1949. In spite of its effective monitoring of the situation, the Commission's most important contribution was the Round Table Conference.

THE ROUND TABLE CONFERENCE

The Round Table Conference was held at the Hague in November of 1949 under the auspices of the United Nations Commission for Indonesia and attended by the government of the Netherlands, representatives of the new Indonesian government and representatives of the Federal Consultative Assembly. On March 23, 1949, the President of the Security Council had addressed the Chair of the United Nations Commission for Indonesia as follows:

It is the sense of the Security Council that the United Nations Commission for Indonesia, in accordance with the Council's Resolution of 28 January 1949, without prejudicing the rights, claims and positions of the parties, should assist the parties in reaching agreement as to (a) the implementation of the Council's Resolution of 28 January, and in particular paragraphs 1 and 2 of the operative part thereof, and (b) the time and conditions for holding the proposed conference at The Hague, and to the end that the negotiations contemplated by the Resolution of 28 January may be held as soon as possible.

It is further the sense of the Council that, if such an agreement is reached, the holding of such a conference and the participation by the United Nations Commission for Indonesia, in accordance with its terms of reference, would be consistent with the purposes and objectives of the Council's Resolution of 28 January 1949.

The Conference was to provide the legal framework for the transfer of sovereignty from the Netherlands to the new state, the Republic of the United States of Indonesia. According to the members of the Commission, the goal was

to bring about a just and lasting settlement of the Indonesian dispute as soon as possible by reaching an agreement among the participants concerning the ways and means to transfer real, complete and unconditional sovereignty to the United States of Indonesia in accordance with the Renville principles.

By special reference to the Renville Agreement, it was clear that the Conference was to establish legal rights and responsibilities of the Netherlands and the new Indonesia, especially in regard to the component states of the Dutch colonial administration in order to safeguard the right of the component states to self-determination.

The issue of self-determination was not raised at the Round Table Conference until the last days partly because, as described above, the formulation of relevant articles on the Provisional Constitution did not incorporate self-determination as set out in the Linggadjati and Renville Agreements. At the Conference itself, the parties could not reach agreement until the United Nations Commission for Indonesia proposed terms in conformity with the Linggadjati and Renville terms. All parties agreed to this formulation that became Article 2 of the Third Agreement (Transitional Measures) providing, in pertinent part:

Article 2 1. The division of the Republic of the United States of Indonesia into component states shall be established finally by the constituent Assembly in conformity with the Provisional Constitution of the United States of Indonesia with the understanding that a plebiscite will be held among the population of territories thereto indicated by the Government of the United States of Indonesia upon the recommendation of the United

Nations Commission for Indonesia, or of an organ of the United Nations under supervision of the United Nations Commission for Indonesia or other United Nations referred to, on the question whether they shall form a separate component state.

Paragraph 2 of the same article sets out rights of components states that do not ratify the new Constitution of Indonesia:

Article 2 2. Each component state shall be given the opportunity to ratify the final constitution. In case a component state does not ratify that constitution, it will be allowed to negotiate about a special relationship towards the Republic of Indonesia and the Kingdom of the Netherlands.

It is patently clear that the Round Table Conference Agreements gave the Malukan people the prerogative to refuse incorporation into the Republic of the United States of Indonesia either by exercise of a negative vote in a pre-incorporation plebiscite or by refusing to ratify the Provisional Constitution.

INDONESIA VIOLATES THE ROUND TABLE CONFERENCE AGREEMENTS

Soon after signing of the Round Table Conference Agreement, the government of the Republic of Indonesia, headed by President Sukarno, made moves to establish all of Indonesia as a unitary state. By the first meeting of Parliament, 15 February 1950, President Sukarno referred to the "temporary nature" of the Republic and the "provisional character" of the Constitution. The Emergency Law of 7 March 1950 of the Republic of Indonesia provided for "political reforms", including plebiscites, but there were many exceptions to the right of plebiscite and in fact, no plebiscites were held. Beginning with the Decree of 9 March 1950 which incorporated East Java, Central Java, Madura, Padang and Sabang into the Republic of Indonesia, a series of decrees incorporated all but East Sumatra and East Indonesia. The High Commissioner of the Netherlands addressed an appeal to the United Nations Commission for Indonesia questioning how Indonesia could comply with Article 2 of the Round Table Conference Agreements regarding the right to self-determination.

The United Nations Commission for Indonesia, though signatory to the Covering Resolution to the Round Table Conference Agreements, did not consider itself a party to the agreements. It stated this position in a letter addressed to the parties on 24 June 1950 that the responsibility to execute the Round Table Conference Agreements - including the Agreement on transitional Measures - is the burden of solely the two countries

[The Commission's] responsibility as an international organ entrusted with the task of observing the agreements was necessarily secondary to that of the two parties. Consequently, the Commission had so far regarded it as inappropriate to take action on the basis of the provisions of the Round Table Conference Agreement without being first approached in the matter by at least one of the parties.

The Government of the United States of Indonesia transmitted a letter of 8 June to the United Nations Commission for Indonesia stating that the Government of Indonesia would guarantee the right to self-determination of the peoples of Indonesia by establishing autonomous communities or provinces. The letter stated that Indonesia was making preparations to hold general elections to a constituent assembly as specified by the Provisional Constitution; and that the Government and the constituent assembly would legislate the final constitution "displaying the real democratic features of the unitary state."

Efforts to create a unitary state met resistance in East Indonesia and serious conflicts began on the Malukan island of Amboina. The disputes led East Indonesia to appeal to the United Nations Commission for Indonesia 12 April 1950. Talks between the governments of the Republic of Indonesia and the United States of Indonesia continued following an agreement of 19 May 1950. By July, full agreement was reached to create a unitary state containing ten provinces. East Indonesia was to be divided into three provinces: Lesser Sunda, Celebes and the Moluccas. On 15 August 1950, President Sukarno proclaimed the establishment of the Republic of Indonesia as a unitary State - in audience were members of the diplomatic corps accredited in Djakarta and members of the United Nations Commission for Indonesia.

THE REPUBLIK MALUKU SELATAN DECLARED

Anticipating the ultimate annihilation of a federated state of Indonesia and alarmed by the rapid engulfment of much of the area to Javanese control of the Republic of Indonesia, on 25 April 1950, the Republik Maluku Selatan (Republic of the South Moluccas) was formed by the Malukan people and it declared its separation from both the East Indonesian State and from the United States of Indonesia. The Malukuans were acutely aware that no plebiscites had been carried out and that none were planned for either their own determination nor the determination of any other of the many nations incorporated in the Netherlands East Indies.

The Republic of Indonesia unsuccessfully attempted to negotiate a settlement with the Republik Maluku Selatan and finally on 13 July 1950, they landed armed forces on the Malukan islands of Buru and Ceram. The Malukan forces were depleted at the time because about 4,000 of them who had been incorporated into the Royal Netherlands East Indian Army (KNIL) but transferred to the Royal Netherlands Army (KL) in 1950 were not able to join local Malukan armed forces. The Government of Republik Maluku Selatan sent appeals to the United Nations on the 26th, 29th, 31st of July, the 2nd, 11th, 14th of August, and on the 28th of September 1950. The United Nations Commission for Indonesia, in its concern for the civilian populations, communicated its readiness to give assistance to the Indonesian Government (the new unitary state) on 4 August and again on 25 September in order to help peacefully resolve the conflict.

The Indonesian Foreign Minister Dr. Mohammad Hatta, in his reply on 30 September, responded that it was the belief of his government that intervention by the United Nations Commission for Indonesia would not be of use because it would constitute only an encouragement for the "rebels" who may see the apparent international attention as an affirmation of their case. In the meantime, Indonesian forces landed on and attacked the main South Moluccan island of Amboina.

On 6 October 1950, the United Nations Commission for Indonesia once again tried to ask Indonesia to

halt the present military operations in the South Moluccas, and, even at this late stage, to further explore the possibility of a peaceful settlement by accepting the Commission's offer of good offices.

The Indonesian government, however, dismissed the offer of assistance by repeating previously stated reasons. The Commission sent a report of their attempts to secure a peaceful settlement, asking the United Nations Security Council to "reinforce the Commission's authority by calling upon the Indonesian Government to utilize the existing machinery for a peaceful solution of this problem which is provided by the presence in Indonesia of the United Nations Commission for Indonesia". The request by the Commission was debated in the Security Council on 30 October 1950, but the debate was adjourned and not resumed.

On 5 December 1950, the Malukan forces were forced to withdraw to Ceram. These forces have continued to exist and to carry out limited military actions against the Indonesian forces. The United Nations Commission for Indonesia ceased to exist in 1955. The Malukan question is still unresolved.

MALUKAN SELF-DETERMINATION

The United Nations through its United Nations Commission for Indonesia, the government of Indonesia and the government of the Netherlands all promised the people of Maluku the opportunity to express their wishes regarding their governance and the international status of their country. The Round Table Conference Agreement and the earlier bi-lateral agreements clearly grant the Malukans the right to self-determination. Even absent that express recognition of the right to determine their status, the Malukan people meet all international law tests for the right to self-determination.

The right to self-determination, a fundamental principle of human rights law, is an individual and collective right to freely determine political status and to pursue economic, social and cultural development. The International Court of Justice refers to the right to self-determination as a right held by people rather than a right held by governments alone. The right to self-determination is indisputably a norm of jus cogens.

The two important United Nations studies on the right to self-determination set out factors of a people that give rise to possession of right to self-determination: a history of independence or self-rule in an identifiable territory, a distinct culture, and a will and capability to regain self-governance.

The Malukan claim to self-determination even absent the express agreement is particularly strong. The Malukan people have a different ethnic and cultural background from the Javanese who predominate in other island groups in the area. Malukans are Melanesians rather than Malayan/Mongoloid, the ethnic background of the Javanese. Malukans speak Amboinese, a separate language from the widely used Malay-based language of much of Indonesia. Malukan culture, customs and manners strongly identify with those of traditional Melanesian cultures. Malukans are predominately Christian, testimony to the long years of colonial domination by the Netherlands.

Prior to colonial rule, the Malukan people enjoyed self-governance. They were not under domination by other groups in the area but maintained their islands and traditional culture intact. Even through the long years of colonial rule, the Malukans remained politically and culturally intact except for the adoption of Christianity as their religion. The islands comprising Maluku are clearly identifiable, having gained fame as the Spice Islands centuries ago. Finally, the Malukan people have both a will and a capacity for self-governance. Malukans in exile have formed provisional governments, and the political agenda of the people and their leaders has remained intense since 1950. The summary execution (by firing squad) of the Malukan leader Dr. Chris Soumokil in 1966 further strengthened the resolve of the people and their military units to maintain the struggle. Repeated attacks by Indonesian authorities on Malukan culture and people since then also merely strengthen Malukan resolve.

Because the Malukan people have the right to self-determination, the armed conflict that occurs periodically between Malukan forces and those of Indonesian should be considered a war of national liberation in exercise of the right to self-determination. In any case, the armed conflict is by applicable humanitarian law including the Geneva Conventions. Violations of human rights must, therefore, also be considered as violations of humanitarian law when relevant.

OPINIONS ON MALUKAN SELF-DETERMINATION

The issue of Moluccan self-determination has been before relevant bodies in the Netherlands. The following is a brief synopsis of some of them.

1. Resolution passed by the Netherlands Branch of the International Law Association on 24 June 1950: The Netherlands Association for International Law, meeting in Rotterdam on 24 June 1950, having taken cognizance of a letter from J.P. Nikijuluw . . . in which he asks the Association to pass an opinion of the legal position of the South Moluccas . . . with regard to the obligation of the Republic of the United States of Indonesia and the Kingdom of the Netherlands to recognize this legal position; Considering:

That the Amboinese population inhabiting the territory of the South Moluccas is a "population of a territory" as referred to in art. 2 sec. 1 of the Agreement of Transitional Measures . . . so that this population has the right to form itself into a separate "component State" in the manner therein provided, and thereupon, by virtue of art. 2 sec 2 of the Agreement on Transitional Measures, to acquire the opportunity to accept or reject the final Constitution of the Republic of the United States of Indonesia - i.e. to remain a part of the Republic or to withdraw from it. . . .

is therefore in the opinion that the Republic of the South Moluccas had the right to proclaim its independence and is lawfully entitled to preserve that independence against all others, in order to realize its right, derived from art. 2 of the Agreement on Transitional Measures, to negotiate with the United States of Indonesia and the Kingdom of the Netherlands concerning a special relationship with these two States.

2. The Judgement of the President of the Arrondissement Court of Amsterdam of 2 November 1950:

On the 2nd of November 1950, in an action brought by the Republik Maluku Selatan (South-Moluccan Republic) against the N.V. Koninklijke Paketvaart Maatschappij (Royal Packet Company Ltd.) the President of the Arrondissement Court of Amsterdam gave a decision on the question whether this Republic is to be regarded as a state, therefore as competent to be a party to a civil lawsuit, and on the question whether the proclamation of the independent Republik Maluku Selatan on the 24 of April 1950 was a lawful exercise of the right to self-determination . . . Considering, further, that the disputed question, whether the recognition of a State is essential for its capacity to appear as a party to a civil action, need not be answered in the present case, because the recognition of the Republik Maluku Selatan (which exists in fact, as has been considered above) by the Netherlands is contained in the Netherlands act of Parliament of 21st December 1949, State Gazette J 570 (Transfer of Sovereignty over Indonesia Act), by which the said Agreement on Transitional Measures was ratified and thereby became a part of the Act; That the Kingdom of the Netherlands, which itself fulfilled the agreement with the Republic of the United States of Indonesia, may not in good faith blame the population of the territory of the South Moluccas for acting as it was entitled to do by international law when the other party violated the agreement. (underlining added).

3. The Judgement of the Court of Appeal in Amsterdam of the 8th February 1951:

Even when still entirely under Netherlands rule the territory of the South Moluccas, by

reason of its geographical situation and the race, culture, and common interests of its population, formed a natural and organic unity, with its own local system of government. ... The agreement of Linggadjati of 25 March 1947 ... between the Netherlands Government and the Government of the Republic of Indonesia ... contained, in so far as relevant here, the following provisions:

in article 3: "The United States of Indonesia shall comprise the entire territory of the Netherlands Indies with the provision, however, that in the case the population of any territory, after due consultation with the other territories, should decide by democratic process that they are not, or not yet, willing to join the United States of Indonesia, they can establish a special relationship for such a territory to the United States of Indonesia and to the Kingdom of the Netherlands."

Article 4: "(1) The component parts of the United States of Indonesia shall be the Republic of Indonesia, Borneo, and the Great East without prejudice to the right of the population of any territory to decide by democratic process that its position in the United States of Indonesia shall be arranged otherwise."

Article 5: "(1) The constitution of the United States of Indonesia shall be determined by a constituent assembly composed of the democratically nominated representatives of the Republic and of the future partners of the United States of Indonesia to which the following paragraph of this article shall apply."

"(2) Both parties shall consult each other on the method of participation in this constituent assembly by the Republic of Indonesia, by the territories not under the authority of the Republic and by the groups of the population not, or insufficiently, represented with due observance of the responsibility of the Netherlands Government and the Government of the Republic, respectively."

Further, the Renville principles, agreed upon 17th January 1948 as the basis for the political discussion between the Netherlands and R.I. [Government of the Republic of Indonesia], in so far as is relevant here, provided:

"2. It is understood that neither party has the right to prevent the free expression of popular movements looking toward political organizations which are in accord with the principles of the Linggadjati Agreement."

"3. It is understood that decisions concerning changes in administration of territory should be made only with the free and full consent of the populations of those territories."

"11. A sovereign State on a federal basis under a Constitution which will be arrived at by democratic process." and in point 6 of the Additional Principles:

"6. Should any state decide not to ratify the Constitution and desire in accordance with the principles of articles 3 and 4 of the Linggadjati Agreement, to negotiate a special relationship with the United States of Indonesia and the Kingdom of the Netherlands, neither party will object."

The Van Royen-Roem agreement of 7th May 1949 also presupposed a federal Indonesian State, subject to the absolute right of self-determination of the Indonesian Peoples, as

affirmed by the agreements of Linggadjadi and Renville . . . On account of the foregoing facts, circumstances, and evidence that Court is of opinion that for the present it must be held: 1. that the people of the South Moluccas are a people of territory. which, under the provisions of the agreements of Linggadjadi and Renville and of art. 2 of the Agreement on Transitional Measures could qualify for the exercise of the right to self-determination.

2. that the possibility of realizing this right of self- determination in this manner was in effect taken away from the people by the creation of the said territory by the creation of R.I. of an unitarian state for the whole of Indonesia under its own leadership and supreme authority contrary to what was agreed to in the above-mentioned pacts and at the Round Table Conference;

3. that, viewed in the light of 1 and 2, the proclamation of the Republik Maluku Selatan . . . was permissible in the given circumstances;

4. that the authority of the Republik Maluku Selatan and its Government over the inhabitants of the territory of the South Moluccas, as regards duration, nature, and extent, satisfies . . . sufficiently the conditions of stability and effectiveness to be regarded as the authority of an existing State.

4. The Judgement of the Supreme Court of Justice for New Guinea, given on the 7th of March 1952: The Agreements were signed by the Government of the Kingdom of the Netherlands, the Government of the Republic of the United States of Indonesia, and by the United Nations Commission for Indonesia. The parties who have signed sign not only to the agreements but to the obligations entailed. The parties who have signed must make legitimate efforts to enforce that to which they have agreed.

INTERNATIONAL ACTION

Since the demise of the United Nations Commission for Indonesia there has been no regular effort by the international community to resolve the long-standing crisis in Maluku.

According to basic principles of international law, the governments of both the Netherlands and Indonesia (the successor state to the Republic of the United States of Indonesia) are responsible for and obligated to insure implementation of the Agreements, including the peoples' right to self-determination. As discussed above, the government of the Netherlands did express concern to the United Nations Commission for Indonesia at the time Indonesia was consolidating power as a unitary state in violation of the Round Table Conference Agreements. However, there has been very little action by the Netherlands government since, in spite of the unresolved situation of many Malukans still residing in the Netherlands.

In 1994, the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities introduced a resolution on Indonesia mentioning, *inter alia*, the Moluccas and Aceh, but failed to take action on it.

At this point, the international community should act as follows:

1. Governments should communicate to Indonesia that they do not recognize Indonesian sovereignty over Maluku.
2. The United Nations Commission on Human Rights and its Sub-Communications should, directly through specific resolutions and indirectly through the reporting of thematic rapporteurs, address the situation in Maluku, including presentation of the numerous and very serious human rights and humanitarian law violations perpetrated by the government of Indonesia and its forces in Maluku.
3. The United Nations should address the situation in Maluku as one of a non-self-governing territory and should accordingly place Maluku under the trustee system of the United Nations until a plebiscite of Malukans is held which determines the wishes of the Malukan people.

CONCLUSION

The government of Republik Maluku Selatan was a legitimate government and was wrongly overturned by the government of Indonesia. The Malukan people are entitled to the exercise of self-determination because this was explicitly granted them by history and express agreement of the governments of the Netherlands and Indonesia and acknowledged by the United Nations. The government of Indonesia illegally occupies Maluku and should withdraw its people and military forces immediately. The people of Maluku should be given the opportunity to reorganize their government in Maluku or, if it is their wish, to indicate by plebiscite or other means of free choice, their wishes for their governance. The government of the Netherlands and the United Nations as a whole should carry out initiatives to restore the right to self-determination to the Malukan people.

BIBLIOGRAPHY

(United Nations documents are cited in the text and footnotes and therefore not listed here. With the exception of the materials prepared by the Malukan government, most of the materials cited here are of general reference value. This author relied on the actual UN documents).

Republik Maluku Selatan, Department of Public Information, The Legal Position of the Republic of the South Moluccas in the International Legal Order No. 8 A. (1952).

Republik Maluku Selatan, Department of Public Information, The South Moluccan Case in the United Nations Machinery No. 12 Submitted to the United Nations, [1954?].

Foster, Colin, "The United Nations and Indonesia," (Carnegie Institute, Int'l Conciliation No. 459 (1950). Suter, Keith, "West Irian, East Timor and Indonesia," (Minority Rights Group #42, 1976).

Taylor, Alistair, Indonesian Independence and the United Nations, (1960).

Van Kaam, Ben, The South Moluccas, (1980).