

Republik Maluku Selatan



H. E. Joko Widodo
President of the Republic of Indonesia
Istana Merdeka
Jakarta Pusat 10110
Indonesia

Concerning: Liability Republic of Indonesia

Dear President of the Republic of Indonesia,

On 17 August 2019, the President of the Government of the Republic of the South Moluccas in exile announced two Presidential Regulations in the name of the South Moluccan people. On 27 December 2019 the President of the Government of the Republic of the South Moluccas announced the third Presidential Regulation.

1. The first Presidential Regulation of 17 August 2019 concerns the issue and publication of Presidential Regulations. (Government Gazette RMS 2019-1).
2. The second Presidential Regulation of 17 August 2019 concerns the ownership of natural resources and the liability of public and private actors for infringement of property. (Government Gazette RMS 2019-2)
3. The third Presidential Regulation of 27 December 2019 concerns the liability of the Republic of Indonesia for the consequences of the unlawful annexation and occupation of the territory of the Republic of the South Moluccas (Government Gazette RMS 2019-3)

Pursuant to Articles 1 to 5 of the Presidential Regulation of 17 August 2019 (Government Gazette 2019-2) on the ownership of natural resources and the liability of public and private actors for infringement of property, we hereby hold the Republic of Indonesia liable for the consequences of the unlawful annexation and occupation of the territory of the Republic of the South Moluccas.

Explanation of liability

Annexation and occupation of RMS territory

On 27 December 1949, the Kingdom of the Netherlands transferred sovereignty over its former colony to the United States of Indonesia (RIS). The state of the Republic of Indonesia (Java, Sumatra) subsequently liquidated the remaining states by force. The dissolution of the United States of Indonesia took place in contravention of the Round Table Agreements and the provisional constitution of the United States of Indonesia.

The exercise of the right to internal and external self-determination - laid down, among other things, in Articles 43 and 289(4) of the Provisional Constitution of the People of the United States of Indonesia (including the South Moluccan people) - was thereby taken away by the state of the Republic of Indonesia.

In this connection, it is important to note that the South Moluccan Council decided on 11 March 1947 to join the state of East Indonesia under the condition that the state of East Indonesia respects the interests of the South Moluccas region properly. If this were no longer the case, the South Moluccas reserved the right to leave the state of East Indonesia in order to be able to realize its right to self-determination.

In response to the liquidation of the United States of Indonesia and the withdrawal of the right to self-determination of the South Moluccan people by the State of the Republic of Indonesia, the Republic of the South Moluccas was proclaimed in Ambon, on 25 April 1950. The Interim Constitution of the Republic of the South Moluccas entered into force on 2 May 1950.

It was not until 17 August 1950 - after the liquidation of the United States of Indonesia (RIS) - that the Indonesian Unity State (NKRI) was formed.

The Republic of the South Moluccas therefore emerged earlier than the Republic of Indonesia.

By decree of 4 July 1950, Mr. Sukarno - the then President of the United States of Indonesia - declared war and martial law on the territory of the Republic of the South Moluccas.

Subsequently, a military conflict arose between the Republic of Indonesia and the Republic of the South Moluccas.

After years of resistance by military forces (APRMS) and civilians of the Republic of the South Moluccas, the Republic of Indonesia annexed and occupied most of the territory of the Republic of the South Moluccas.

The then president, Dr. Chr. Soumokil, and his troops continued their resistance against the Indonesian aggressor on the island of Ceram for many years afterwards. Since then, the Republic of Indonesia has consolidated the unlawful annexation and military occupation of the territory of the Republic of the South Moluccas.

On 2 December 1963, Dr. Chr. Soumokil was arrested by the Indonesian occupier in the interior of Ceram.

On 25 April 1964, an extraordinary military court of the Republic of Indonesia sentenced the President of the Republic of the South Moluccas to death. An appeal against this sentence was not possible. On 12 April 1966, the President of the Republic of the South Moluccas was executed by firing squad on the Indonesian island of Obi. To this day, the Republic of Indonesia has refused to disclose the location of Dr. Chr. Soumokil's grave. To this the Republic of Indonesia is also guilty of a serious violation of human rights with regard to the grave and remains of Dr. Chr. Soumokil, the second president of the Republic of the South Moluccas.

In April 1966, after the execution of Dr. Chr. Soumokil, the remaining members of the RMS government - including the former Minister of Defense ir. J.A. Manusama - formed a government in exile of the Republic of the South Moluccas in the Netherlands. This government has legal authority over the territory of the Republic of the South Moluccas, which is occupied by the Republic of Indonesia.

It follows from the above, that under international law the political entity the Republic of the South Moluccas was formed on 25 April 1950. The creation and continued existence of the Republic of the South Moluccas as a political entity has been repeatedly confirmed in case law and literature. We hereby refer to the contents and conclusions of the 'legal opinion' of Prof. E. de Brabandere of Leiden University (2011) and Dr. N. Higgins of Dublin University (2011).

It should be noted in this regard that both Prof. Dr. Brabandere and Dr. N. Higgins regard the then government and current government in exile of the RMS as legal successors to the 1950 RMS government and as the legitimate representatives of the RMS. According to these two experts the continued existence of the RMS as State is guaranteed to date due to the presence of the Government in exile of the RMS.

This State was subsequently annexed and occupied in violation of international law by the Republic of Indonesia, which was later formed on 17 August 1950. Article 2(4) of the UN Charter lays down the fundamental prohibition of the use of force in international relations.

States cannot annex (part of) the territory of another State through the use of force. The annexation of another State by military force is prohibited. The territorial integrity of the Republic of the South Moluccas has been violated by the Republic of Indonesia. The continuous occupation of one State by another State has no fundamental influence on the continued existence of the annexed State.

The annexation and occupation of the territory of the Republic of the South Moluccas by the Republic of Indonesia - which occupation continues to this day - does not, therefore, result in the Indonesian occupier acquiring a legitimate territorial title over the territory of the Republic of the South Moluccas. The principle '*ex injuria jus non oritur*' takes precedence over the principle '*ex factis jus oritur*'. The latter means that the use of force by one State can never lead to the lawful annexation of another State.

Pursuant to the application of the Fourth Hague Convention of 1907 and the annexed Hague Regulations, as well as the Fourth Geneva Convention, occupation of the territory of the Republic of South Moluccas does not lead to a transfer of sovereignty. The government in exile of the Republic of South Moluccas has therefore retained sovereignty over its territory, but is prevented by the occupying forces from exercising that sovereignty.

The authority of the Republic of Indonesia over the territory of the Republic of the South Moluccas is therefore unlawful.

Recognition of the Republic of Indonesia by other States in no way detracts from the unlawful nature of annexation and occupation of the territory of the Republic of South Moluccas.

It should be noted that the unlawful annexation and occupation of the territory of the Republic of East Timor by the Republic of Indonesia was initially recognized by several States, including Australia and the United States of America. Eventually, the Republic of East Timor and the people of East Timor regained their sovereignty.

The illegal annexation and occupation of the territory of the Republic of the South Moluccas should now come to an end after almost 70 years as well!

State Liability of the Republic of Indonesia

An armed conflict arose between the Republic of Indonesia and the Republic of the South Moluccas in 1950. The President of the United States of Indonesia, by decree of 5 July 1950, declared war and siege on the territory of the Republic of the South Moluccas. The armed forces of the Republic of Indonesia - TNI - subsequently invaded the territory of the Republic of the South Moluccas and, after years of resistance from the armed forces of the Republic of the South Moluccas (APRMS) - supported by the people - annexed and occupied the territory of the Republic of the South Moluccas. This annexation and subsequent occupation is unlawful.

In international law, a State can be held liable by another State.

This state liability is laid down in the '*Articles on Responsibility of States for international Wrongful Acts*' drawn up by the International Law Commission of the United Nations.

Article 1 of the preceding regulation states that any international tort of a State gives rise to liability of the State. The conditions for State liability are as follows.

- I. The existence of an international obligation between two States;
- II. An act - or an omission - by the State in breach of that international obligation and which is imputable to the State and gives rise to damage as a direct consequence of that act or omission.

Article 2(4) of the UN Charter lays down the principle of prohibition of the use of force in international relations. States cannot annex (part of the territory) of another State through the use of force. The annexation of another State by military force is prohibited. The Republic of Indonesia has flagrantly violated the sovereignty and integrity of the territory of the Republic of the South Moluccas by annexing and occupying the territory of the Republic of the South Moluccas. In addition, since 1950, the Republic of Indonesia has systematically and grossly violated the human rights of the South Moluccan people and has illegally exploited the natural resources of the South Moluccan people.

As a result of the above violations, the Republic of South Moluccas has suffered damage. The Republic of Indonesia is liable for any damage resulting from the violation of the Republic of Indonesia's international obligations towards the Republic of South Moluccas and the people of South Moluccas.

Explanation of damage resulting from the annexation by the Republic of Indonesia

The illegal annexation and occupation by the Republic of Indonesia of the territory of the Republic of the South Moluccas is an international illegal act committed by the Republic of Indonesia. The immaterial and material damage suffered as a result of the unlawful annexation and occupation will have to be assessed in the case of a state of damage. We hereby list the following damage items in advance.

Since 1950, thousands of civilians of the Republic of the South Moluccas have been killed and injured by the Indonesian army and police. These civilians or their families will have to be compensated. The material damage caused by the destruction of houses, government buildings, prayer rooms, schools and other property belonging to the Republic of the South Moluccas and its citizens should also be compensated.

All immaterial and material damage suffered by the Republic of the South Moluccas and its citizens from 1950 onwards should be compensated by the Republic of Indonesia.

Thousands of citizens of the Republic of the South Moluccas have been imprisoned since 1950, for their allegiance to the Republic of the South Moluccas. In violation of international law, they were deprived of their liberty for years, tortured and forcibly separated from their

close relatives. To this day, citizens of the Republic of the South Moluccas are imprisoned and sentenced to lengthy sentences.

The material and immaterial damage suffered by these citizens of the Republic of the South Moluccas - as well as their families - will have to be compensated by the Republic of Indonesia.

The extent of the damage will be further assessed.

Damage resulting from illegal exploitation of the territory and marine waters of the Republic of South Moluccas.

The territory of the Republic of the South Moluccas - like the territory of Western Papua - is one of the richest territories unlawfully annexed and occupied by the Republic of Indonesia. In addition, these are two Melanesian brethren who have fallen victim to the Republic of Indonesia's unprecedented drive for expansion.

From April 25, 1950, the Republic of the South Moluccas experienced the depredation of its territory and marine waters. The hard fact that the population of the territory of the Republic of the South Moluccas and Western Papua has been ranked among the poorest - occupied - areas of the Republic of Indonesia for decades, proves that the Republic of Indonesia considers these areas as new colonies.

The Republic of the South Moluccas, and therefore the South Moluccan people, is 100% owner of all its natural resources. However, the South Moluccan people have so far not been able to benefit from this.

The marine waters of the Republic of the South Moluccas are exploited by Indonesia. Fishing alone should provide the South Moluccan people with sufficient national income to live in prosperity. For decades, the Republic of Indonesia has been plundering the marine waters of the Republic of the South Moluccas with particular support from foreign companies. Illegal fishing takes place on a large scale and is well known to the authorities of the Republic of Indonesia, but is tolerated because the authorities of the Republic of Indonesia earn a lot of money from this illegal fishing as well. The people of the South Moluccas, however, are watching in poverty as their rich marine waters - their primary source of life - are confiscated by the Republic of Indonesia in cooperation with foreign companies. It is telling that in the year 2019, the Indonesian occupier did not issue any permits to a company with a Moluccan background.

Since the occupation of the area of the South Moluccas, Indonesia has exploited the jungles of the South Moluccas. Years of - illegal - logging has caused a great deal of damage. Financial damage, but this exploitation has also caused a lot of irreparable environmental damage among the South Moluccan people. The citizens of the South Moluccas have been deprived of the so-called adat lands by allocating these lands to trans-migrants from outside the South Moluccas. In addition, many natural resources of the South Moluccas have been unlawfully exploited. In this context, we point to the extraction of oil, bauxite and nickel.

The most recent far-reaching exploitation, is gold mining on the island of Buru. The Indonesian state, together with Indonesian and foreign companies, has illegally exploited the gold reserves located on the so-called 'Gunung Botak'.

The illegal exploitation of natural resources by the Indonesian occupying power - in cooperation with Indonesian and foreign companies - has been continuously accompanied by the violation of the adat rights of the South Moluccan people with regard to their property. The damage suffered by those whose adat rights have been violated should also be compensated by the Republic of Indonesia.

Impending damage regarding the exploitation of the Masela gas supply

Special attention should be paid to the planned exploitation by the Republic of Indonesia of an enormous gas supply located in the marine waters of the Republic of the South Moluccas. It concerns the so-called gas block 'Masela'.

The Republic of Indonesia has concluded agreements with the Japanese company Inpex Corporation and the originally Dutch company Royal Dutch Shell in order to exploit the aforementioned gas supply.

The exploitation of this gas supply could be of unprecedented significance for the prosperity of the people of the South Moluccas. The proceeds of the exploitation could make the South Moluccas one of the most prosperous areas in the world. At present, the South Moluccas are in 3rd place of the poorest areas, which are colonized by the Republic of Indonesia. Poverty, high unemployment, poor education and very poor health care could be brought to an end if the South Moluccan people could fully benefit from the gas revenues.

It is significant in this connection to mention the open accusation of the Moluccan MP Mercy Barends to the government of the Republic of Indonesia, stating that this government has a deliberate policy of keeping the people of South Moluccan structurally weak and poor economically. According to the RMS government, the Republic of Indonesia is doing this with the aim of weakening the South Moluccan people, so that it is unable to resist the occupier - the Republic of Indonesia.

Under the regulations of the Republic of Indonesia, the South Moluccas only receive 10% of the revenues from gas exploitation. On the other hand, the South Moluccas will first have to co-finance 10% of the total investments in order to exploit the Masela block. This is an impossible task for the South Moluccas. The Masela gas supply will eventually be exploited without the South Moluccan people sharing in the enormous profits of the exploitation.

The government of the Republic of the South Moluccas is of the opinion that the South Moluccan people are 100% owner of its natural resources. The people of South Moluccas are fully entitled to the revenues from the exploitation - and 10% or less - of all their natural resources.

As laid down in the 2nd Presidential Decree of 17 August 2019, the agreements concluded by the Republic of Indonesia with other States and private companies - such as Shell and Inpex - are unlawful. Without the consent of the RMS government and the South Moluccan people, these treaties have no legal force.

The Republic of Indonesia should compensate the South Moluccan people for any damage caused by illegal exploitation of the natural resources.

Damage caused by the 'Kerusuhan' civil war

In the period 1999 to 2004, a civil war, known as the 'Kerusuhan', took place in the South Moluccas: a 'civil war' between Christians and Muslims.

This war was started by the Republic of Indonesia and lasted for a long time. Parts of the Indonesian army and police actively participated in this war. They also provided the warring parties with weapons and ammunition. As a result, the war lasted for years. The army and the police are organs of the Republic of Indonesia whose acts and omissions the Republic of Indonesia is deemed to be responsible for.

The material and immaterial damage resulting from this war is immense. Thousands of South Moluccans have been murdered and wounded. Children have lost their parents. Thousands of civilians of the South Moluccas have been traumatized as a result of the war. Houses, buildings, schools, prayer rooms have been completely destroyed.

On behalf of the South Moluccan people, the Republic of the South Moluccas holds the Republic of Indonesia liable for all material and immaterial damage suffered by the South Moluccan people. The extent of the damage will be further assessed in the damage statement.

Consequences of State liability

On the basis of the foregoing, the Government of the Republic of the South Moluccas in exile concludes that the Republic of Indonesia has flagrantly infringed international law.

The Republic of Indonesia is therefore liable for that breach of international law.

The consequences of State liability of the Republic of Indonesia are as follows.

First, the Republic of Indonesia is under an obligation under Article 30 of the *'Articles on Responsibility of States for international Wrongful Acts'* to immediately cease conduct in violation of international law. The latter means that the annexation and occupation of the territory of the Republic of the South Moluccas must come to an end.

The Republic of Indonesia should transfer sovereignty over the territory of the Republic of South Moluccas to the Government in exile of the Republic of the South Moluccas. In doing so, the Republic of Indonesia should guarantee that it will not infringe on the rules of international law again.

In addition, it follows from Article 31 of the *'Articles on Responsibility of States for international Wrongful Acts'* that the Republic of Indonesia must fully compensate the Republic of the South Moluccas and its people for the material and immaterial damage suffered as a result of committing an international wrongful act. The total damage to be compensated by the Republic of Indonesia will be further assessed.

The Government of the Republic of the South Moluccas requests the Government of the Republic of Indonesia to communicate to the Republic of the South Moluccas its position regarding the State liability claimed by the Republic of the South Moluccas and its consequences.

The government of the Republic of the South Moluccas will raise the liability of the Republic of Indonesia due to annexation of the territory of the Republic of the South Moluccas in violation of international law wherever possible.

The Government of the Republic of the South Moluccas hereby challenges the Republic of Indonesia to challenge the correctness of the position of the RMS - to submit the dispute between the Republic of the South Moluccas and the Republic of Indonesia to the International Court of Justice for review, or to submit it to the International Court of Arbitration established in The Hague.

Let the law speak!

The Government in Exile of the Republic of the South Moluccas will also request the General Assembly of the United Nations to put the dispute between the Republic of the South Moluccas on the agenda and to forward it to the Security Council of the United Nations. And to the United Nations Decolonization Commission.

The Kingdom of the Netherlands will be held separately liable for the consequences of non-compliance as a party to the Round Table Agreement and other treaties, as a result of which

the sovereignty of the Republic of the South Moluccas and the South Moluccan people after annexation by the Republic Indonesia is continuously being violated.

We will also send a copy to the General Assembly of the United Nations and the Security Council of the United Nations.

We will send a copy of this letter to the International Court of Justice and the International Court of Arbitration in The Hague.

Amsterdam, 27 december 2019

The government in exile of
the Republic of the South Moluccas,

President

Minister of Foreign Affairs

Mr.J.G.Wattilete

U.Santi

Vice-President

Minister of General Affairs

T.M.Solisa

ir.P.D.Rahantoknam
