

WEST PAPUA 1942 to 2020 the legals, the politics, and the only way forward

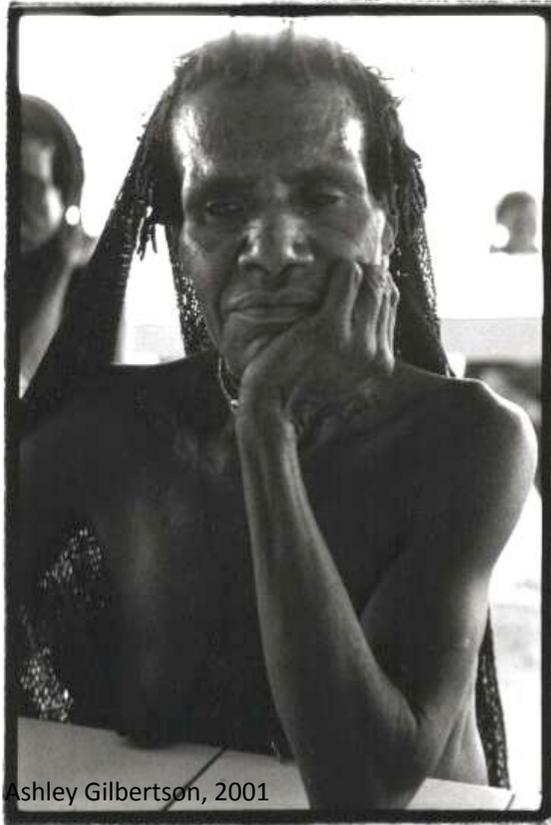


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Ashley Gilbertson, 2001

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INTRODUCTION

When we march on the street calling for a referendum
Indonesia arrests and kills us

When we invite media to hear our stories
Indonesia bans them from entering

When we tell the world what is happening
Indonesia cuts off the internet

Under Indonesian occupation
West Papua is the biggest prison in the world.

*Benny Wenda, 23 September 2019, Chair, United
Liberation Movement for West Papua (ULMWP)*

This document is in five sections, beginning with the twenty-years between 1942 and 1962 covering WWII in West Papua (1942–1944) and the nation's period as a UN Non-Self-Governing Territory (1950–1962). The third section details the legal manoeuvring by Indonesia, the United States and the United Nations to turn the Non-Self-Governing Territory into an Indonesian colony. The fourth section sketches the West Papuans' program in 2020-21 to be registered on the UN Decolonisation List. The final section is a Q&A rebuttal of the claims used by Indonesia to takeover and occupy the 459,412 kms² of richly resourced Melanesian land.

The Japanese and Allies' invasion and occupation of West Papua between 1942 and 1944 changed an isolated Dutch colony into an active player in Pacific affairs. The Papuans experienced terrible loss, mainly from Allied bombs, and torture mostly from the Japanese, and were left with a lot of foreign blood and bones in their soil. But they were made aware of the power of technology, and were inspired by the respect that white American and Australian soldiers accorded their black-skin comrades. They were also surprised by General MacArthur's appreciation of self-determination after he'd thoroughly bombed the north coast. Indeed, by the end of 1944—when Indonesia was still under Japanese control and the Netherlands was still occupied by the Nazis—Resident van Eechoud had established a national Police School, Defence Force, and civil service training academy.

On 6 December 1950 the United Nations via Res. 448 (V) adopted West Papua as a Non-Self-Governing Territory administered by the Netherlands. This

was *after* the UN had accepted Indonesia as a *unitary* republic (not *federal* republic to which sovereignty had been transferred in December 1949). After the passage of Res. 448 (V), all social, economic, and political development in West Papua was based on the self-determination principles adopted in 1951 by the Netherlands Inter-Departmental Commission, aired by Queen Juliana in her 1952 address, and enshrined in Dutch legislation in 1953. The Netherlands' Article 73e reports to the UN for the next ten years (1951 to 1961) demonstrate it was progressing the nation of tribal-traditional peoples towards independence with purposeful consideration. However, in November 1961, the UN failed to pass the Dutch motion to place the Non-Self-Governing Territory on the UN Decolonisation List. This betrayal of the UN founding principle paved path for Indonesia to declare it was annexing what it called 'a Dutch puppet state' (19 December 1961) and launch a military invasion (15 January 1962).

The Dutch had crafted the motion with the Swedish UN Secretary-General, but he was killed on 18 September 1961 just days before the opening of the General Assembly. It may not be a coincidence that after the Security Council appointed Burma's U Thant to replace him (3 November 1961) Indonesia was not condemned for using military force against the Non-Self-Governing Territory. (Nor was India for its military annexation of the Non-Self-Governing Territory of Goa). U Thant instead oversaw a 'peace treaty' between Indonesia and the Dutch for a UN Trust administration, to be passed to Indonesia after seven months. He also appointed a team of UN Military Observers to enter West Papua **without Security Council authorisation**, and employed 1500 Pakistani troops (rather than a multi-national force) **for which there are no official UN documents**. The Dutch managed to have self-determination included in the New York Agreement, but all the signatories knew that Indonesia didn't recognise the principle (and still doesn't) even if its constitution declares every nation's right to it. **Consequently there has never been an act of self-determination in West Papua.**

In 2020 the Republic of Vanuatu is sponsoring a motion to finally register West Papua on the UN Decolonization List. Preparatory motions in 2019 by the Pacific Islands Forum (18 UN member-states including Australia and New Zealand) and the African Caribbean Pacific Group (79 member-states) **call on all parties to address the 'root cause' of the conflict**, and on Indonesia to allow the UN Human Rights Commission to undertake its outstanding fact-finding mission within the first three months of 2020.

The 'root cause' of the conflict exposes an international legal issue (breach of



ORPHAN IN NDUGA, DECEMBER 2018 after the Indonesian Air Force dropped bombs of the banned chemical white phosphorus.

The real problem is that West Papuans own the land that Indonesia wants. “As a Christian I feel very guilty about being a governor because I am of no use to the people. We are pressured and terrorized and intimidated. We are considered to be the enemy of the country. I am sure that what I say you will hear directly from the Papuan people when you meet them” (Governor Lukas Enembe, to World Council of Churches, February 2019).

self-determination) whereas Indonesia views the conflict as a ‘domestic’ and ‘separatist’ problem. An UNHCR Report will conclude, as all major Papuan institutions had by 2010, that Special Autonomy 2001 has failed. It has failed, principally, because Jakarta structured it to enhance ‘national’ security not ‘local’ autonomy. Thus it has been an engine for the exponential growth of military infrastructure, tripling the number of ‘autonomous’ districts to which Jakarta assigns a set formula of land, air and sea defence. West Papuans are still at the bottom of Indonesia’s human development index, and calculated to constitute just 15% of the population in 2030. (In 1962 they were 99%; in 2010 they were 30%, with a growth rate of 1.6% compared to the non-Papuan rate of 10.5%). Moreover President Jokowi has now reverted to Sukarno-like fixes, appointing Prabowo Subianto as Defence Minister (a former military general with a human rights record and felonious ideas about ‘territorial integrity’) and Vice-president Mar’uf Amin—a powerful Islamic cleric with untested views about the predominately Christian independence movement.

In 2014 Papuan leaders established the United Liberation Movement for West Papua (ULMWP) as an ‘inclusive, representative, united body to carry the independence program’; accountable to an array of resistance and nation-making institutions that have developed over decades into pillars of parliamentary architecture. In 2015 the ULMWP delivered West Papua from ‘the dark’ into ‘the light’ when the Melanesian Spearhead Group accepted its application for membership. Its lobbying since has overseen the 18-member Pacific Islands Forum (including Australia and New Zealand) and 79-member African Caribbean Pacific Group passing preparatory resolutions for West Papua’s registration on the UN Decolonisation List. Vanuatu is the sponsor raising the motion in the United Nations, which requires two-thirds of the 197 UN member-states (about 130) to vote ‘yes’. The ICJ lawyer Melinda Jenki believes member-states should consider the *legal facts*, which are:

1. West Papua under international law is an Indonesian colony, and West Papuans are under illegal alien rule.
2. Colonialism is illegal under international law. West Papua has a legal right to be free and a legal right to independence. This is not just a moral right, or a political right. It is a legal right.
3. The legal right to self-determination is guaranteed by the UN Charter, under customary international law, and in the New York Agreement that Indonesia signed with the Netherlands in 1962.



NEWSPAPER CAPTION "Sobs for mama. The smile of Sgt. George C Yount from Fresno is spurned as the native boy yells for his mother; somewhere in Dutch New Guinea, 5 Nov 1944" (Fresno Bee newspaper, California, 8 December 1944). Yount was on General MacArthur's personal staff and died in 2012.

WORLD WAR TWO, WEST PAPUA 1942-1944

No one knows how many West Papuans were killed, starved, maimed, raped, or how much of their sacred land was destroyed during the Japanese and Allied occupations between 1942 and 1944. American and Australian historians have ignored this particular theatre of war, and the support they received from West Papuans, while producing tomes about the same war in East New Guinea and the local 'fuzzy wuzzy angels'. Indonesian, then the Netherlands East Indies, collaborated with the Japanese, impressed by the empire's rhetoric of 'Asia for Asians' but also because their colonial experience and relations with the Dutch were very different to the West Papuans.

The Dutch had gun-fired entry into Java and the Moluccas spice islands in 1600, and slowly amassed control over a vast territory and a huge number of people whose labour produced and generated profit for the Dutch state. It was not until 1898, three-hundred years later, that the Dutch established any administration posts in West Papua. The Papuan 'colonial' experience from 1855 until World War Two was primarily with missionaries who brought modern education and health to the villages they were 'civilising' and 'christianising'. There was racism, undoubtedly, but less from the Europeans than from the missionary 'gurus' (Indonesian graduates of missionary training) who from 1942, after the Europeans were killed or incarcerated, interpreted and implemented the Japanese military commands.

Just before the Allies blitz along the north coast (April to June 1944) the US General MacArthur appointed Jan van Eechoud, the former Police Commissioner, to lead 'mopping up' operations (capturing Japanese soldiers). With both men strong believers in self-determination, Eechoud had by the end of 1944 established three important (and ultimately enduring) national Papuan institutions: a Police School, a Defence Force (Papuan Volunteers Battalion/PVK) and a Public Service Training School. By 1946 he'd organised for West New Guinea to join the new South Pacific Commission, where Papuans met and danced with their Oceanic kin in winds of change towards self-rule and independence. Indonesians meantime were totally preoccupied with their war of independence with the Dutch which lasted from 1945 until 1949.

After the Dutch East Indies surrendered on 8 March 1942 Japan invaded Nederlands-Nieuw-Guinea and by December 1942 had occupied the major coastal towns and islands. The Papuans did not view the Japanese as liberating heroes, unlike the peoples of Nederlands-Indië (Indonesia) who believed they'd be freed from the European's exorbitant powers of censorship and exile, and from slaving for an export that 'by 1938 was producing about 15 per cent of the Netherland's national income' (Penders 2002:p34). In contrast 'by 1942 only



DUTCH NEW GUINEA POLICE (1944) protect West Papuans returning to Hollandia, through Japanese-occupied territory, after the Allies assault in 1944. The police were from the Police Training School that Resident Jan van Eechoud set up in Merauke in 1944 and transferred to Hollandia in 1945.

the Netherland's national income' (Penders 2002:p34). In contrast 'by 1942 only 5% of West Papua was covered by colonial administration' (Poulgrain Ch 2:p67), the people only familiar with European missionaries—Protestant in the north since 1855, Catholics in the south since 1894—who brought modern education and health practices to the villages they were 'civilising and christianizing'.

By 1943 the Allies had established a military base at Merauke in the ritual heartland of the Marind tribe; and five radar stations on the outskirts of the tribe's territory, with a sixth further west in Asmat territory. At its peak the Merauke base serviced 7000 Dutch, American and Australians—including Pilot Officer Gough Whitlam (Australia's Prime Minister 1972-75) and 60-80 Torres Strait Light Infantry (who though critical for exploratory surveys were paid much less than their white colleagues until they went on strike).

In April 1944, the Allies commenced a devastating blitz of the north coast mainland and islands, producing horrendous casualty and destruction. For instance the Battle for Lone Tree Hill, a coral formation just 53m high x 1.1km² was 'the bloodiest ten days in the entire New Guinea campaign ... and as severe as any fought in the Pacific' (Thomas E Price) with 400 Americans killed, 1500 wounded; 3,870 Japanese killed, 11,000 dead from sickness and starvation. The fight for Biak Island, just 72km long x 37 km wide, produced 474 Allied deaths, 2,428 wounded; and 6,100 Japanese killed, 4,000 dead. Hollandia, a small village, was turned into one of the great war bases:

"Sides of mountains were carved away, bridges and culverts were thrown across rivers and creeks, gravel and stone were poured into sago swamps to make highways as tall as Mississippi levees. Tremendous docks were constructed, and 135 miles of pipeline were led over the hills to feed gasoline to the airfields. **Where once I had seen a few native villages and an expanse of primeval forest, a city of 140,000 men took occupancy**" (Lt-Gen Robert Eichelberger *Our jungle road to Tokyo*, 1950).

top—**OAKTREE PARTY (1943-44)** was a commando-intelligence group that covered vast tracts of unmapped territory in the Central Highlands of West Papua for fourteen months between 1943 and 1944. Led by Jean Victor de Bruijen, the District Officer of Enaratoli (Lake Paniai), the group raided Japanese posts, created diversions, cut bridges, negotiated boundaries with tribal chiefs, trained pigeons, organised supply drops, informed the people. The group's reports were sent to the Australian-US-Dutch base in Merauke and forwarded to the Allies Intelligence headquarters in Melbourne. Members of the Oaktree Party and the West Papuans in Sergeant Kokkelink's KNIL commando-group (that worked on the north coast of the Birds Head) were the core of the PVK (Papuan Volunteers Battalion) established by Resident van Eechoud in 1944.



TORRES STRAIT LIGHT INFANTRY BATTALION. From 1943, sixty-to-eighty Torres Strait Islanders were based in Merauke on the south-east coast of West Papua; described by an Australian Army Intelligence agent as *I would rather fight with them than against them.*

“In proportion to population, no community in Australia contributed more to the WW2 effort than the Melanesian men of the Torres Strait Islands” (Reg Ball, 1996).

Before the blitz, General MacArthur parachuted Jan van Eechoud, the former Police Commissioner back into Nederlands-Nieuw-Guinea and appointed him Acting Resident. Van Eechoud immediately began setting up infrastructure for what he believed would be a nation separate from Indonesia. Initially using two-thousand Japanese prisoners-of-war as labourers, by the end of 1944—while the Netherlands was still occupied by the Nazis, and the Nederlands-Indië by the Japanese—he had established three important and enduring Papuan-national institutions: a Police School, a Papuan Volunteers Battalion (defence force of 400 armed soldiers), and a Public Service Training School (Amapon Marey, 2012:pp95-100).

The Allies formally transferred the territory back to the Netherlands on 25 January 1946, by which time Van Eechoud was preparing to enrol the blossoming nation in the new South Pacific Commission alongside the other Melanesian island-colonies nascent-states. Indonesia meantime maintained its alliance with the Japanese until September 1945, and then began a vicious four-year war of independence with the Netherlands that lasted until 1949.

West Papuans’ learned much from their war experience of seeing black American soldiers working alongside white Americans, and Aboriginal and Torres Strait Islanders in uniform alongside their colonial masters. To then find themselves in uniform within Papuan institutions, and as part of an international organisation like the South Pacific Commission, generated confidence and a sense of inquiry, and rendered meaning to their biblical understandings of God’s arrangement of the world (“from one man he made all the nations ... and he marked out ... the boundaries of their lands”).

All this meant that by 1950 even the most cautious Papuan could sense more logic and opportunity as a UN Non-Self-Governing Territory than as part of a new, unorganised, and fragile Indonesian state.



HMAS ARUNTA, 22 April 1944 F McGuinness of Liverpool (NSW) and R Gough of Melbourne ready their torpedoes as the Royal Australia Navy destroyer moves into shore during the invasion of Tanahmerah Bay on the north coast of West Papua.

Gough Whitlam (Australian Prime Minister 1972-1975) was part of the Allies assault, posted to Merauke in the southeast corner of West Papua in April 1944 as Pilot Officer 13th Squadron RAAF.

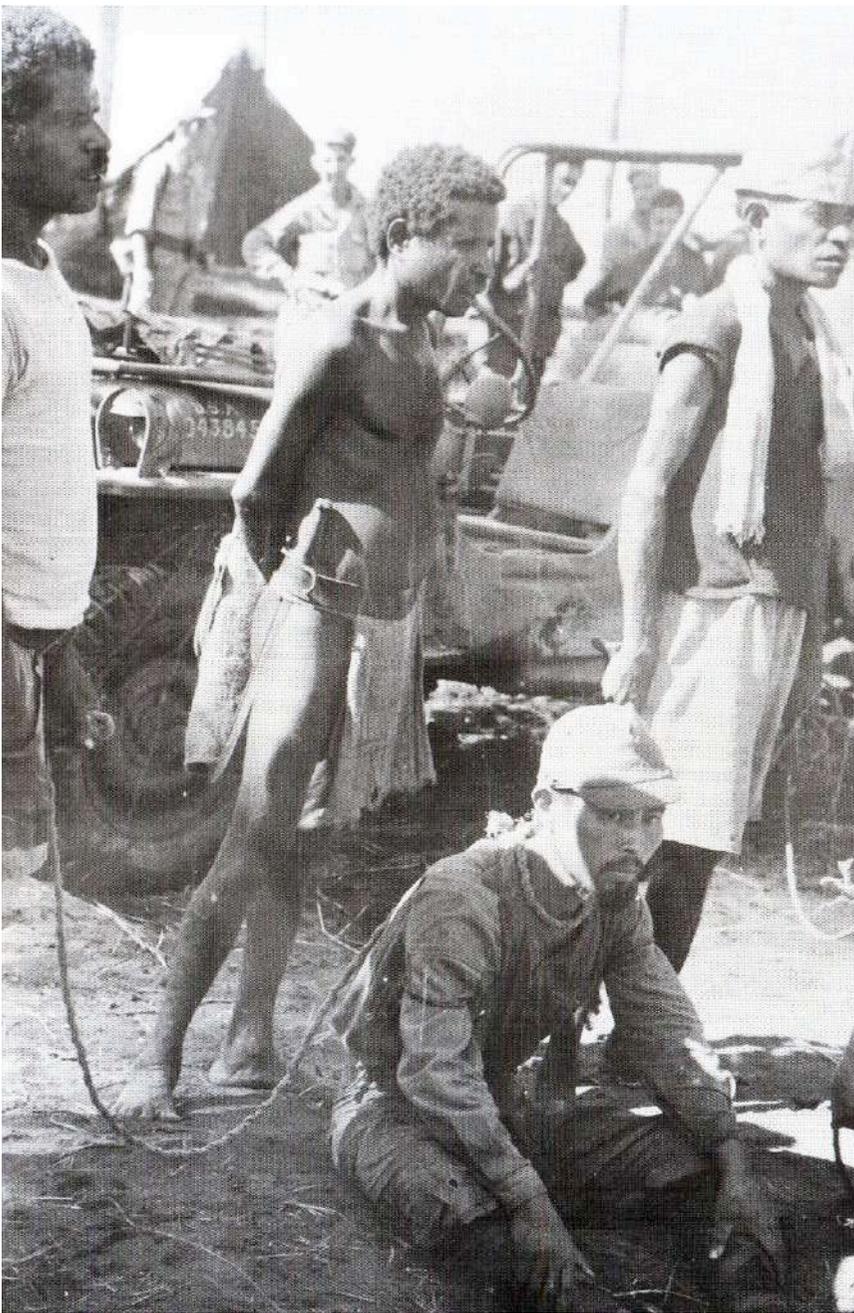
Frank Robertson, father of Geoffrey Robertson QC, was a Flying Officer in the 75th Kittyhawk Squadron in Biak in 1944 and took part in the Allies blitz.

Russell Costello (father of Peter—Federal Treasurer 1996-2007; and Tim—Baptist minister and CEO World Vision Australia) was rescued and rejuvenated by Biak-Noemfoor Islanders after his plane was shot down in Geelvink Bay. Before his death in 2016 Mr Costello honoured his debt, paying for the education of Meki Nawipa, a young Papuan whose scholarship to an Australian college was cut after a friend posted a Morning Star flag on his facebook page.



NOEMFOOR ISLAND, OCTOBER 1944. Curtiss Kittyhawk 78 Squadron. Len Waters, the first Aboriginal RAAF pilot, was based in Noemfoor in 1944. (below) “Simplicity was the keynote of an Allied Memorial Service at the war cemetery where Americans and RAAF members who fell at Noemfoor are buried”.





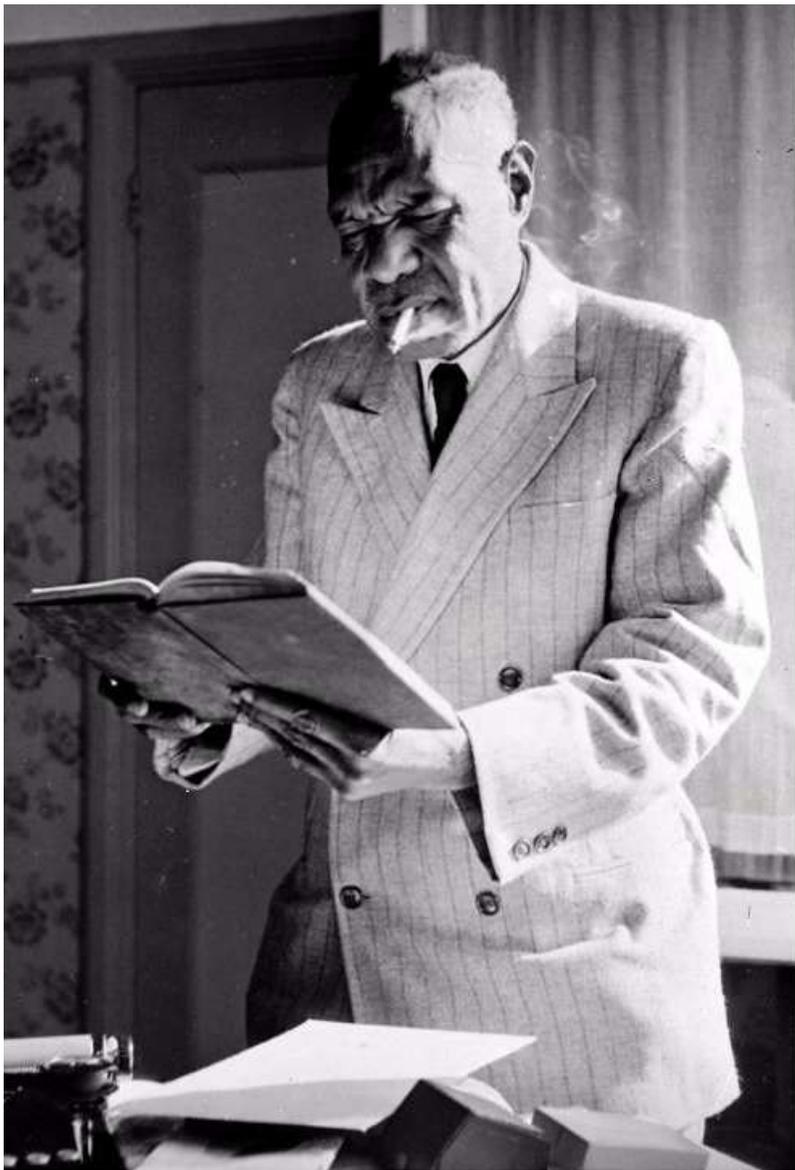
PAPUAN VOLUNTEERS BATTALION (PVK) WITH JAPANESE PRISONER 1945
The PVK was established in 1944 out of two Papuan war-time commando-intelligence groups. 200 PVK joined Resident Bessems in Manokwari in November 1945 for the Japanese Surrender Ceremony.



PAPOEA SOLDIERS, MANOKWARI, 1949 After the war the PVK became part of the Dutch Army. "As bush soldiers the Papuans excelled, couldn't be matched. They knew the jungle inside out, and just as they tracked down Japanese during World War II, so they tracked down Indonesian infiltrators throughout the 1950s" (Dutch Veteran).

AIRCRAFT CEMETRY, BIAK ISLAND, 1947





JOHAN ARIKS An Arfak man from the Kebar Plains in the Birds Head, educated at a theology school in West Java; pastor of Mansinem Island from 1914; and from 1931 a lecturer at the teacher-training college in Mei where the first generation of Papuan freedom thinkers and fighters were educated. Ariks was the first Papuan to direct international attention to the Papuan national cause. On 1 July 1965 he was jailed for an ‘anti-Indonesian’ speech, and he died in prison aged 70 in 1967 (At Ipenburg 2004).

WEST PAPUA AND THE UNITED NATIONS Non-Self-Governing Territory 1950-1962

For twelve years between 1950 and 1962 the Dutch and West Papuans were implementing a well-funded well-organised self-determination program in the Non-Self-Governing Territory of Nederlands-Nieuw-Guinea. At the same time Indonesia, desperate for recognition of ‘its’ sovereign territory, wilfully misinterpreted international law, refused to approach the UN International Court of Justice, burdened its impoverished citizens with a massive weapons debt, and ultimately earned itself recognition as a belligerent neo-colonising state.

15 June 1949 Johan Ariks, a Papuan teacher-pastor trained in Java but back in Papua since 1914, wrote to the UN Commission for Indonesia: **i)** condemning Indonesia’s involvement in deliberations about the political future of West New Guinea as an attack on the Papuan right of self-determination; **ii)** arguing that while West Papuans were not ready for full independence they were quite capable of giving a valid opinion about political ties with Indonesia; and **iii)** pointing to many regions where the number of tertiary and secondary educated was much smaller than in West New Guinea, and power was being transferred to just 0.0035% of the population (CLM Penders 2002:p154-56).

28 August 1949 Ariks wrote to the President of UN General Assembly saying:

“Irian opposes with all its might the imperialistic inclinations of Indonesian leaders who aim to bring our country and our people under the domination of a foreign people and foreign state with which it has never kept up friendly relations and cooperation of any kind. It determinedly and resolutely refuses to be negotiated on as a piece of merchandise without being heard” (ibid).

5 August– 2 November 1949 UN-auspiced conference in The Hague transfers sovereignty of Nederlands-Indië to a *federal* United States of Indonesia **without West Papua**. No West Papuans were invited to the three-month Round Table Talks but late in October Johan Ariks, Nicholas Jouwe and Marcus Kaisëpo managed to get to Holland where their articulate arguments stiffened the resolve of Dutch politicians to keep West Papua out of Indonesia.

12 December 1950 UN General Assembly Resolution 448 (V) directs the Special Committee on Information to examine **Article 73e Reports** from the Non-Self-Governing Territory of West New Guinea (Page 11). Article 73 (e) Reports track the development of self-government, and remain a legal

UN RESOLUTION 448 (V). DEVELOPMENT OF SELF-GOVERNMENT IN NON-SELF-GOVERNING TERRITORIES

The General Assembly,

Considering that resolution 222 (III) adopted by the General Assembly on 3 November 1948, while welcoming any development of self-government in Non-Self-Governing Territories, considers that it is essential that the United Nations be informed of any change in the constitutional position and status of any such Territory as a result of which the responsible government concerned thinks it unnecessary to transmit information in respect of that Territory under Article 73e of the Charter,

Noting the communication dated 29 June 1950 from the Government of the Netherlands in which it is stated that the Netherlands will no longer present a report pursuant to Article 73e on Indonesia with the exception of West New Guinea,

Noting that the full independence of the Republic of Indonesia has been followed by the admission of that State to membership in the United Nations,

1. *Takes note* with satisfaction of the communication of the Government of the Netherlands with reference to the cessation of the transmission of information on Indonesia;

2. *Requests* the Special Committee on Information transmitted under Article 73e of the Charter to examine such information as may be transmitted in future to the Secretary-General in pursuance of General Assembly resolution 222 (III), and to report thereon to the General Assembly.

*320th plenary meeting
12 December 1950*

Indonesia *voted for* Resolution 448 (V), its representative, Mr Tajipnaips, thanking India for presenting the draft resolution (Par. 221, UN General Assembly, Sixteenth Session, Official Records, 1055th meeting, 15 November 1961, Pars 197—255).

Following Res. 448 (V) the Netherlands submitted Article 73e Reports on West New Guinea for twelve years which the Committee on Information and the Fourth Committee accepted and discussed. **During this time Indonesia never submitted a draft resolution to the effect that this reporting should cease** (Par. 223).

Since the General Assembly decided in 1950 that Netherlands New Guinea was a Non-Self-Governing Territory under Netherlands administration and has acted accordingly in respect of twelve annual reports on that Territory, **Indonesia cannot reverse that decision, except by a judgment of the International Court of Justice, which it has refused—and which it still refuses—to elicit** (Par 224).

obligation of the Administering Power until the territory attains full self-government; i.e., until an act of self-determination.

All social, economic and political development in West New Guinea after 1950 was based on self-determination principles adopted by the Netherlands Inter-Departmental Commission in 1951, aired in Queen Juliana's 1952 address, and enshrined in Dutch legislation in 1953. By 1961 the Dutch were investing Fl 91 million per year in the territory (up from Fl 15 million in 1950) with plans to 'papuanise' the civil service (to 90-95%) with teachers, health workers, administrators, and police, including positions requiring tertiary education (PENDERS 2002: P391).

The Netherlands Administering Power generated major advances in health and education (primarily through long established Christian networks); export economies that dovetailed Papuan subsistence economies; and the development of institutions for an emerging state (Pages 12-14, 16-18).

A political program included setting up three Papuan-majority advisory councils in 1951; and establishing regional councils as training grounds for politicians in Mimika (1953); Yapen, Hollandia, Schouten Islands, Sorong and Manokwari (1955); Fak fak (1958); and Biak-Numfor (in 1959 but since 1948 as Kankain Kankara Biak). The councils were tasked with administering local affairs, levelling tax, implementing and enforcing local ordinances. They were the underpinnings of territory-wide elections in 1961 for the national Nieuw-Guinea RAAD/council (PENDERS 2002:385-400; SEE PPI2, 13).

1950—1960 Indonesia's diplomatic, military, political and media attacks on the Non-Self-Governing Territory all fail until the republic is assisted by both Cold War superpowers, the US and the USSR.

Page 12 shows a sample list of Indonesia's failed negotiations with the Netherlands (1950-1956), its failed military incursions into the Non-Self-Governing Territory of Nederlands-Nieuw-Guinea (1952-1962), its failed media campaign, and its failed motions at the United Nations in 1954, 1955, 1956, 1957, and 1961 (details at Page 38).

January-February 1961 Territorial elections for New Guinea RAAD which "officiated as a Parliament with all its powers" (Dutch Governor Platteel). 22 Papuans were elected to the 28-seat representative body (including Mrs Tokoro-Hanasby) which was tasked with making known, within a year, the Papuan peoples wishes on self-determination (details at Page 12).

POLITICAL DEVELOPMENT BETWEEN 1950 AND 1962



5 APRIL 1961

Queen Juliana's Address

".... Netherlands wants your people to take a dignified and equal stand in the community of the the modern world and the United Nations

This is the first step on the road that leads to the exercise of self-determination. May that turn out to be short Remain yourself and enter in the form that you choose based on your own nature....."

FEB 1961 Voting for New Guinea RAAD.



5 APRIL 1961 RAAD member Mrs Tokoro-Hanasby sworn in by Dutch Governor Platteel.

5 APRIL 1961 Sir Alistair McMullin, President of the Australian Senate.



6 APRIL 1961

Sydney Morning Herald

"The RAAD should make its wishes known on self-determination within twelve months since by 1970 only a few foreign experts would still be needed."

Dr Bot, Dutch State Secretary for Home Affairs, added that Holland would continue to give material and financial aid to help achieve independence.'

1. Indonesia's failed negotiations with the Netherlands 1950—1956

Article 2 of the 1949 Sovereignty Transfer Charter stipulated negotiations over West New Guinea continue for twelve months, but all negotiations failed and in 1956 Indonesia rescinded the agreement. A Ministerial Meeting in **March 1950** failed; a Fact-Finding Mission in **May 1950** produced two conflicting reports; a Conference in **December 1950** collapsed when Indonesia demanded sovereignty by June 1951. In **January 1952** Indonesia insisted sovereignty had already been transferred, and rejected the Dutch offer to seek International Court of Justice advice. At meetings in **June 1954**, **December 1955**, **February 1956** Indonesia dismissed UN decolonisation principles as 'irrelevant' and 'inadmissible' (PENDERS 2002: CH 3, PPI78-265).

2. Indonesia's failed military incursions into West Papua 1952—1962

- 1952 January: Gag Island (28 pro-indonesian Irianese).
- 1953 January: Kaimana (pro-indonesian Irianese).
- 1954 Kaimana: (42 secretly trained Irianese led by Lt Henkie Antaribaba).
- 1960 9 November: South coast: 23 pro-indonesian Irianese called Guerilla Force 100 led by Lt H Antaribaba).
- 1961 14 September: Sorong (32 Irianese from Guerilla Force 200, timed for UN General Assembly and the Netherlands Decolonisation motion).
- 1961 Sukarno's Declaration of War ('Crush the elected councils in West Papual Plant the Indonesian flag, Take control of the territory').
- 1962 15 January: Kaimana: includes III Irianese from Guerilla Force 300 + 3 of Indonesia's 10 US C 130 Hercules & 4 West German jaguar torpedo boats
- 1962 21 March: Raja Ampat archipelago (151 Irianese from Guerilla Force 300, and Indonesian police rangers, with US AR-15 automatic rifles, trained secretly by US Army Special Forces on Okinawa).
- 1962 26 April: 75 parachute drop over Fak Fak and 80 on Kaimana.
- 1962 15 May: Parachute drops on Fak Fak and Kaimana, + police rangers.
- 15 May: Parachute drops on Sorong + insertion of Guerilla Force 400.
- 1962 25 June: 214 commandos parachute drop on Merauke.
- 1962 31 July: Sorong: 89 Guerilla Force 500 and media personality Herlina.
- 1962 July: Battalions to Seram, Kei and Sulawesi for invasion of Biak Island.
- 1962 7 August: Commandos infiltrate Fak Fak; Guerilla Force 600 on Misool.
- 1962 14 August: Parachute drops on Sorong, Merauke, Kaimana.
- 1962 15 August: 45 commandos on 3 of Indonesia's 12 Soviet whiskey-class submarines invade Hollandia. (DATA: FROM KEN CONBOY 2002:PP61-80).

3. Indonesia's failed media campaign directed by government's 'National Front for the Liberation of West Irian' (JUSTUS M. VAN DER KROEF, 1961:P52).

4. Indonesia's failed motions at UN: 1954, 1955, 1956, 1957, and 1961 (Pages 38, 15)



24 April 1961: Presidents Sukarno and Kennedy, Andrews Air Force Base, USA.



May 1961: New Guinea RAAD votes on a proposal.

“There was an undeniable desire for human development shared by the Dutch and the Papuan civil servants in the 1950s that made the situation quite different from the pre-World War II situation” (Leontine Visser 2012:p3).

5 April 1961 The Netherlands Government installs Nieuw-Guinea RAAD in front of representatives from every region in West Papua, as well as an array of international media, and 135 officials from the South Pacific Commission including the governments of Britain, New Zealand, France, and Australia. Australia's delegation included Sir Paul Hasluck, Minister for Territories; Sir Alistair McMullin, President of the Senate (Page 12); Brigadier Cleland (Administrator of Papua and New Guinea) and ten of the PNG Legislative Council (Bibliography for online Dutch video of the event).

24 April 1961 President Kennedy invites President Sukarno to Washington (left). For a \$900,000 helicopter and \$100 million aid package Sukarno promises to rein in the Indonesian Communist Party and agrees to ‘a short interim UN Trusteeship followed by an Indonesian takeover of West Papua’ (PENDERS CLM 2002:335). **This arrangement became the core of the New York Agreement brokered by the United Nations twelve months later that judassed the Netherlands well-organised decolonisation program in West Papua and pilloried a cardinal principle of modern international law.**

18 September 1961 UN Sec-General Dag Hammarskjöld killed in (still) suspicious circumstances days before his scheduled introduction to the General Assembly of an OPEX plan for West Papua where the people were recognised as the sovereign owners of their land and a decolonisation program adopted for UN technical officers to assist an independent Papuan government for five years (Greg Poulgrain 2015 Ch 2).

19 October 1961 New Guinea RAAD names the emerging state (Papua Barat, not Irian), its people (as Papuan, not Irianese), and its national flag and national anthem; and declares that on 1 November 1961 ‘in accordance with the ardent desire and yearning of our people for our independence’ the Morning Star flag is hoisted alongside the Netherlands flag (Manifesto at 18).

The Netherlands Government accepts the manifesto but defers the the flag-raising ceremonies to 1 December to allow for passage of its decolonisation motion in the Sixteenth Session of the UN General Assembly.

ECONOMIC AND SOCIAL DEVELOPMENT BETWEEN 1950–1962



Netherlands New Guinea money 1949-62



Mass immunisation program for malaria, yaws and tuberculosis by the Netherlands administering Power in association with World Health Organisation and the UN Childrens Fund (UNICEF).



Road-making in the interior in 1959

School in Sorong in the Bird Head 1962



Precision tractor-driving lessons in an agriculture-training school in 1955.



UN Plenary Meetings, 9th & 16th November 1961: discussion of the Dutch motion whereby UN member-states were asked to:

1. Recall Res. 1514 (XV), and note the Netherlands had been administering Netherlands New Guinea under the terms of Ch XI;
2. Recognise that the Netherlands wants to implement the Declaration on Decolonisation under UN supervision and assistance, and was **prepared to transfer sovereignty to the people of the territory**;
3. Understand that the Netherlands powers would be exercised by a UN-designated international authority that would provide the territory with technical and economic assistance;
4. The Netherlands would maintain its financial aid to the territory;
5. Set up a UN Commission for Netherlands New Guinea to investigate implementation of Res. 1514 (XV) and a Declaration on Decolonisation; and the political, economic, educational and social conditions in the Territory; the people's view of their present and future; and the possibility of a plebiscite and an international development authority. (UN Legal Records, Ch XI, Art 73, Pars 846-848).

“In the view of the Australian Government, the Netherlands proposal has drawn from the UN Charter principles which provide an excellent basis for the settlement of the West New Guinea problem, and is in full accord with the principles of Resolution 1514 (XV)” (Pars 24-53, General Assembly, 1055 Plenary Meeting, 15 November 1961).

“I am very favorably impressed by this new Dutch position which I think goes a long way towards establishing Dutch *bona fides* and exposing Indonesia's territorial ambitions” (Adlai Stevenson, US Ambassador to the UN, on 18 September 1961, in Annette Culley 2016:p90).

Indonesia's numerous and contradictory objections are detailed, with rebuttals on Pages 32-35. (They can be read in the record of the UNGA 1050th plenary meeting, 9 November 1961; and UN Legal Records, Ch XI, Art 73, Pars 849-862).

To overcome Indonesian objections 13 member-states introduce an amendment, whereby the General Assembly:

1. Recalls the principles in Resolution 1514 (XV);
2. Recommends the dispute could best be ended by negotiated settlement under the auspice of the Secretary-General, with respect for the will and self-determination of the people;
3. Appoints a commission of five members to carry out an investigation if the



Dag Hammarskjöld, United Nations Secretary-General 1953–1961. The lives of the West Papuan people and the quality of their territory would have been very different had he survived the plane crash that killed him and 15 UN executives, staff and airline crew on 18 September 1961.

Votes of UN member-states in November 1961 that affirmed West Papuan's right to self-determination included:

Australia, Cameroun, Canada, Central African Republic, Chad, Togo, Congo (Brazzaville), Dahomey, France, Gabon, Israel, Ivory Coast, Madagascar, Mauritania, Niger, Senegal, Sudan, Togo, Upper Volta, United States, Western Europe, and most Latin American states.

Votes of UN member-states in November 1961 for Indonesia that denied West Papuan's right to self-determination included:

Albania, Bolivia, Bulgaria, Bylorussian SSR, Czechoslovakia, Congo (Leopoldville) Cuba, Guinea, India, Jordan, Liberia, Mali, Mongolian People's Republic, Morocco, Nepal, Romania, Saudi Arabia, Syria, Tunisia, Ukrainian SSR, United Arab Republic.

parties had not reached a settlement by 1 March 1962. The commission would investigate conditions in the territory and the possibility of establishing an international system of administration without prejudice to the right of the population to decide the status of the territory. **The amendment won a simple (53-41, 9) but not two-thirds majority.** Indonesia's counter motion also failed (41-40, 21). (UN Legal Records, Ch XI, Art 73, Pars 863-868).

Such was the level of debate without Hammarskjöld's leadership that a paragraph in the amendment—that the General Assembly states its conviction that any solution affecting the final destiny of a Non-Self-Governing Territory must be based on the self-determination of the people in accordance with the UN Charter—which was voted on separately, also failed (53-36, 14)!

“Since the Member States at the Sixteenth Session were unable to reach any consensus upon the facts in dispute, the resolutions presented, or the legal merits of the competing claims, **the situation clearly called for a debate upon a Resolution requesting the International Court of Justice to furnish an advisory opinion to the General Assembly upon legal questions designed to secure the Court's opinion on the key issue of whether The Netherlands or Indonesia holds lawful sovereignty over the territory of West Papua.** As that option was not considered it left the way open for an American diplomat, Ellsworth Bunker, appointed by Secretary-General U Thant, to enter the arena as a mediator and broker the adoption, on 15 August 1962, of an Agreement between the States party to the dispute that was **in accord with the USA agenda of accommodating Indonesia**” (George Lambert ICJ, 2000:p5).

The Nigerian delegate: "What has greatly surprised us in this dispute is that one of the parties is **not asking for the opinion of the people of New Guinea**, although that would have been a good starting point in order to remove any possible misunderstanding. **It is for the people of New Guinea themselves to say, in the present circumstances, who is entitled to claim sovereignty over their territory until they themselves, by referendum or by some other means, decide their own fate.** It should be agreed in this dispute that the voice of the people of New Guinea ought in no case to go unheard” (UNGA Debate, 1055th Plenary Meeting 15/11/61; pp. 76-77).

1 December 1961 New Guinea RAAD and Netherlands Government implement their 19 October legislation, playing the two anthems and raising the two flags in ceremonies across Papua Barat (Photos: Page 16).

Manokwari hijsen van de NG vlag 1-12-1961 (Ruud Bauwens)



1 December 1961 ceremonies in Manokwari and Hollandia, organised by the Nieuw-Guinea RAAD, raised the Morning Star flag alongside the Netherlands flag, with the national anthems of the two nations, and the Papua Volunteer Korp (PVK) marching alongside the Netherlands Army.



Article VII of the 1962 New York Agreement excised the PVK's 350 officers and men from the Netherlands Armed Forces and placed them under Indonesian officers. Three years later, in 1965, the (Papuan) Cassowary Battalion routed the Indonesian Army from its barracks in the Arfak Mountains behind Manokwari.

19 December 1961 Indonesia declares its use of military force to annex the Non-Self-Governing Territory, breaching Article 2 (4) of the UN Charter that “prohibits the threat or use of force and calls on all Members to respect the sovereignty, territorial integrity and political independence of other States”. Indonesia at this time, with supplies from the US and especially the USSR, is ‘the most powerful military power in Asia outside China’ (Penders 2002: p370).

In 1961 the Indonesian Air Force had the latest Mig-19 and Mig-21 jet fighters, Ilbushin-28 medium bombers, Tupolev-16 heavy bombers, Soviet-made Mi-6 helicopters; American Dakota C-47 transports and ten US-made C-130 Hercules. **The Navy** had the latest Soviet destroyers, 12 Soviet whiskey-class submarines with diving equipment (with training in Vladivostock), Italian MTBs, a Sverd-lodsk-class heavy cruiser, modern transport craft, and four West German jaguar torpedo boats. **The Army** had modern East European small arms, tanks, missiles, rocket launchers, surface-to-air and surface missiles, motorised rubber boats, Russian D-1 parachutes, AK-47 assault rifles, American parachutes, AR-15 automatic rifles, as well as West German, British Irvin parachutes and Yugoslavian parachutes, Lee-Einfeld rifles, Heckler & Koch G-3 automatic rifles, Hong Kong-made camouflage suits, and Czechoslovakian jump boots.

In 1961 Major Benny Moerdani did special warfare training in the United States, and Captain Abdul Ramly did psychological operations training. Early in 1962 there were 300 Soviet military advisers in Jakarta. (Data Sources: CLM Penders 2002 and Ken Conboy 2003).

15 January 1962 Invasion includes 3 of Indonesia's ten US-made C-130 Hercules and 4 West German jaguar torpedo boats (see Page 12).

“Here was a situation in which a UN member state holding sovereignty over West Papua, had committed itself upon a program designed to enable the people to prepare for and exercise their right to an act of self-determination in 1970, in full compliance with the provisions of the UN Charter and resolutions adopted under it; and a neighbouring UN member state resorting to armed force and military occupation of the territory, and on its own admission, to annex the territory” (George Lambert ICJ 2001).

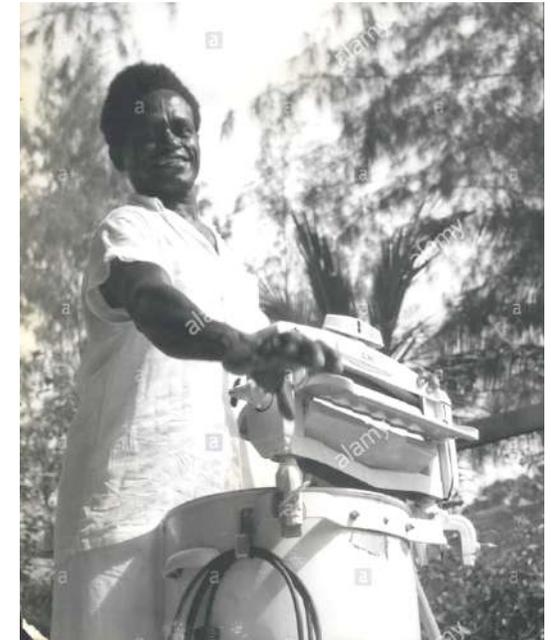
The UN's failure to recognize self-determination in the context of West Papua on 16 November 1961, and Indonesia's subsequent declaration of war on 19 December 1961 resulted in the New York Agreement.

“It would be difficult to envisage an agreement more favourable to the aspirations of Indonesia to annex the territory than the New York Agreement” (George E Lambert 2000:p2).

Some of the Development Data in the Non-Self-Governing Territory of West New Guinea between 1950 and 1962

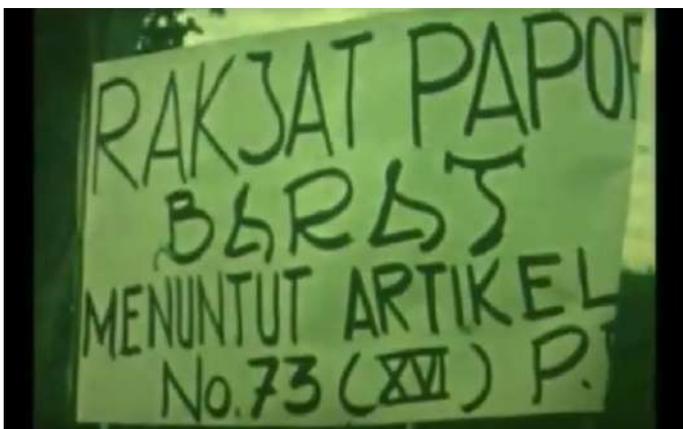
Education	1950	1955/56	1959/60	1961	1962
Elementary schools	25,791				32,686
Advanced primary	804				2,734
Secondary	20				430
Teacher training courses	95				504
Technical schools	70				212
Tertiary study in the Netherlands			29	50	
Tertiary study in Port Moresby				13	Medicine, Radio, Engineering
Tertiary study in Fiji				2	Medicine, Dentistry
Employment in the modern sector					
Graduates of the Administration School			50% of the 74 districts run by Papuan patrol officers		
Working Papuan civil servants		1,290	2,192		
Working Papuan village school teachers			966		
Papuan teachers in continuation schools			16		
Working Papuan nurses			270		
Type: Economy					
Production of logs		18,472m3	49,963m3		
Export of sawn timber (from Manokwari saw-mill)		51,000 guilders	1.118 million guilder		
Export of copal and damar			2.1 million guilders		
Export of copra (from coconut plantations)	2,945 tonnes		5,847 tonnes (3.9 million guilders)		
Nutmeg and mace		355 tonnes (1.9 m)	600 tonnes (3.45 million guilders)		
Export of cocoa			52 tonnes (90,800 guilders)		
Farming pilot programs					
Nimboran: food crops, fruit, export cocoa and coconuts			All 14 x 3-4ha pilot farms continue without financial aid		
Mappi: coconut, cocoa, rubber		75 families	1,000 hectares of coconut planted		
Yapen-Waropen: 880 farms			43 tonnes of cocoa		
Netherlands Budget for Development Program	f1 15 million			f1 91 million	
Papuans under direct administrative control		342,600	461,858 (+71,079 within radius of regular government patrol + 169,020 in Central Highlands still outside government umbrella)		

Plans for a plantation economy disbanded after findings that only 2 million (5%) of the 41.4 million hectares were arable; moreover, widely scattered in relatively small pockets
 Table prepared by Louise Byrne, 2015. Data Source Christiaan LM Penders 2002: p391—400)



1962 - the washing machine comes to New Guinea (photo in newspaper article about oil development “In Sorong an oil company (40% Dutch Shell, 40% Stanvac, 20% Pacific Investments) has a concession of 2 million acres and supports 200 men and their families.

Production resumed in 1946, with a port at Sorong and a pipeline and road to the fields in Klamond 36 miles away Ten million guilders has been spent on roads that were maintained after Klamono was abandoned in 1955. Now, with the search for more oil, helicopters are used Holland spends 50 million guilders annually on development and 450 million on defense. Private investors are chary because the future of the territory is not clear.”



top—Highlander greeting Dutch Franciscan nuns.
bottom—Banners, Sorong, 1 December 1961: ‘West Papua people demand Article 73’; ‘Indonesia government rejected’

MANIFESTO, PAPUAN PEOPLES CONGRESS Hosted by the New Guinea RAAD, 19th October 1961

We the undersigned, residents of the western part of Papua, representing various groups, tribes and religious denominations, knowing that we are united as a people and a nation, DO HEREBY DECLARE to all our fellow countryman that we,

- I. in pursuance of Article 73 a and b of the Charter of the United Nations;
- II. on the strength of the declaration of principle regarding the independence of non-self-governing territories and peoples, as laid down in the resolution No. 1514 (XV) adopted by the General Assembly of the United Nations at its fifteenth meeting from September 20 to December 20 1960;
- III. by virtue of the inviolable right we, inhabitants of the western part of Papua, have to our native country;
- IV. in accordance with the ardent desire and the yearning of our people for our own independence,

through the National Committee and our parliament, the New Guinea Council, insist with the Government of Netherlands New Guinea and the Netherlands Government that as of November 1, 1961,

- a) our flag be hoisted beside the Netherlands flag;
- b) our national anthem *Hai Tanahku Papua* be sung and played in addition to the Netherlands national anthem;
- c) our country to bear the name of Papua Barat
- d) our people to be called the Papuan people.

In view of the foregoing, we, Papuans, demand our own position, equal to that of the free nations, to live in peace and to contribute to the maintenance of world peace.

Through this manifesto we summon all those who love this country and its people to rally round and uphold this manifesto, as it is the sole basis for the freedom of the Papuan people.

Hollandia, October 19th, 1961.

W. Inury, D. Sarwom, F. Poana, A. Onim, F.J.S. Romainum, E. Itaar, M. Suwae, J.J. Roembiak, J.Jaab, M. Onggé, P.H. Jochu, Iz. Menufandu, M. Wai, N. Jouwe, H. Mori Muzendi, P. Koejab, W. Zonggonao, F. Jufuway, A.J.A. Rumtoboy, E. Noembery, J.S. Dekeniap, S.L. Rumadas, T.S. Akwan, H. Jomungga, M. Buotabui, F. Torey, M.W. Kaisiëpo, B. Gebze, Th. Mezet, J.E. Bonay, N. Tanggahma, H.I. Bauw, Sp. Malibela, T. Dansidan, W. Giay, O. Nemnay, A. Sefa, J. Manory, L. Ajamiseba, M. Romainum

REPORT, THE NEW GUINEA COUNCIL

Resolved at a public meeting in Hollandia on 16 February 1962

Invited by the Netherlands Government through the State Secretary of Home Affairs on the occasion of the inaugural meeting of the Council on April 5, 1961, to inform the Government of Netherlands New Guinea of its views of the manner in which the right to self-determination of the people of this Territory could be effected, as well as of the question of the desirability of setting a date for this purpose, taking into consideration the actual consequences thereof for the economic, social and cultural building-up of the country, Considers its position with regard to the concomitant problems as follows:

I. The Papuan people as an ethnological unit has the right to decide its own fate in pursuance of item 2 of the decolonisation resolution 1514 (XV), where it says that:

"All people have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". The fact that the western part of the island of New Guinea was brought under the central administration of the former Netherlands Indies Government can hardly be adduced in evidence that the Papuan inhabitants of the western half of the island have consequently become Indonesians.

The Netherlands has since December 27, 1949 administered Netherlands New Guinea in conformity with the provisions of the U.N. Charter. Accordingly, the annual representative reports referred to in Article 73e of the Charter have not only been submitted by the Netherlands, but have also been accepted as such by the United Nations on the strength of the pertinent resolution of the General Assembly no. 448 (V), dated December 12, 1950.

The people of West Papua has therefore a right to the continuation of its development to self-government, whereas the Netherlands as a member of the United Nations Organisation is, on the one hand, bound to promote this development to the best of its ability pursuant to Article 73e of the U.N. Charter, and, on the other hand, has a right to the support of the United Nations Organisation in fulfilling this obligation.

The Indonesian claim that the right to self-determination of the people of West Papua was brought into effect by the Proclamation of the Indonesian Republic on August 17, 1945, is rejected. Firstly, the people of West Papua were not represented at the issuance of the proclamation; secondly, the proclamation took place during the Japanese occupation of Indonesia at a time when New Guinea had already been liberated by the Allies.

It is not the real or fictitious unity of a people, but the voluntary combination of all component parts, on which a modern state should be based. And it is in this special sense that the Council wants to consider the right to self-determination of the people of West Papua. Whether or not West Papua by virtue of the right to self-determination will enter into a voluntary association of interests with another country, and if so, with what country, will have to be decided in due course by the West Papuan people itself. The essential point at present is that the right to decide on the matter in freedom be given to this people.

II. As set out in item 6 of the Decolonisation Resolution of the United Nations No. 1514 (XV), an insufficient economic or social development of the population should in itself not justify the prevention of the right to self-determination from being exercised. On the other hand, there are certain minimum requirements which the development of a people must meet in order to guarantee a purposeful and justified decision. Areas not yet under control should be brought under government control as soon as possible, while the introduction of primary education and illiteracy eradication courses should keep pace with the opening-up process. As the progress of a country is highly dependent on the educational system applied, measures for the reinforcement as well as the extension of primary education, which are the necessary

basis for further education and the general condition to increase the present level of development, are insisted upon with a view to accelerating the development of New Guinea. In this connection it is also urged, in addition to the possibilities of education available to West Papuans students in the Netherlands, the Territory of Papua and New Guinea, Fiji and the other Pacific Islands, to make use of Resolution No. 1540 (XV) concerning the possibilities for study and training offered by member countries to the inhabitants of Non-self-governing territories.

The process of "papuisation", for which a ten year plan has been drawn up, should be accelerated as much as possible and by all available means. In this connection it will be necessary to forego to some extent the current conditions of appointment consisting of a university training followed by many years of experience, while for a number of political appointments preference will have to be given to those who have distinguished themselves by such qualities of character as wisdom, integrity and resoluteness, and by a political backing. Decentralisation and democratisation should be developed with unflagging zeal, both for reasons of principle and in order to give as many individuals as possible some idea of the problems of government.

As no self-governing territory can prosper without a sound economic basis, much activity should also be displayed in this respect, with a view to operating the national resources of the country. More than half of the budget should, in principle, be financed from the national means or from unconditional financial support.

III. For the purpose of acquainting themselves with the methods used in the decolonisation process elsewhere and for a better understanding of and more goodwill for West Papua among other nations, a missions composed of New Guinea Council Members and prominent Papuans should without delay be sent abroad, especially to the Afro-Asian countries, including Indonesia. Similarly missions from other countries could be invited for a better acquaintance of West Papua.

IV. The consideration mentioned fills such an extensive program that a justified estimate of time involved cannot be given. However, in the opinion of the New Guinea Council, 1970 is the deadline for the realisation of the right to self-determination of the people of West Papua.

The time when this right can be exercised as well as the concomitant technical problems, should be reviewed by the New Guinea Council every two years.

V. As to the administration of West Papua, which has frequently been discussed at United Nations meetings, the Council considers its position as follows:

From an international point of view it would seem to be immaterial by whom West Papua is administered until this country can exercise its right to self-determination, as long as its people is guaranteed the possibility of making a decision in freedom.

Yet there are objections to certain forms of administration:

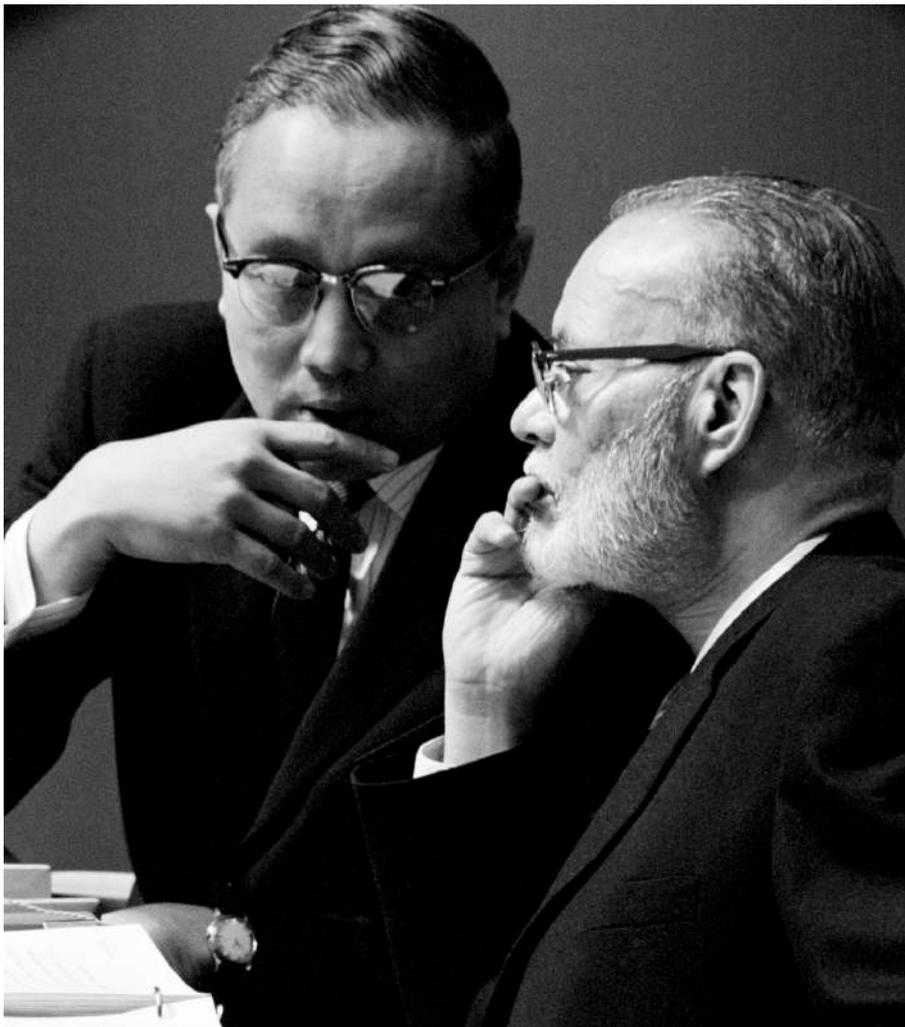
a. Administration by Indonesia is rejected, because Indonesia is the claiming party and is therefore not neutral, and consequently will not enable the Papuan people to exercise their right to self-determination in freedom.

b. In practice, any administration that is different to the current government will inevitably slow down the present rate of development.

c. The desire for international acknowledgement of the right to self-determination may result in a certain form of internationalisation, but in view of the drawback in (b) preference is for a Netherlands administration rather than another Power or direct by the United Nations.

d. The Council considers it of utmost importance, as expressed in its motion of January 22, 1962, that the United Nations send a commission to West Papua as soon as possible so that it may learn direct of the views and wishes of the Papuan people.

(sgd.) J.H.F. Sollewijn Gelpke, Chairman; W. Trouw, LL.M., Clerk of the Council



UN photo and caption “21 September 1962, General Assembly authorizes UN to carry out tasks set forth in the Agreement on West New Guinea (West Irian). Sec-General U Thant and President of the General Assembly Muhammad Khan”.

WEST PAPUA AND THE UNITED NATIONS Indonesia and Netherlands Agreement (New York Treaty) 15 August 1962—20 November 1969

The Kennedy administration believed that gifting the Non-Self-Governing Territory of West New Guinea to Indonesia would create out of ‘700,000 cannibals living in the Stone age’ a pillar on which the ‘socio-economic health’ (freedom from communism) of the Pacific depended. It didn’t diminish Indonesian communism, but it did reduce a functioning self-determination unit to a colony of an Asian republic that was in political chaos, on the brink of economic collapse, and at high risk of infracting its legal obligations. Now many UN member-states believe their organisation needs to recompense its failure to uphold self-determination in the context of a Non-Self-Governing Territory whose Administering Power was in full compliance with the international rules-based order. And that Indonesia must relinquish the 459,412 kms² of richly resourced Melanesian land it was able to acquire because of that failure.

17 January 1962 After the UN’s failure to recognise self-determination in the context of West New Guinea on 27 November 1961, Acting UN Sec-General U Thant invited the Dutch and Indonesians to negotiate directly. Subsequent dialogue stalled when Indonesia insisted, as it always had, that negotiations were based on a precondition that West New Guinea will eventually pass to Indonesian control (John Saltford, 2003:pp xviii, 12).

11 March 1962 On instructions from the Kennedy administration, U Thant appoints an American diplomat Ellsworth Bunker to mediate talks between the Dutch and Indonesians. Talks begin on 20 March 1962. The next day, 21 March 1962, 151 secretly trained Irianese and Indonesian Police trained by US Army Special Forces on Okinawa (with US AR-15 automatic rifles) land in the Raja Ampat islands off the west coast of West Papua (see Page 12).

24 March 1962 Indonesia withdraws from negotiations.

26 April 1962 Forty Indonesian commandos parachuted into Fakfak and 32 into Kaimana. “U Thant declines Dutch request for UN observers noting such action could only be considered if both governments made the request” (<https://peacekeeping.un.org/en/mission/past/unsfbackgr.html>).

“I cry because the Papuans do not support us ... they do not give us food .. we must look for our own or barter with our valuable equipment ... they report on our movements to the Dutch” Lt Heru parachuted into Kaimana on 26 April ’62



15 AUGUST 1962, Signing, New York Agreement, UN Headquarters.

Acting Secretary-General U Thant personally appointed Brigadier General Indar Jit Rikhye from India (seated behind Ellsworth Bunker) to lead the UN Military Observer 'cease fire' in West Papua.

20 AUGUST 1962, Airport in West Papua. West Papuans greet arrival of Brigadier General Rikhye and the 21-member advance team of UN Military Observers under the command of Swedish Naval commander O. W. Melin.



29 June 1962 UN legal counsel Constantin Stavropoulos advises U Thant of “a strong presumption in favour of self-determination in situations such as that of West New Guinea” ... “irrespective of legal stands or interests of other parties”

12 July 1962 Talks resume. Indonesian battalions proceed to Seram, Sulawesi and Kei to invade Biak Island. Incursions continue until the day that a UN-auspiced peace treaty between the Netherlands and Indonesia is signed in New York on 15 August 1962

31 July 1961 89 guerilla-fighters into Sorong (see Page 12).

7 August 1962 Commandos infiltrate Fakfak and Misool.

14 August 1962 Parachute drops on Sorong, Merauke, and Kaimana.

15 August 1962 12 whiskey-class submarines invade Hollandia.

15 August 1962, Signing, Indonesia and Netherlands Agreement (left), or ‘New York Agreement’ was a US-driven UN-auspiced peace treaty between the Dutch and Indonesians that over-rode West Papua’s self-determination process by transferring administration of the Non-Self-Governing Territory to the United Nations, and then Indonesia until an act of self determination. (bibliography for online access to New York Treaty).

“The New York Agreement contained no clause concerning the obligation under Article 73e of the Charter that requires the Administering Authority to transmit regular reports to the Secretary-General relating to economic, social, and educational conditions in the territory for which it is responsible” (Annette Culley 2016:65).

“The General Assembly must be held responsible to a significant extent for brokering the Treaty in terms which clearly reflected the proposition that the merits in the dispute were entirely in favour of Indonesia” (George Lambert ICJ 2001).

15 August 1962 During the signing of the Agreement, the Indonesian and Dutch representatives pass a MOU to Sec-General U Thant asking him to immediately implement ceasefire functions as an “extraordinary measure” because the General Assembly hadn’t yet signed Agreement (<https://peacekeeping.un.org/en/mission/past/unsfbackgr.html>).

“Although there was no explicit reference to military observers in the memorandum, the Secretary-General selected them to perform these tasks and agreed to dispatch them without the prior authorization of the General



Airport in West Papua, 20 August 1962. West Papuans protest against the New York Agreement and the Indian Brig-General IJ Rikhye as head of the UN Military Observer Force. (India led Indonesia's argument in the UNGA in November 1961).



Photo and caption from UN Archives 18 Sept 1962, Karachi, Pakistan "Pakistan Troops Leave for Service as UN Security Force in West New Guinea (West Irian). Some 1,100 men of the Pakistan Navy and Army left here today aboard the SS Safina-E-Hujjaj for west New Guinea (West Irian) to serve as Security Force of the United Nations Temporary Executive Authority. Vice-Admiral A.R. Khan (left foreground), Commander-in-Chief of the Pakistan Navy, at the pier during a ceremonial farewell for the troops".

Assembly or the Security Council, a step never before taken by a Secretary-General

.... The Sec-General appointed Brigadier General IJ Rikhye to head the military observer team supervising the ceasefire. Six Member States (Brazil, Ceylon, India, Ireland, Nigeria, Sweden) provided 21 observers. Aerial support, also requested by U Thant, was given by the 13th US Task Force for the Far East and the Royal Canadian Air Force

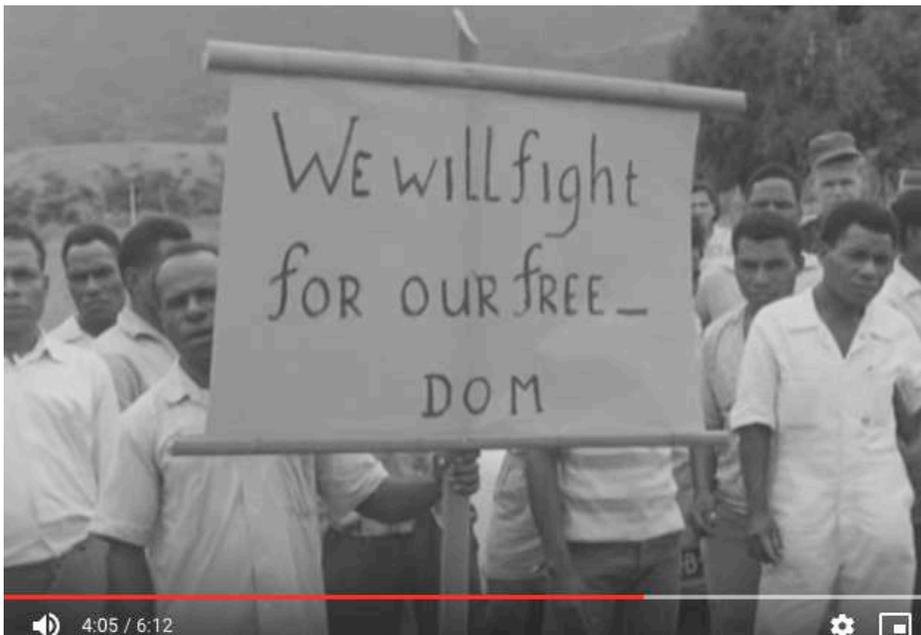
... The UN Military Observer Force (UNMO) landed in West Irian on 20 August 1962 (5 days after the New York Agreement and 2 days after **The Netherlands military command announced its ceasefire on 18 August 1962**). The UNMO helped supply the Indonesian troops with food and medicines although **most of the emergency supplies were provided by the Netherlands military command, which also treated any Indonesian troops who were seriously ill**. On 21 September 1962, Rikhye reported **all ceasefire actions had been completed without incident** and he was arranging the landing of the UN Security Force (<https://peacekeeping.un.org/en/mission/past/unsfbackgr.html>).

18 September 1962 Eleven-hundred (ultimately 1500) troops leave Pakistan to serve as the UN Security Force (left). **The consent of the UN Security Council was not sought for this deployment** (Annette Culley 2016:94). Note the troops are boarding the ship **three days before UN General Assembly members have seen, or voted on, the New York Agreement**. (Commander Said Uddin Khan arrived in West Papua on 4 September, five days before the General Assembly opened on 9 September).

21 September 1962 UN General Assembly votes (89-0, 14) to authorize the Secretary-General to carry out tasks entrusted to him in the New York Agreement (UNGA Res. 1752 (XVII)).

"Members were given no time to study the resolution, or agreement, or to seek legal advice before voting" (Annette Culley 2016:p64).

"After the vote **Australia's representative, Garfield Barwick stated the dispute should have been taken to the International Court of Justice as it involved a juridical question** (par. 213). He spoke of the Papuans right of self-determination [that] Indonesians had previously stated that their claim to West New Guinea was based on political considerations of historical or consensual origins ... [that] Australia would not regard a forceful solution as binding (par. 216) ... and **deplored both the use of force and the threat of it**



Airport, West Papua, 20 August 1962. West Papuans protest New York Agreement as the UN Military Observers arrive.

THE ROME AGREEMENT, 30 September 1962

- i) Relieved Indonesia's fear of losing West Papua in 1969
- ii) Gifted the US and Indonesia economic and political hegemony until 1985 including security of US investment in the Freeport mine
- iii) Guaranteed that Indonesians would eventually outnumber indigenous Melanesians (through World Bank funds for transmigration)
- iv) Diluted the influence of previous 'Dutch' development with an Asian Development Bank grant that matched Holland's \$US30 million to the UN Fund for Development of West Irian/FUNDWI.

Herman Wajoy, a graduate of the civil service school set up by van Eechoud in 1946, risked his life pillaging the Rome Agreement files from the Foreign Ministry archives in Jakarta. He instructed Herman Waingai to publish them after he died (in Annette Culley 2016:p91).

and the threat of it during the period between the sixteenth session and the conclusion of this Agreement” (par. 19), i.e., between November 1961 and 15 August 1962 (Annette Culley 2016:p141, citing UN Records, 1127th Plenary Meeting, 21 September 1962).

“With the commission of the New York Agreement the world conceived and delivered an international nation. That is, Nederlands Nieuw-Guinea after 21 September 1962 was a UN territory, administered by the Indonesian Republic after 1 May 1963, until West Papuans freely determined, through a referendum, whether they wanted independence or integration” (Thomas Frank 1985).

30 September 1962, Rome Agreement—signed by Indonesia, the US, and Netherlands subsequent to the General Assembly ratifying the New York Agreement, affirmed quid pro quo understandings between the Indonesian Republic and the United States of America, whereby:

1. The Act of Free Choice to be delayed or cancelled;
2. The *Musyawarah* system be used rather than one-person-one-vote;
3. The UN report to the UNGA in 1969 be accepted without debate;
4. Indonesia rules West Papua for twenty-five years after 1963;
5. US to exploit natural resources in partnership with Indonesian state companies;
6. US to underwrite Asian Development Bank grant for \$US30,000,000 and guarantees World Bank funds for transmigration program beginning in 1977.

1 October 1962 The administration of the Non-Self-Governing Territory is transferred from the Netherlands to a UN Temporary Executive Authority (UNTEA) and Security Force (UNSF) for seven months.

1 May 1963 The administration of the Non-Self-Governing Territory of West New Guinea is transferred from the United Nations to Indonesia. Indonesia immediately issues a presidential decree that closes West Papua, renders it an Operational Military Zone (DOM), and establishes Anti-Subversion regulations (Jacob Rumbiak, 2001). All the district councils in the Non-Self-Governing Territory are abolished and the New Guinea RAAD is paralysed by the arrest and torture of its members. There are massive book-burning events and it was illegal to fly the West Papuan flag or sing the anthem.

November 1963 Indonesian Army forces 11 Papuan leaders to sign a document stating they relinquish the right to self-determination. In December Papuans

Tom-toms in welcome to Soekarno WEST IRIAN LANDING

KOTA BARU, Saturday (A.A.P.).—Dozens of outrigger canoes full of singing, chanting Papuans welcomed Indonesia's President Soekarno to West Irian today.

Dr Soekarno came ashore at Kota Baru from his Russian-built cruiser, Irian, in a white yacht formerly used by Dutch Governors of the territory.

Papuans in warpaint and wearing bird of paradise feathers in their headdresses chanted and beat tom-tom drums as he arrived.

But the Papuan crowd of about 5,000 later was silent during the landing ceremonies.

Some showed curiosity and looked for a glimpse of the President, who wore a special brown uniform of the Supreme Commander of the Armed Forces.

Took salute
Earlier, three Russian-built TU-16 long-range jet bombers and six U.S. Hercules transports flew overhead as the Irian tied up at the landing stage half an hour behind schedule.

As Dr Soekarno stepped ashore on West Irian for the first time to take the salute

from the military units, guards on the West Java Siliwangi Division band played the national anthem, "Great Indonesian".

The President was surrounded by officials and plainclothes security men. Red-berreted troops of the Palace Guard, carrying submachine guns, also were in his entourage.

On the landing stage to welcome the President was the 30-year-old Papuan Governor of the West Irian Province, Mr Elskar Boker, and members of the Government-appointed West Irian Council.

Djakarta was represented by Indonesia's Foreign Minister, Dr Subandrio, and his deputy, Dr Subdono Imdirodjo.

A West Irian Papuan

INDONESIA'S ANGRY MAN



'Civic mission'

West Irian would be given the widest possible autonomy in the administration and economy while the Central Government would only give "guiding principles," Dr Soekarno said.

The territory would be placed in an "economic quarantine" temporarily while the circulation of special rupiah currency only valid in West Irian at the same rate as the Dutch guilder.

Three-quarters of the troops stationed in West Irian would be assigned to help in developing programs as part of the Indonesian "civic mission," he said.

Priority would be given to the eradication of illiteracy, raising the people's social standard and the introduction of about 400,000 tribesmen to the interior.

Envoy's denial

He said there would be no transmigration of other people from other regions to West Irian.

In Indonesia's relations with Australia, he said that the Government in principle had no objection to an Australian request to open a Consulate in Kota Baru and Djakarta was prepared to discuss the matter.

In Kota Baru today, the Australian Ambassador to Indonesia, Mr Keith Shann, said he wanted to see Dr Subandrio as soon as possible for talks about the

establishment of Australian representation in the town.

Mr Shann denied that Indonesia was pressing for reciprocal status in Port Moresby, the capital of Australian New Guinea, and that Australia had withdrawn its application for a Consulate in Kota Baru because of this.

One question he wanted to bring up was the future of 12 West New Guinea students attending school in Port Moresby.

Jet flights

From today, Queen of the South will be allowed to fly over West Irian again.

Permission to pass over the territory was granted yesterday by the Indonesian authorities.

Quarantine

Quarantine aircraft have been diverted around the area since May 1 when it came under official Indonesian control.

The first flight to fly over the land since it became part of Indonesia will bring the increasing for Manila and Hong Kong.

I N D O N E S I A
President Dr Soekarno, dressed in traditional Indonesian attire, addresses an audience in the Kota Baru sports stadium.

“INDONESIA'S ANGRY MAN” Indonesian President, Dr Soekarno, clenches his teeth as he addresses an audience in the Kota Baru sports stadium” (The Sun-Herald, 5 May 1963).

“Dr Sukarno came ashore at Kota Baru from his Russian-built cruiser, Irian Papuans in war paint bird of paradise feathers in their headdresses chanted and beat tom-tom drums as he arrived But the Papuan crowd of about 5,000 later was silent during the landing ceremonies Some strained for a glimpse of the President, who wore a special brown uniform of the Supreme Commander of the Armed Forces ...

TOOK SALUTE

Earlier, three Russian-built TU-16 long-range jet bombers and six U.S. Hercules transports flew overhead as the Irian tied up at the landing stage ... As Dr Soekarno stepped ashore on West Irian for the first time he took the salute from the military honour guards as the West Java Siliwangi Division band played the national anthem ‘Great Indonesian’ The President was surrounded by officials and plainclothes security men Red-berreted troops of the Palace Guard, carrying submachine guns, also were in his entourage A West Irian Papuan police platoon was among the honour guards of Indonesian armed forces in ceremonial uniform ... Steel-helmeted troops perspired in heavy camouflage uniform while patrolling the silent Papuan crowd gathered in bayside suburbs Indonesian army trucks brought hundreds of Papuan villages from outlying districts into Kota Baru to join festivities ...According to the news agency Antara, [Foreign Affairs Minister] Dr Subandrio has announced that the Indonesian Government will spend 10 million U.S. dollars each year on West Irian, which was handed over to Indonesia on Wednesday He said this would include expenditure for the armed forces in the territory.

‘CIVIC MISSION’

West Irian would be given the widest possible autonomy in the administration and economy while the Central Government would only give “guiding principles” Dr Subandrio said ... The territory would be placed in an “economic quarantine” temporarily with the circulation of the special rupiah currency only valid in West Irian at the same rate as the Dutch guilder Three-quarters of the troops stationed in West Irian would be assigned to help develop programs as part of the Indonesian armed forces “civic mission” he said ... Priority would be given to the eradication of literacy, raising the people’s social standard and the introduction of about 400,000 tribesmen in the interior into civilisation....

ENVOY’S DENIAL

He said there would be no transmigration of other people from other regions to West Irian On relations with Australia, he said that the Government in principle had no objection to an Australian request to open a Consulate in Kota Baru ... In Kota Baru today, the Australian Ambassador to Indonesia, Mr Keith Shann, said he wanted to see Dr Subiandro as soon as possible for talks about the establishment of Australian representation in the town Mr Shann denied that Indonesia was pressing for reciprocal status in Port Moresby, the capital of Australian New Guinea, and that Australia had withdrawn its application for a Consulate in Kota Baru because of this One question he wanted to bring up was the future of 12 West New Guinea students attending school in Port Moresby.

Transcript of A.A.P Report lightly edited for space →



UN Photo and caption “31 December 1962. At an impressive ceremony held today at the residence of UNTEA Administrator Dr. Djalal Abdoh, the Indonesian flag was raised side by side the United Nations flag. Presenting arms: an Indonesian detachment and a unit of the Pakistani contingent of the UN Security Force.” This was 3 months after UNTEA’s arrival on 1 Oct 1962 and 4 months before it passed the administration to Indonesia on 1 May 1963.

below—UN Secretary-General U Thant (1961-71) with Dutch Foreign Affairs Minister Joseph Luns (1952-71) at a press conference on 7 April 1968. Luns was widely ridiculed for championing the West Papuans right to self-determination.



are arrested who’d rallied for the ‘election’ (act of free choice) to be held during the UN administration ... some are never seen again, including members of the Nieuw-Guinea RAAD like Nicolaas Tanggahma, and Penehas Torey who had attended the South Pacific Conference (Luther Saroy, 2012:pp181-202).

7 January 1965 Indonesia resigns from United Nations.

October 1965 Indonesia exacts ‘one of the worst mass murders of the 20th century alongside the Soviet purges of the 1930s, Nazi Holocaust during WWII and the Maoist bloodbath of the 1950s’ (Helen Hunter, CIA Report 1968).

July 1966 Election regulations passed by Indonesian Parliament enable government to set up *Dewan Musyawarah Pemilihan* (DMP/Election Consultative Council) which in 1968 determines that the Act of free choice will not be based on one-man one-vote but on *musyawarah* consensus (Jacob Rumbiak, 2001).

“Indonesia's obligations under the terms of the Treaty were to apply Indonesian law only to the extent to which they were consistent with the spirit of the treaty. These [regulations] were diabolically opposed to the spirit of the treaty” (George Lambert ICJ 2001).

28 September 1966 Indonesia rejoins the United Nations.

1968—1969, Act of Free Choice The Indonesian government (military) selects 1,026 Papuans for the act of free choice and isolates them. Over nineteen days in July-August 1969 they are distributed into eight assemblies for *musyawarah* (reach consensus) about whether to ‘remain with, or sever ties with Indonesia’.

“The Act of Free Choice was stage-managed and shrouded in a web of intrigue, bribery, duress by threat, coercion by propaganda and fraudulent promises such that 1025 carefully selected, indoctrinated and controlled members of the indigenous population of almost 800,000 under the close scrutiny of armed Indonesian security personnel, agreed unanimously to commit their peoples to the integration of their homeland with the State of Indonesia” (George Lambert ICJ 2000). “The 1025 of them stood up to indicate the desire of the Indonesian administration that they choose to integrate with Indonesia. The bold course taken by 851 of them, in refusing when called upon, to sign an integration statement, verified by an official Indonesian document, testifies to their real choice” (Lambert 2001).

The clear distinction between the right of a dependent people to choose its own political future and the contingent interest of a neighbouring State in the exercise of that right has been **confused or conflated**. In particular the General Assembly has treated certain territories not as self-determination unit but as **enclaves of a claimant State**, with the result that in the latter case [enclave], the only acceptable future status has been the surrender of the territory to the claimant State. In spite of these unfortunate events the International Court's conclusion as to the right of colonial self-determination and the special status of a non-self-governing or trust territory remains firm (**JAMES CRAWFORD** *The creation of states in international law* in Annette Culley 2016:p108).

On the eve of the Act of Free Choice in 1969, two West Papuans, Clemens Runawery and Willem Zonggonau (a member of the New Guinea RAAD) sought refuge over the border in the Australian-administered side of New Guinea in order to fly to New York to present the Papuan case to the UN General Assembly. **At the request of then Indonesian Foreign Minister Adam Malik, who feared the Papuans would be credible spokesmen, the Australian administration in Papua New Guinea ensured the two students did not make it to New York.** "Wim and I were forced off the plane by Australian government officials". They were detained on **Manus Island** where the government had built houses to isolate politically active refugees from West Papua, but were not processed as 'refugees'.

During the Act of Free Choice I was a civil servant, working for the bupati in Biak ... Soedjarwo Tjondronegro, who worked at the Indonesian Embassy in the Netherlands was an organiser. When he came I met him in Biak. He asked 'In your opinion what method shall we use for the election?' I said 'Oh just use the district system, that is, an election by district, so it is fair and honest.' But all the regions used the *musyawarah* system. **We protested, and we were arrested on 8 October 1968.** Three soldiers came to our house and took us away. We were locked up and beaten until we bled, because we had protested (Joel Boray 2012:161-81).

A study commissioned by the Dutch government, written by **PIETER DROOGLEVER** of the Institute of Netherlands History, the 740-page *Een Daad van Vrije Keuze* (An Act of Free Choice) published in 2005, leaves little doubt that the vote was, as the 1969 **UN Under-Secretary General Chakravarthy Narasimhan said in a 2001 interview "a whitewash ... The mood at the UN was to get rid of this problem as quickly as possible"** (Bibliography for online English summary of this study).

ANDREW JOHNSON'S comprehensive legal argument that **West Papua was (and still is) a UN Trust Territory** is detailed in Annette Culley 2016 (Chapter 11 *West Papua and the United Nations Trusteeship System*).

Article XVIII of the Agreement stated 'all adults, male and females, not foreign nations, participate in the act of self-determination, to be carried out in accordance with international practice'.

Indonesia did not organise an act of self-determination, and the UN has outstanding legal and moral obligations under the Agreement approved in UNGA Res. 1752 (XVII) and Chapters 12 and 13 of the UN Charter (Andrew Johnson, in Annette Culley 2016: Chapter 11).

20 November 1969, UNGA Resolution 2504 (XXIV). UN member-states voted (84-0, 14) to 'take note of the Secretary-General's Report and acknowledge that his and his representatives fulfilled the tasks entrusted to them under the Agreement of 15 August 1962'.

Resolution 2504 (XXIV) doesn't call on Indonesia to allow the act of self-determination agreed to in the New York Agreement. Nor does it document any change in the territorial status of West Papua. **Nor did it revoke the UN Trust status of the territory which was and still is administered by Indonesia pending an act of self-determination** (Andrew Johnson, in Culley 2016:p102).

THE OPINIONS OF EMINENT JURISTS (in Annette Culley 2016:pp67-69)

ANTONIO CASSESE

The integration of West Irian into Indonesia in 1969 demonstrated 'a gross disregard for' and 'substantial denial of' the principal of self-determination ... with the main irregularities being:

1. The choice for the people provided for in the bilateral agreement of 1962 was limited to whether they 'wished to remain with Indonesia' or 'wished to sever their ties with Indonesia', with no reference to possible alternatives if the vote was in favour of leaving Indonesia;
2. The criteria for establishing if a territory is no longer a Non-Self-Governing Territory, as listed in General Assembly Resolutions 742 (VIII) and 1541 (XV), was not met in the 1962 agreement between Indonesia and The Netherlands.
3. The method used for voting in the 'act of free choice' did not meet the international standards of one-person-one-vote stipulated in the 1962 Indonesia and Netherlands Agreement or UNGA Resolution 1752 (XVII).
4. There was 'no real and direct consultation of the population'. The 'consultation' was indirect, in that Regional Councils (enlarged by three classes of representatives: regional, organizational, tribal) were called upon to decide which option to accept.
5. By reason of insufficient United Nations personnel ... there was insufficient supervision of the elections for the consultative assemblies.
6. The Indonesian authorities put strong pressure on the people of West Irian to support integration with Indonesia.

The critical comments that have been made concerning this pseudo-choice—which actually proved to be a charade and a substantive betrayal of the principle of self-determination—by such authors as **Pomerance** and **Franck** are fully justified, as are the views put forward by the Dutch delegate to the 1962 General Assembly, which were rightly referred to by Franck as '**an eloquent epitaph to self-determination**' (CASSESE *A Self-determination of peoples—a legal reappraisal* 1995:p86).

ANDRÉS RIGO SUREDA

After the Agreement of 1962 was concluded the General Assembly approved it without any reference to the fact that West Irian was a Non-Self-Governing Territory ... before the signature of the agreement the General Assembly may have been reluctant to take any action because of doubts about its competence [but] the failure of the General Assembly to determine whether West Irian was a Non-Self-Governing Territory or not after the settlement of the territorial claim can be interpreted as an implicit acceptance of the Indonesian view that the territory was part of Indonesia.

Indeed, since the Agreement between Indonesia and the Netherlands was not in accord with the factors listed by the General Assembly in Resolutions 742 (VIII) and 1541 (XV) as indicative of a territory ceasing to be Non-Self-Governing, the attitude taken by the General Assembly can be taken to mean that West Irian was regarded already as 'an integral' part of Indonesia and therefore there was no need for it to go through the process indicated by the General Assembly to achieve self-determination (RIGO SUREDA, *The evolution of the right of self-determination: a study of United Nations practice*, 1973:p151).

MISHLA POMERANCE

When the conclusion of the 1962 Agreement ('act of free choice') came to the vote before the General Assembly in 1969 many African and Central American States were profoundly distressed by the spurious, non-democratic methods used to ascertain the wishes of the Papuan population and strove, in vain, to secure for that population a future right of final and genuine self-determination In fact some General Assembly members declared 'the issue before the Assembly was not one of self-determination, but of the affirmation of the national unity and territorial integrity of the Republic of Indonesia' (UN Yearbook 1969:pp175-179). **Pomerance** notes 'that the "special circumstances" were the preference for Indonesia's "territorial integrity" claim over any separate right the Papuans might have to self-determination' (POMERANCE, *M Self-determination in law and practice: the new doctrine in the United Nations* Netherlands, 1982:p33).

THOMAS MUSGRAVE

There were other irregularities in the 1962 Agreement between Indonesia and The Netherlands. West Papua was a Non-Self-Governing Territory and its inhabitants were classified as 'a people', therefore self-determination applied to them separately from the remainder of the Netherlands East Indies. Indonesia, however, citing Principle 6 of General Assembly Res. 1514 (XV) claimed that it was 'reintegrating' West New Guinea.

Principle 6 states that '[a]ny attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the United Nations.' The purpose of the principles is to protect a country's national unity and territorial integrity. But in this case to which State or territory was the protection owed?

Since West New Guinea was a Non-Self-Governing Territory, the principle applied to West Papua's national unity and territorial integrity, not Indonesia's. This being so, the question then for West Papuans in Article XVIII (c) of the Agreement should not have been did they wish to *remain* with Indonesia or *sever* their ties with Indonesia, but whether they wanted to integrate with Indonesia. **THOMAS MUSGRAVE** *An analysis of the 1969 Act of Free Choice in West Papua*, In CHINKIN C, BACTENS F *Sovereignty, Statehood and State responsibility: essays in honour of James Crawford* Cambridge University Press, 2015, Chapter 12.

Abstract 'West Papua : Real-Politik v International' George Lambert 2001.

The General Assembly never approved, or adopted, or validated in its resolutions, the outcome of the treaty [New York Agreement]. It didn't have to do that. It was not its responsibility. However the General Assembly must be held responsible to a significant extent for the outcome:

1. Its failure to accept and commit to date upon Res. 1055 of 16 November 1961, convened on a reference from the Netherlands, which called for the parties to continue negotiations for a settlement of their dispute; and if such negotiations proved unavailing, to appoint a commission to study and report on the political, social and economic conditions in West Papua.

In brokering the Treaty in terms which clearly reflected the proposition that the merits in the dispute were entirely in favour of Indonesia.

3. In appointing Ortiz Sanz as the Secretary-General's representative for the United Nation's facilitative role specified in the terms of the Agreement. Sanz revealed to Hugh Lunn, who covered the Act of Free Choice for Reuters, that he would like to see a US base at Manokwari. He, like the Americans, feared a communist take-over. He knew, as did the United Nations, that Indonesia, with substantial armaments provided by the Soviet Union, had, prior to the execution of the treaty, perpetrated an armed invasion of the territory and military occupation of it.

4. In its failure in those circumstances to refer that crime against the peace that is referred to in the charter, its effect on the peoples of West Papua, and the consequences of such conduct set out in General Assembly Resolution 1541 (15) which are dire.

Here was a situation in which a UN member state holding sovereignty over West Papua, had committed itself to a program designed for the West Papuan people to prepare for and exercise their right to an act of self-determination in 1970, in full compliance with the provisions of the UN Charter and resolutions adopted under it; and a neighbouring UN member state resorting to armed force and military occupation of the territory, and on its own admission, to annex the territory.

The treaty was tainted by the Indonesian threat and use of armed force, and its military occupation of the territory prior to its adoption by the parties to it; and the illegality, and unconscionable conduct, and breaches of the fundamental terms by Indonesia over its course. I set out some examples:

1. Indonesia's failure to accept participation and assistance by the United Nation Secretary-General representative, an obligation under the terms of Article 13 of the Treaty, and particularly with respect to appropriate methods to be followed for ascertaining the freely expressed wishes of the population of West Papua.

2. Indonesia's conduct in issuing regulations in 1966 to be applied to the territory

of West Papua. Indonesia's obligations under the treaty were to apply Indonesian law only to the extent to which they were consistent with the spirit of the treaty. These were diabolically opposed to the spirits of the treaty.

3. Indonesia's failure, contrary to the proviso of Article 18 of the treaty, to give to the people of the territory the opportunity to exercise freedom of choice, and appropriate methods to be followed for ascertaining the freely expressed will of the population, and providing eligibility for all adults, male and female, to participate in the act of self-determination in accordance with international practice.

Article 103 of the United Nations Charter stipulates that in the event of a conflict between the obligations of the members of the United Nations under the present charter, and their obligations under any other international agreements, the obligations under the present charter shall prevail. That provision applies to a conflict between the provisions of Article 18(c) of the treaty and the obligation imposed upon the parties to the treaty by the General Assembly's declaratory Resolution 1541 (15) of 1960, which includes the option of 'free association with an independent state' an option not included in Article 18(c) of the treaty.

That circumstance alone casts gravest doubt upon the validity of the Act of Free Choice in West Papua.

There are a whole range of other factors outlined in the major paper which led me to the conviction that Indonesia did not acquire lawful sovereignty over West Papua through the processes involved, and the ultimate outcome of, the 1969 Act of Free Choice. I mention one briefly.

Ortiz Sanz, in his report to the Secretary-General, lists the top brass of the Indonesian administrators, military, and security in attendance at all the sessions of the consultation assemblies between 13 July and 2 August 1969. It wasn't until then that Indonesia got busy implementing its obligations. It includes **Ali Murtopo, the head of OPSUS, masquerading as 'group chairman of logistics, social and political affairs'**; and **Brigadier-General Sarwo Edie under the pretentious title of 'regional leadership, consultative body'**. It would be a bold West Papuan to have not stood up and say what he was invited to say, given the reputations of Murtopo and Edie. All 1026 of them stood up to indicate the desire of the Indonesian administration that they choose to integrate with Indonesia. The bold course taken by 851 of them, in refusing when called upon, to sign an integration statement, verified by an official Indonesian document, testifies to their real choice. That they would voluntarily choose integration defies reason.

The other most significant factors are the jurisprudence of the International Court of Justice over the course of its opinions in the series of cases relating to Namibia; and the terms of the Vienna Convention on treaties adopted on 22 May 1969. In a response to a question from the General Assembly of 1949, for an advisory opinion on the legal issues concerning the international status of Namibia, the Court advised

inter alia that 'South Africa has no competence to modify unilaterally the international status of the territory, or any of the international rules respecting their rights, powers and obligations relating to the administration of the territory and the supervision of its administration'.

That jurisprudence raises a fundamental issue: whether a UN state, that is the Netherlands—bound by the sacred trust imposed upon it by Chapter 11 of the UN Charter, resolutions adopted under its provision, the customary rules relating to treaties, and the terms of the Vienna Convention on treaties—can lawfully enter into and implement a bilateral treaty with Indonesia, the terms of which required the Netherlands to repudiate its obligations under the sacred trust, and transfer its administration to Indonesia, and its obligations under the trust to Indonesia - particularly without consulting the beneficiaries of that trust, and having regard to Indonesia's armed invasion and occupation of a non-self-governing territory.

In its judgement in the Namibia legal consequences case of 1966, the Court referred to its previous judgement of 1962 relating to the South African mandate over Namibia, which was then under the League of Nations, which described it in fact and in law as an international agreement with the character of a treaty or convention. And added this opinion: 'the rules laid down by the Vienna Convention on the law of treaties concerning termination of a treaty relationship, adopted without a dissenting vote, may be in many respects a codification of existing customary law on the subject.

This means that in 1962 and 1966, the international court was recognising that there were customary law rules, relating to treaties prior to the adoption of the Vienna convention, which had to be complied with.

These statements - in relation to the capability of the Netherlands to validly repudiate its obligations under the trust, and transfer the administration to Indonesia, have wider implications for Indonesia - although the jury is still out on that one. It seems to me that these statements may have relevance and implications for the validity of the transfer by the Netherlands of all of the colonies in its East Indies under the Charter of transfer of sovereignty to Indonesia in 1949 (with the exception of West Papua) without consulting the peoples of the territories - that is without their consent. Indonesia may have a problem with that.

I just want to add a couple of more factors. The law of treaties arose out of international *jus cogens* (that is, rights). The manifest purpose of *jus cogens* is to protect the over-riding interest and values of the international community. This purpose can be realised only if peremptory norms - that is, customs of customary law - are universally obligatory. The principal source of peremptory norms are conventions and international customs, often together.

According to the two Vienna conventions, treaties conflicting with peremptory norms are void. The invalidity is extended to bilateral treaties, and to parties, which do not as such infringe the rights or direct legal interests of any third state. Since the states,

and the parties, are prohibited in the treaty to agree to something derogating from the peremptory obligations, logically, no state can validly give its consent to any violation of peremptory norms.

The following three groups of peremptory norms are of interest.

1. Prohibition of the use of aggressive force by states in the international sphere. That is covered in the Charter.
2. Obligation not to obstruct the rights of peoples to self-determination. That is also covered in the Charter.
3. Prohibition of the gravest violation of human rights. Covered in the Charter.

Article 4 of the Charter ends by saying 'the Convention applies only to treaties which are concluded by states after the entry and before the present Convention'. This treaty was entered into shortly before the Convention. It precedes that by saying 'without prejudice in the application of any rules set forth in the present convention, to which treaties would be subject under international law independently of the convention, the convention applies only to treaties concluded after the entry and before the present Convention'. But that doesn't apply to this one. It had operation in effect at the time the treaty was entered into.

Article 49 states that 'if a state has been induced to conclude a treaty by the fraudulent conduct of a negotiating state, the state may invoke fraud as invalidating its consent to be bound by the treaty'.

Article 52, much wider than Article 49, states 'the treaty is void if its inclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations'. There can be no doubt that happened. In the Fisheries jurisdiction case in 1973, the court stated 'there can be little doubt that consent obtained contrary to Article 52 is of no legal event'.

While the conclusion of the New York Treaty preceded the adoption of the 1969 Vienna Convention on treaties, the convention was adopted prior to the implementation of the so-called Act of Free Choice in West Papua. And although the convention did not enter into force until 1980, member states were aware of its terms prior to the noting of that Act, and so was the General Assembly in November 1969. They were also aware of the threat by Indonesia to use armed force to procure West Papua which tainted the New York Agreement prior to the debate of the General Assembly in 1962 which led to the adoption of the resolution which noted the Agreement and recognised the report of the Secretary-General.

George Lambert presented this abstract from 'West Papua : Real-Politik v International Law' at Yumi Wantaim Seminar for West Papua in Melbourne on 15-16 September 2001. Full paper at <https://dfait.federalrepublicofwestpapua.org/document/west-papua-real-politik-v-international-law-by-george-lambert-icj-2000/>



9 September 2019: Federal Republic of West Papua (FRWP) petition to the Australian Parliament for tabling in the Senate by Australian Greens Leader Richard di Natale.

The procession to Parliament House from the Netherlands Australian War Memorial was led by Jacob Rumbiak (ULMWP Spokesperson) and Len Cooper (Communication Workers Union, and Chairman of the International League of Peoples Struggle).

Photo—Tommy Latupeirissa RMS.

WEST PAPUA RETURNS TO THE UN

Between 1962 and 1969 the United Nations did not uphold its sacred obligation to protect the Papuans right to self-determination. Furthermore, the UN, as well as the Netherlands, and Indonesia promised the people an act of self-determination, but there has never been an act of self-determination in West Papua. It is because the Dutch—as Administering Power of the Non-Self-Governing Territory from 1950 to 1962—fought so doggedly for the inclusion of that right in the New York Agreement (indeed there are eleven references to it) that the Vanuatu Republic is now able to sponsor a motion to register West Papua on the UN Decolonisation List.

Vanuatu is confident its motion will succeed because the people of the world who voted, through their UN representatives on 21 September 1962, to share responsibility with Indonesia for the administration of the Territory, now recognise their mistake and seek to rectify the problem. As the Netherlands UN Representative said on 15 November 1961 “As a result of the New York Agreement, the ‘Free Choice’ granted to the population of the territory was no longer exclusively its own concern, not was it any more a question of Netherlands or Indonesian policy; it was a question of world concern for which each Member of the United Nations carried a responsibility of the same order as that of the parties themselves.

In 2014, during a Summit for West Papuan leaders in Vanuatu, the United Liberation Movement for West Papua was set up as an inclusive, representative united body to carry the independence program. The Summit was a regional initiative generated by Melanesian church and women’s organizations; sparked by the 2013 World Council of Churches Assembly in South Korea; supported by the Protestant church in West Papua; sponsored by the Pacific Conference of Churches and Vanuatu Government; mediated by the Vanuatu Christian Council and the Malvatumauri National Council of Chiefs.

The ULMWP’s five-person executive was elected from and is tightly accountable to the nation’s three key political identities: the West Papua National Parliament, West Papua National Coalition for Liberation, and the Federal Republic of West Papua. Each of these identities is accountable to a range of dynamic **Civilian Powers**—the churches; ADAT (tribal) infrastructures; youth, student, workers, and women’s’ groups; and energetic **Political Powers** like the nation’s political parties and its military diplomatic, and intelligence organisations.



In 2015 ULMWP lobbying effected an historic shift from ‘the darkness to light’ (the popular description of the Melanesian Spearhead Group’s courageous recognition of the independence movement). Such naming of this hard-fought deliverance—from a closed militarised colony to an international platform where Papuan cries and arguments can be adjudicated in terms of international law—embodies the particular spirituality of the Papuan independence movement that shouldn’t be ignored.

The root cause of the problem is Indonesia’s colonisation of the West Papuan homeland, and it is within the UN—or its principal judicial organ the International Court of Justice—that there are mechanisms to adjudicate the facts and develop a solution in the form of recognition or referendum (as in the recent cases of Bougainville and New Caledonia).

For West Papua to be registered on the UN Decolonisation requires 127 of the 193 UN member-states to vote for a motion raised by the Republic of Vanuatu (West Papua’s sponsor). The Pacific Islands Forum (an 18-member intergovernmental forum that includes Australia and New Zealand) and the African Caribbean Pacific Group (79 member-states) both passed motions in 2019 that **call on all parties to address the ‘root cause’ of the conflict** and on Indonesia to allow the UN Human Rights Commission’s fact-finding mission to West Papua early in 2020.

As signatories to the Pacific Island Forum motion, Indonesia’s allies like Australia and New Zealand will have to review their support of Indonesia’s Special Autonomy regime in West Papua, which in 2010 was formally rejected by all major West Papuan institutions—as much for encouraging an exponential growth of military infrastructure and personnel as for failing to achieve its development ambition. The two large Pacific nations in ‘addressing the root cause of the conflict’ will inevitably land on West Papua’s ‘right to self-determination’ and realise the problem is an international legal issue (not a domestic problem) that requires UN General Assembly direction and International Court of Justice adjudication.

Some well placed Indonesians have dared to ponder, in public, what a break with West Papua might mean for the unitary republic. The celebrated political scientist Soedjati Djwandono, founder of the nation’s Centre for Strategic and International Studies, and described after his death in 2013 as ‘a beacon of light on dark truths’, asked Indonesian citizens in 1999:

“Would we prefer to have a single nation-state out of this huge but almost



Russia's 'Pussy Riot' campaigning with the iconic Australian Aboriginal band Yothu Yindi at the 2019 Adelaide Fringe Festival for West Papua's registration on the UN Decolonisation List.

unmanageable archipelago ... marked by abject poverty among the majority of people, by continued injustice, continuous tension and conflicts because of seemingly irreconcilable differences in ethnic, religious and cultural terms? Or at the risk of being dubbed "blasphemous", to split peacefully into two, three, four or even five smaller nation-states with a greater chance and hope for peace, greater prosperity, equality and justice for all?" (The Jakarta Post, 9 November 1999, in John Saltford 2003:p4).

West Papuans in 2020 are asking for help from the UN member-states that in 1962 betrayed the organisation's foundational principle of self-determination and forced an indigenous Melanesian people to become an Indonesian colony. The results of the betrayal have been disastrous: in 1962 they were 99% of the population; in 2010 they were 30%, with a growth rate of 1.6% (distinct from the non-Papuan rate of 10.5%); in 2030 they are calculated to be 15%. 'Slow motion genocide' is blamed for up to a million missing—poisoned, assassinated, exiled, born dead or not at all. Their brightest are incarcerated. Their land, source of spirituality and sustainability, is ravaged by miners and loggers. Their waters, pristine in 1962, are polluted, and their unique flora and fauna is flogged in black markets across Java and Sulawesi.

West Papuans are asking UN member-states to support a motion being raised by Vanuatu in 2020 to register West Papua on the UN Decolonisation List. In 2019 the 18-member Pacific Island Forum (that includes Australia and New Zealand) and the 79-member African Caribbean Pacific Group passed preparatory motions.



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16 October 2019

Senator Payne
Minister for Foreign Affairs
Parliament of Australia
Canberra

Dear Minister

I am writing to request a more engaged response from Australia to the Indonesian Parliament's recent passage of legislation that formally integrated a religious militia within the Indonesian Defence Force.

Paguyuban Nusantara, led by criminal-returnees from the caliphate wars in the Middle East, has declared its intention to wage holy jihad in West Papua (SBS TVNews <https://www.youtube.com/watch?v=h1HYaiRttkQ>). Meantime the government claims *Paguyuban Nusantara* is a 'non-violent response by the people of the archipelago' to the situation in West Papua.

This religious militia is backed by the Indonesian military. It's presence portends a level of bloodshed that will not serve Indonesian, West Papuan, or Australian security interests; and contravenes President Jokowi's positive response to the extraordinary advice of his two provincial parliaments in West Papua to enter into dialogue with the United Liberation Movement for West Papua under the auspice of an international third party.

Minister, we believe you can help address what this *impasse in Indonesia* foreshadows, and implore you to do so.

We believe you can help dissuade Indonesia from pursuing an aggressive nationalist performance in West Papua by establishing a dialogue with Vice-President Ma'ruf Amin as distinct from your counter-part and President Jokowi, who we believe cannot undo this alarming directive from their own national parliament.

Mr Amin is an experienced national politician, an Islamic scholar, and as Chairman of the Ulema Council of Indonesia the republic's most powerful Muslim cleric. While his election as Vice-President is a troubling illustration of the Islamisation of politics and weakening of secular democracy, Mr Amin has the moral, and now political authority to argue for the Indonesian Army's recall of this Islamic militia from West Papua.

Minister, in September the ULMWP watched, from inside the UN General Assembly (for the first time), as our people faced the guns to demonstrate their support. We heard member-state representatives gossip about the demise of Indonesian colonial authority in West Papua as Prime Ministers highlighted the Pacific Islands Forum communiqué—which Australia signed—asking for UN access to West Papua, and for investigation of *the root cause of the problem*.

Minister, we hope that Australia will dissuade Indonesia from its use of violence and encourage its politicians to mount legal and political arguments rather than guns as we negotiate what is an inevitable shift in the geo-political arrangements of our region.

Yours sincerely,

Jacob Rumbiak, ULMWP Spokesperson



Australian Government
Department of Foreign Affairs and Trade

22 November 2019

Mr Dylan Wolfgramm
dylan.wolfgramm@iteca.edu.au

Dear Mr Wolfgramm

Thank you for your letter of 07 November 2019 regarding Indonesia's Papua provinces. I am replying on behalf of the Minister for International Development and the Pacific.

The Australian Government recognises Indonesia's territorial integrity and sovereignty over the Papuan provinces. Our position is clearly defined by the 2006 Lombok Treaty between Indonesia and Australia. This is a longstanding and bipartisan position of successive Australian governments.

The Australian Government regularly discusses human rights matters with Indonesia, including developments in Papua. We do so at all levels of government: the Prime Minister raised and discussed Papua when he met Indonesia's President Joko Widodo recently as did Foreign Minister Payne with Foreign Minister Marsudi. Our consistent position has been that the rights of all Indonesian citizens should be upheld and credible allegations of human rights abuses, whether made against government or non-government actors, should be fully investigated, with those responsible held to account.

I trust this information is of assistance.

Yours sincerely

Tom Connor
Assistant Secretary – Indonesia Branch

LOMBOK TREATY (2006), ARTICLE 2.3 The Parties, consistent with their respective domestic laws and international obligations, shall not in any manner support or participate in activities by any person or entity which constitutes a threat to the stability, sovereignty or territorial integrity of the other Party, including by those who seek to use its territory for encouraging or committing such activities, including separatism, in the territory of the other Party.

“The Lombok Treaty ignores the fact that Australia has embedded the Rome Statute in Australian laws through the *International Criminal Court Act* of 2002, and thus determined to put an end to such acts of violence as torture, rape, enforced disappearance, and disadvantage or brutality based on racial or cultural or political or religious bias” (Annette Culley 2016:p83).

REBUTTAL OF INDONESIA'S ERRONEOUS HISTORICAL CLAIMS (Jacob Rumbiak 2001)

CLAIM *West Irian has been part of Indonesia since the declaration of independence on 17 August 1945.*

REBUTTAL West Papuans were not invited to any resistance, peace or nation-making meetings, assemblies or conferences between 1945 and 1949, whether hosted by Republik Indonesia, the Netherlands Government, the Federal Consultative Assembly, or even the UN Security Council. The exception was **Frans Kaisepo, founder of the Freedom Party of Indonesia, at the Malino Conference in July 1946, who opposed the State of East Indonesia as it did not integrate Papua into the planned state**). Below is a list of the main assemblies starting with the Second Youth Congress in 1928).

Any discussion *about* West Papua during any of these gatherings *always* resulted in a directive 'to be determined later' (including at the 1949 Round Table Conference, and in the constitutions of the State of East Indonesia and of the (federal) United States of Indonesia).

Second Congress of Indonesian Youth, Jakarta, 28 October 1928. Participants from Java, Sunda, Sumatra (including Morammad Yamin), Borneo, Celebes, Ambon, *but not West Papua*. Congress declared the sumpah pemuda (one motherland, one people, one language) and played what became the Indonesian national anthem.

Investigating Committee for Preparatory Work for Independence of Java (BKUPK) January-August 1945. Set up by Sukarno with permission of Japanese. BKUPK was quasi-legislature of sixty-seven representatives from most ethnic groups including Chinese, Arab and Dutch *but not West Papua* that developed Pancasila as the ideological basis of the state and the Jakarta Charter (draft constitution).

Preparatory Committee for Independence of Indonesia (PPKI), 7-29 August 1945. A 21-person committee including Sukarno, Hatta, Soepomo, Mohammad Yamin, approved by Japan to prepare for transfer of authority to Indonesia. Promulgated BKUPK's draft constitution after removing obligation on Muslims to abide by Sharia Law; set up (a new) Indonesian National Party (PNI), and People's Security Agency BKR (forerunner of Indonesian Armed Forces); partitioned Indonesia into eight provinces: West, Central and East Java, Sumatra, Kalimantan, Sulawesi, Maluku, Lesser Sundas (Bali, Lombok, Sumbawa, Flores, Sumba, Timor, Alor archipelago, Barat Daya Islands, Tanimbar) *but not West Papua*. On 29 August PPKI became the Central Indonesian National Committee (KNIP) advisory to President Sukarno until December 1949, with legislative functions in the Unitary State after 1950.

Malino Conference, South Sulawesi, 16-25 July 1946. Hosted by the Netherlands the day after the Allied Forces handed back authority. Formed *federal* United States of

Indonesia: Java, Sumatra (incl. Bangka, Riau, Belitung), Kalimantan, and the Great East (incl. Lesser Sunda). *No West Papuans present except Franz Kaisepo, founder of the Freedom Party of Indonesia, who criticised the State of East Indonesia for not integrating West Papua.*

Linggadjati Conference, 7 Oct—25 Nov 1946. Mediated by Britain; Republik Indonesia agrees to join *federal* United States of Indonesia; the Netherlands recognises Republik Indonesia's de facto authority over Java, Madura and Sumatra. *No representative from West Papua.*

Den Pasar Conference, Bali, December 1946. Hosted by the Netherlands. Fixed laws for the State of East Indonesia (listed as North Celebes, Central Celebes, South Sulawesi, Timor, Moluccas, Bali-Lombok and nine smaller constitutions, *but not West Papua whose relationship with the State of East Indonesia and the United States of Indonesia is 'to be determined at a later date'.*

Renville Agreement, 8 Dec 1947—17 Jan 1948 Brokered by UN Security Council. Cease fire talks between Netherlands and Republik Indonesia. Restated Linggadjati commitment to a federal United States of Indonesia, with each state free to decide via referendum whether to join Republik Indonesia or United States of Indonesia. Federal Consultative Assembly (BFO) set up to lead the federal states.

Parliamentary Mission, Jakarta, Yogyakarta, 16-18 February 1948 State of East Indonesia *but not West Papua* visits Republik Indonesia and attends Renville Dinner.

Federal Consultative Assembly, 15 July 1948. Created provisional government for federal United States of Indonesia (*all of Nederlands-Indië except West Papua*).

Federal Consultative Assembly, October 1948. *West Papua to remain under Dutch crown but administered by Dutch-Indonesian administration.*

Council of Rajas, Denpasar, 14 March 1949. Organised by State of East Indonesia. *No representative from West Papua.*

Roem-van Roijen Agreement, 14 April—7 May 1949. Cease fire talks between Netherlands and Republik Indonesia hosted by the UN. *No West Papuans.*

Inter-Indonesian Conference, Jogjakarta 19-22 July, Jakarta 31 July-2 Aug 1949. Republik Indonesia and Federal Consultative Assembly draft provisional constitution for (federal) United States of Indonesia. *West Papua not in constitution.*

Round Table Conference, Holland, 23 Aug—2 Nov 1949. Auspiced by UN Security Council. *Nederlands-Indië, but not Nederlands Nieuw-Guinea* is transferred to (federal) United States of Indonesia. Status of West Papua 'to be negotiated between Indonesia and Netherlands within twelve months (Article 2). *No mention of West Papua or even Nederlands-Nieuw-Guinea in the Provisional Constitution.*

Although no West Papuans were invited to the Round Table conference, Johan Ariks, Nicolaas Jouwe and Marcus Kaisepo got to Holland in October (but not to the conference) where their articulate arguments and petitions (from Geelvink Bay, Lake Sentani, Hollandia) stiffened the resolve of Dutch politicians to keep West Papua out of Indonesia.

REBUTTAL OF INDONESIA'S ERRONEOUS HISTORICAL CLAIMS (Jacob Rumbiak 2001)

CLAIM *West Irian was part of the Majapahit Empire*

REBUTTAL The Majapahit Empire was actually a kingdom in East Java with trading links to the Chinese Ming dynasty, Annam and Champa in Vietnam, Cambodia, Siam, the Burmese Martaban, and Vijayanagara in south India. Majapahit (Javanese: *maja*/tree *pahit*/bitter) emerged from the ashes of a battle in 1293 after a Javanese king first allied with, then betrayed Kublai Khan's tribute-demanding missive of 1000 ships and warriors. Less than one-hundred years later Majapahit was wracked by civil war and succession disputes after the death of its most successful ruler King Hayam Wuruk in 1389 (tradition has its demise a century later, in 1478, and surviving until 1530). Majapahit had no significant administrative power outside Java, Bali and Madura, but nationalists Sukarno and his entrepreneurial scholar Mohammad Yamin built an historical construct around the Hindu-Buddhist thalassocracy as 'proof' of their modern nation's 'unified' history and the territorial integrity of its political boundaries.

There is no evidence that West Papua was a part of the Majapahit Empire other than a single-word mention of 'Wanin' (on the Onin Peninsula) in the Javanese poetic narrative *Nāgarakrētāgama*. Written in 1365, this old-Javanese *kakawin* venerates King Hayam Wuruk, Majapahit's most successful ruler, with a detailed account of life in his wealthy kingdom and a name-map of its empirical reach. At best Wanin may have been one of the empire's eighty-nine tributaries, but such is Yamin's reputation as the founding father of modern Indonesia that his assemblage of facile 'facts' are still printed in Indonesian documents including school curricula. He also claimed that Majapahit included Madagascar in West Africa and the Pas archipelago off the coast of Chili!

CLAIM *West Irian belonged to the Sultanate of Tidore*

REBUTTAL There is little to suggest that West Papua belonged to Tidore, although much is written, and acknowledged, about relations between the two peoples. Tidore is a tiny volcanic island (155km²) 460 km north-west of Sorong. (West Papua by comparison is 459,412kms²). In the 1940s and 1950s Soekarno and Anak Agung (from the State of East Indonesia) used a 1660

Sultan's claim that West Papua was under his control, but opportunistically ignored statements by Mr Keyts (Governor of Banda Island in 1679) that the Sultan's claim should not be taken seriously. Both the Royal Navy's Captain Thomas Forrest in 1775, and the Governor of Ternate in 1778 also said the Sultan had no power in nor claim over the territory. An 1850 Dutch Report described Biak-Numfoor-Ansus islanders as victims of Tidore *honggi* expeditions involving 'thievery, pillage, rape, and abduction' made possible by firearms the Sultan obtained from Europeans (Kal Muller 2001:66).

CLAIM *The Dutch were occupying Indonesian territory and their decolonisation motion of 1961 was designed to bring on secession and a 'fractionation' of people.*

There had never been an independent national unit comprising Indonesia and West New Guinea, meaning the territorial integrity of the Indonesian Republic could not be disrupted by recognition of the West Papuans' right of self-determination. Between 1950 and 1962 the Netherlands was the Administering Power of the Non-Self-Governing Territory of West New Guinea. Its motion in the UN General Assembly 1961 was part of its *bona fide* process to deliver self-determination to the people of that territory.

One reason for West Papua not joining the (federal) United States of Indonesia in 1949 was its very different colonial experience. In 1600 the Dutch gun-fired entry into resource-rich Java and the Moluccas spice islands, marking the start of a profitable export economy that remained the basis of colonialism-proper after 1800 when a bureaucratic, centralizing polity in Batavia/Java anchored a political system largely based on oppression and violence. West Papua was not part of this. There were no administration posts in West New Guinea until 1898, three centuries after the Dutch invaded Java and the Maluku islands. The West Papuan experience of Dutch 'colonialism' until World War Two was almost exclusively with missionaries who brought modern education and health systems to the villages they were 'civilising' and 'christianising'. From mid-1944, Nederlands Nieuw-Guinea was administered by the Dutch Resident in Hollandia. This was, again, different to the Nederlands-Indië, which remained under Japanese control, centralised in Java, until September 1945, and then at war with the Netherlands until 1949.

REBUTTAL OF INDONESIA'S ERRONEOUS LEGAL CLAIMS

(Jacob Rumbiak 2001)

CLAIM *The 1949 Transfer of Sovereignty from the Netherlands to the (federal) Republic of the United States of Indonesia included West Irian/West New Guinea.*

REBUTTAL West Irian/West New Guinea was not transferred to Indonesia in 1949. **Article 2, Charter of Transfer of Sovereignty, 2 November 1949** states “The status quo of the Residency of New Guinea shall be maintained with the stipulation that **within a year** from the date of transfer of sovereignty to the Republic of the United States of Indonesia the question of the political status of New Guinea be determined by negotiation between Indonesia and the Netherlands.” (It was agreed, according to the minutes, that status quo meant remains ‘under Netherlands sovereignty’).

The negotiations in 1950 failed, firstly because Indonesia insisted that UN decolonisation principles were ‘irrelevant’ and ‘inadmissible’; and secondly because within six months of the transfer of sovereignty (that is, by May 1950) Indonesia’s first government had bulldozed the (federal) Republic of the United States of Indonesia and replaced it with a unitary state with a different constitution.

19 May 1950 Statement by Dr A Halim (Prime Minister, United States of Indonesia) and Dr M Hatta (Prime Minister, Republic of Indonesia). “We agree to implement in co-operation and in the shortest possible time the formation of a Unitary State which shall be a materialization of the Republic of Indonesia based on the Proclamation of August 17 1945” (in Herbert Feith *The Decline of Constitutional Democracy* 1962:p69).

15 August 1950 The Republic of the United States of Indonesia is dissolved in a joint session of the federation’s bicameral legislature and replaced with a unitary republic. “President Sukarno abolished the federal structure of his new nation, using force to crush separatists movements in the South Moluccas and Sumatra, and dissolved the largely ceremonial union between the Netherlands and Indonesia. Both the federal system and the union were constitutional devices which, theoretically, should have helped to smooth the way for bringing West New Guinea together with Indonesia: the federal system, by promoting local autonomy for the distinct, if backward, Papuan people; the union, by retaining a symbolic Dutch responsibility for Papuan advancement” (Thomas M Franck *Nation against nation: What happened to the U.N. dream and what the U.S. can do about it* 1985:p77).

26 September 1950 Six weeks after the the federal republic was dissolved, the UN Security Council recommended by vote of 10-0 (China abstained) that the General Assembly admit the unitary Republic of Indonesia ‘as a **peace-loving state, in compliance with the UN Charter**’ (UN Security Council Res. 86, 26 Sept 1950). Two days later the General Assembly complied (Res. 491 (V), 28 Sept 1950). On 21 April 1956 Indonesian Republic unilaterally rescinded the UN-auspiced 1949 Charter of Transfer of Sovereignty.

CLAIM *West Irian, as part of the former Netherlands East Indies, was Indonesian territory because of the doctrine of uti possidetis.*

REBUTTAL It is clear from a perusal of customary international law that sovereignty is not conveyed by the principle of *uti possidetis*. ‘*Uti possidetis* is not a binding norm of international law and there is no legal requirement to use it’ (Annette Culley 2016:pp 18, 56, citing Ratner S *Drawing a better line: uti possidetis and the borders of new states* 1996:599-600).

Uti possidetis is a legal principle used by some emerging states that had been colonies to inherit their colonial borders ... but was not consistently used in the break-up of colonial states, or in treaties, and has never become part of customary international law.

Indonesia consistently rejected offers by The Netherlands to submit their dispute over West New Guinea to the International Court of Justice, claiming the court had no competence to solve what it claimed was a ‘colonial’ issue.

The Australian representative to the UN in 1961 was critical of Indonesia’s stance during the debate during the Sixteenth Session in November 1961:

“It would have been normal, and thoroughly in accordance with the provisions and the spirit of the Charter, that a **dispute as to sovereignty over a territory should be referred to the International Court of Justice**. Indeed, the Netherlands have throughout been prepared to do this, and this willingness has further confirmed the Australian conviction that the Netherlands had, and have, the law on their side. **However, as we know, Indonesia was not prepared to submit to the Court, arguing that this was not a legal but a political question**” (Par 25, UNGA Official records, Sixteenth Session, 1055th Plenary Meeting, 15 November 1961).

REBUTTAL OF INDONESIA'S ERRONEOUS LEGAL CLAIMS

(Jacob Rumbiak 2001)

CLAIM *The 1949 Charter of Sovereignty did not mention the peoples' right of self-determination.*

REBUTTAL The Agreement on Transnational Measures signed by Indonesia and the Netherlands at the Round Table Conference in 1949 established the right of territories to exercise self-determination with regard to their position within the Federal Republic of Indonesia, and the possibility of negotiating a special relationship outside the Republic (Annette Culley 2016:p49, citing UN Yearbook 1957).

CLAIM *West Irian was not a Non-Self-Governing Territory*

REBUTTAL "Until 1962 West Irian (West New Guinea) was listed in General Assembly Resolution 66 (I) as a non-self-governing territory under the Administrative authority of the Netherlands and ceded to Indonesia in 1962 subject to UN supervised referendum in 1969" (Annette Culley 2016:p85, citing Crawford J *The creation of States in International law* 2006:p748).

The future status of a Non-Self-Governing Territory does not bear any relationship to the existing sovereignty of the territory. The final destiny of a Non-Self-Governing Territory must be based on the principle of self-determination, and the *bona fide* process must be safeguarded. The Netherlands was fulfilling its obligations under Article 73, and these obligations would cease if the territory became an integral part of Indonesia.

The Friendly Relations Declaration 2625 (1975) states, *inter alia*, that:

The territory of a colony or other Non-Self-Governing Territory, has, under the Charter, a status separate and distinct from the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony of the Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter

"It seems clear from this and other formulations of the principle of self-determination that where the principle applies, it does so as a right of the peoples concerned; it is not a matter simply of rights and obligations as of between existing States. Another State may well be interested in the result of an act of self-determination, in that it may stand to gain or regain territory.

But to treat self-determination as a right of that State would be to deny the reality of the alternative options open to the people concerned" (Annette Culley 2016:p147, citing Crawford J *The creation of States in international law* 2006:pp617-618).

Resolution 1541 (XV), 15 December 1960

Principle VI: A Non-Self-Governing Territory can be said to have reached a full measure of self-government by one of three measures: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; (c) Integration with an independent State.

Principle IX (b): Integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage.

CLAIM *West Papuan independence movement is illegal because it is separatist.*

REBUTTAL There have been suggestions that there is a prohibition against declarations of independence in the territorial integrity clauses particularly as they are reiterated in United Nations instruments, especially in UNGA Resolution 2625 (XXV). However the principle of territorial integrity is confined to the sphere of relationships between States. James Crawford states that '... secession is neither legal nor illegal in international law, but a legally neutral act the consequences of which are regulated internationally (Annette Culley 2016:p124, citing Crawford J *The creation of States in international law*, 2006:p390).

Modern day international law embraces the right of non-colonial people to secede from an existing state 'when the group is collectively denied civil and political rights and subject to egregious abuses', a right known as **the remedial right to secession**. In more recent times the writing of numerous scholars; the Bill of Rights that includes the Universal declaration of human rights plus the two Covenants; General Assembly resolutions; judicial opinions; declarations of international organisations and State practices have **all given support to the right of secession from an existing state in cases where a group has been denied civil and political rights and has suffered extreme abuse** (Annette Culley 2016:p126, citing Sharf MP *Earned sovereignty; juridical underpinnings* 2004:387-9).

INDONESIAN-INSPIRED MOTIONS IN THE UN ON THE QUESTION OF WEST IRIAN (WEST NEW GUINEA)

10 December 1954, 9th UN General Assembly. Failed two-thirds majority vote

On 22 September 1954 the Indonesian Government requested that its demand for the transfer of sovereignty over Dutch New Guinea from the Netherlands be added to the agenda of the 9th session of the General Assembly. During November the matter was discussed and voted upon in the Political Committee. By a vote of 34-14, with abstentions, the Political Committee called on the Dutch and the Indonesians to put forward their best efforts to reach a settlement. **When the matter came before the Plenary Session of the UN Assembly, on December 10th 1954, the resolution did not achieve the necessary two-thirds majority and so was defeated** (CASEY, the Rt. Hon. R.G. *Friends and Neighbours Australia, the U.S. and the World* 1955:p146).

16 December 1955, 10th General Assembly, Resolution 915 (X) introduced by 15 African and Asian states

Shortly before the item was considered in committee, the Dutch and Indonesians agreed to negotiate bilaterally on several outstanding matters. So the General Assembly adopted without objection the following resolution:

Having considered the item on the agenda of its tenth session entitled “The question of West Irian (West New Guinea)”; *Hoping* that the problem will be peacefully resolved; *Noting* the joint statement issued by the governments of Indonesia and the Netherlands on 7 December 1955. *Expresses* the hope that the negotiations referred to in the said joint statement will be fruitful.

1956, 11th General Assembly. Failed two-thirds majority vote

A draft resolution establishing a Good Offices Commission for the purpose of assisting negotiations between the two parties was introduced to the General Assembly failed to obtain a two-thirds majority vote.

29 November 1957, 12th General Assembly. Failed two-thirds majority (41-29, 11) introduced by Ceylon and 10 other nations

Draft resolution Inviting both parties to find a peaceful solution and Secretary-General to assist implementing the draft resolution. The First Committee considered this Item at eight meetings between 20 and 26 November 1957.

Majority favoured invitation to parties to find a peaceful resolution, but others believed the draft resolution could not produce tangible results because the two parties could not even agree on the subject of future negotiations.

Yes votes (41) Afghanistan, Albania, Bolivia, Bulgaria, Burma, Byelorussian SSR, Ceylon, Costa Rica, Czechoslovakia, Egypt, El Salvador, Ethiopia, Ghana, Greece, Guatemala, Haiti, Hungary, India, Indonesia, Iran, Iraq, Japan, Jordan, Laos, Lebanon, Libya, Federation of Malaya, Morocco, Nepal, Pakistan, Poland, Romania, Saudi Arabia, Sudan, Syria, Thailand, Tunisia, Ukrainian SSR, USSR, Yemen, Yugoslavia. **No votes (29)** Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, France, Honduras, Iceland, Ireland, Israel, Italy, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Peru, Portugal, Spain, Sweden, Union of South Africa, United Kingdom. **Abstain (11)** Cambodia, Ecuador, Finland, Liberia, Mexico, Panama, Paraguay, Turkey, United States, Uruguay, Venezuela

Indonesia’s argument was based on two assumptions:

- ❖ West New Guinea was legally part of Indonesia, and illegally occupied by the Dutch
- ❖ The territory had to be transferred to Indonesia without its people being consulted. The Dutch were willing to have the first assumption tested by the International Court of Justice. The second assumption was a denial of the right of self-determination and thus contrary to the UN Charter.

Indonesia’s mendacious warnings included:

1. The problem was an emergency, and would be Indonesia’s last diplomatic effort
2. The principle of self-determination was being invoked to prevent a peaceful settlement, and to prevent the reunification of a divided State;
3. Indonesia was *fighting against* the ‘amputation’ of West Irian from the rest of Indonesia, and *fighting for* the principle of reunification and national unity;
4. The replacement of democratic Indonesia with a different political system risked the stability, peace and security of South-East Asia;
5. Indonesia would have to replace the rule of international law with the rule of the jungle if the Netherlands persisted with its rigid position about sovereignty;
6. Australia and The Netherlands joint statement on 6 November 1957 had military implications with forebodings of a military alliance against Indonesia.
7. Indonesia would promote educational and social advancement in West Irian;

The Netherlands stated:

1. It was fulfilling its Article 73 obligations, and to transfer the territory without ascertaining the peoples wishes would be to forsake its duty to them and the UN.
2. In the absence of opportunity for the people to decide their own political future it would not countenance Indonesian threats to annex the territory, nor enter into any negotiations about its future status.

Australia declared:

1. The Netherlands was abiding by its obligations under Article 73, and these obligations would cease if the territory became an integral part of Indonesia;
2. Its statement with the Netherlands (1957) was fully consistent with Chapter XI of the Charter, had no military implications, and was a solemn undertaking by the two Governments that they were preparing the people for self-determination. (UN Yearbook 1957, Part 1, Section 1, Ch 8, The Question of West Irian (West New Guinea)

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- PAGE 1** Maps *West Papua*, Jacob Rumbiak 2003. Jacob is from Numfor Island (West Papua) and was flown to Australia from East Timor in 1999 after he'd escaped from prison in Jakarta to observe the referendum. (In 1989 he and dozens of West Papuan academics were jailed for treason).
Melanesia, Micronesia, Polynesia, Louise Byrne 2008 *Melanesia*,
- PAGE 2** Image *Dani woman*, Ashley Gilbertson, 2001 (a gift from Gilbertson to Jacob Rumbiak).
- PAGE 3** Text Poem by Benny Wenda. In *Indonesia escalates repression in West Papua* Red Flag, 23 Sept 2019. Online at <https://redflag.org.au/node/6895>
- PAGE 4** Text JENKI Melinda *West Papua and the right to Self-determination under international law* West Indian Law Journal, Vol. 34, No. 1, May 2010.
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- Image *Orphan, Nduga (West Papua)*, December 2018, ULMWP Media, Jayapura.
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