

WEST PAPUA 1942 to 2022

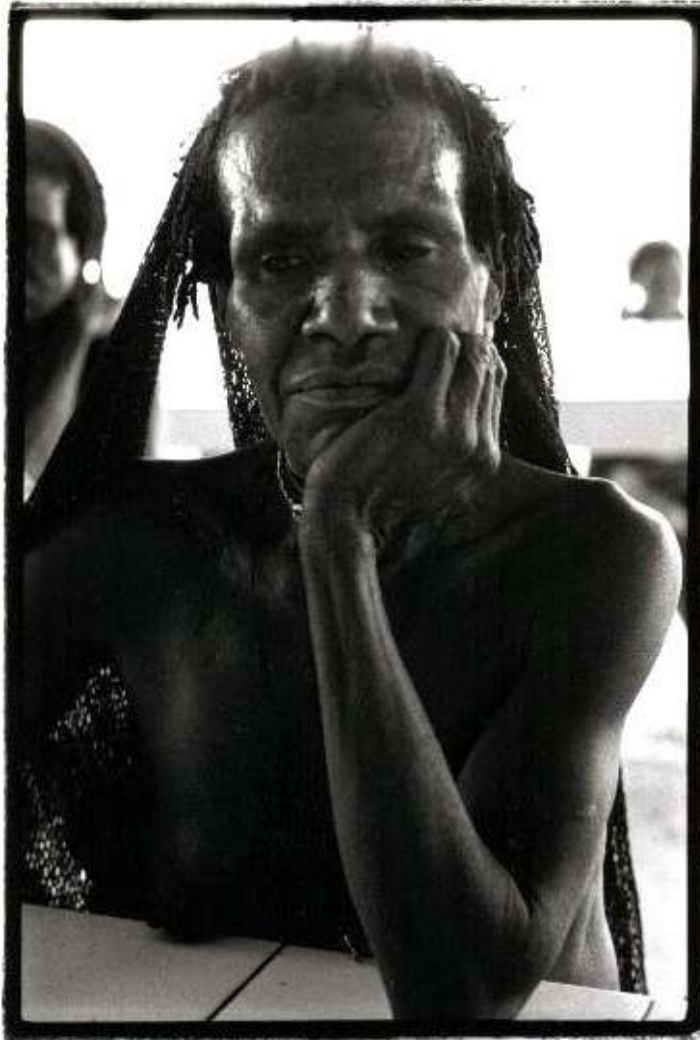
the legals, the politics, and the only way forward



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Dani Woman with *noken* (Ashley Gilbertson, 2001)

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

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1. 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)

This is a study guide of the West Papuans' harrowing but also enlightening experience of World War II (Section 2); as a progressive UN Non-Self-Governing Territory during the 1950s (3.1); as victim of the UN failure to uphold its founding principle, self-determination, in the face of Indonesia's belligerence (3.2). Section 4 presents legal commentary on the New York Agreement (1962–69) and a detailed rebuttal of the claims Indonesia used to justify its colonisation of the Papuans' 459,412 kms² of richly resourced territory. Section 5 outlines West Papuans' most recent resistance and nation-making, and their effort to be listed on the UN Decolonisation Agenda. The guide does not address West Papuans' rich cultures and deep religious beliefs; nor does it attempt to document Indonesia's malevolent governance and overwhelming litany of human rights violations

The Japanese and Allies' military occupations between 1942 and 1944 transformed a passive Dutch colony into an active player in Pacific affairs. The Papuans suffered terrible losses, mainly from Allied bombs, and torture mostly from the Japanese, but they also became aware of modern military technology, and the camaraderie between the Allies white- and black-skin soldiers. After routing the Japanese in 1944, General MacArthur (Commander of Allied Forces in the Southwest Pacific) appointed the pre-war Police Commissioner Jan van Eechoud as Resident. Eechoud was an advocate of self-determination, and immediately established training academies for a

local nation Police and Defence Force as well as a Civil Service.

On 6 December 1950, the United Nations recognised West Papua as a Non-Self-Governing Territory (Res. 448 (V)). Thereafter, all social, economic and political development was based on 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 eleven years show the Dutch progressing a nation of tribal-traditional peoples towards independence with purposeful consideration. However, after the murder of UN Secretary-General Dag Hammarskjöld in September 1961, *UN member-states in the General Assembly refused to register the Non-Self-Governing Territory on the UN Decolonisation List*. A month later, Indonesia declared it was annexing what it called 'a Dutch puppet state' (19 December 1961) and a month after that (15th January 1962) it launched a military invasion.

Hammarskjöld's replacement, U Thant, didn't condemn Indonesia for its (illegal) use of military force against a Non-Self-Governing Territory. Instead he oversaw a 'peace treaty' between Indonesia and the Netherlands (New York Agreement), whereby the administration of West Papua was (illegally) transferred from the Netherlands to Indonesia. He also appointed a team of UN Military Observers—without Security Council authorisation—to oversee the departure of the Dutch from the territory, but not the hundreds of Indonesian soldiers. He also employed 1500 (Muslim) Pakistani troops as a UN Security Force—also without UN authorisation—when it should have been a multi-national force. While Dutch negotiators did manage to have 'self-determination' included in the New York Agreement, UN member-states knew that Indonesia didn't recognise the principle (and still doesn't). **Consequently there has never been an act of self-determination in West Papua.**

The root cause of this long-standing conflict is the breach of West Papuans' right to self-determination and independence. It is therefore an international legal issue, even if Indonesia opportunistically insists it is a 'domestic' issue caused by the Papuans' 'separatist' intentions. Any UNHCR report will undoubtedly conclude, as all major Papuan institutions did in 2010, that Indonesia's 'special' autonomy since 2001 has failed as spectacularly as its 'regional' autonomy' between 1969 and 1999. Both have failed, principally, because Jakarta structured them to enhance central control, not to enhance local autonomy. For instance the 2001 version partitioned the province ostensibly to 'streamline administration'; but it also tripled the number of districts.



ORPHAN, NDUGA, DECEMBER 2018, after Indonesian Air Force dropped bombs of the banned chemical white phosphorous on highland villages.

“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, terrorised, intimidated, 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 delegates visiting West Papua in February 2019).

Indonesian law stipulates that it is the districts, not the provinces, that are each assigned a set formula of defence personnel and military infrastructure. An unknown number of districts have been created with the three more provinces created in 2022.

The data on the quality of Indonesian governance in West Papua speaks for itself. After fifty years of ‘autonomy’ West Papuans are still at the bottom of Indonesia’s human development index. By 2030 they are calculated to be a ‘dwindling minority’ of just 15% of the population. (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%). In 2019, President Jokowi (2014-2023) appointed, as Defence Minister, Prabowo Subianto (a Suharto-era military-general with an atrocious human rights record), and Vice-President Mar’uf Amin—a powerful Islamic cleric who refuses to even countenance the legitimate rights of West Papua’s predominately Christian population.

In 2014, Papuan leaders established the United Liberation Movement for West Papua (ULMWP) as an ‘inclusive, representative, united body to bring about independence’. Twelve months later, the Melanesian Spearhead Group granted West Papua Observer status, although the inter-government organisation has since refused to recognise their Melanesian kins’ application to become a full member. In 2019 the Pacific Islands Forum (18 UN member-states that includes Australia and New Zealand) and the African Caribbean Pacific Group of States (79 member-states) both passed their first resolutions on the issue. Both motions called on **all parties to address the ‘root cause’ of the conflict, and on Indonesia to allow the UN Human Rights Commission to undertake the Fact-finding mission that it agreed to in 2017**. Since 2017 Indonesia has thwarted the entry of the UN Fact-Finding Mission, whose report is necessary for the member-states to consider registering West Papua on the UN Decolonisation List.

International law in terms of West Papua is unequivocal (ICJ lawyer Melinda Jenki to European Parliament in Brussels in 2010):

1. West Papua 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 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 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). Sgt Yount was on General MacArthur's personal staff.

2. WEST PAPUA 1942-1944: THE SECOND WORLD WAR

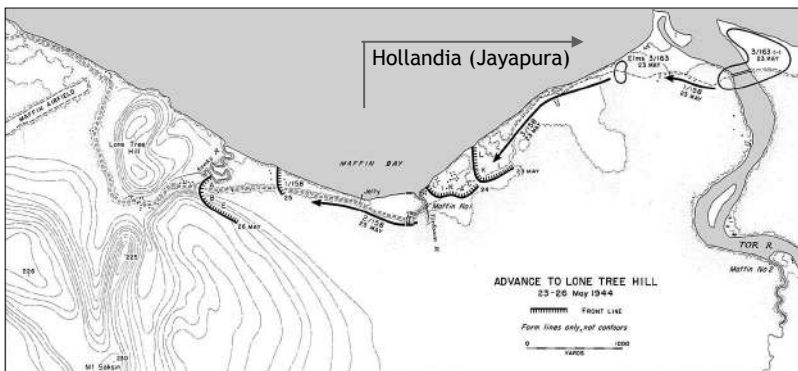
Indonesian and West Papuans very different experiences of Dutch colonialism were a strong influence on their very different responses to the war in their homelands between 1942 and 1945. In 1600 the Dutch had gun-fired their way into Batavia and the Moluccan spice islands, and then incrementally amassed control over the archipelago and its peoples whose labour generated huge profit for them. Japan's rhetoric 'Asia for Asians' therefore resonated with Sukarno, who with little-to-no regard of the cost, forced thousands of Indonesians to work in slave-like conditions for the Axis Power. In West Papua European missionaries landed half-a-century before the Dutch government, 'civilising' the Papuans from 1855 with western religion, health and education systems. The government built its first post in 1898, three centuries after occupying Java. Half-a-century later, just before World War Two, only 5% of the territory was under colonial administration. No one knows how many West Papuans were killed, starved, raped or maimed by Axis and Allied soldiers between 1942 and 1944, or how much of their sacred land was destroyed, primarily because English-language historians have ignored this theatre of war (while producing tomes about it and the local 'fuzzy wuzzy angels' on the other side of the border in East New Guinea).

War for Indonesians didn't cease with Japan's surrender on 15 August 1945, because two days later Sukarno launched a war of independence against the Dutch that lasted until the transfer of sovereignty in 1949. In contrast, World War Two for the West Papuans, climaxing in April-July 1944 with the Allies blitz, ushered in a long period of self-determination based development. Prior to the blitz, General MacArthur (Commander of the Southwest Pacific Area) appointed JPK van Eechoud—Police Commissioner before the war—as Acting Resident, who immediately implemented a self-development program for West Papuans. By the end of 1944 three national institutions were operating: a Police School, a Defence Force (Papuan Volunteers Battalion/PVK) and a Public Service Training School. In 1946 Dutch New Guinea West Papua joined the new South Pacific Commission, where Papuans met and danced with their Oceanic kin in the heady post-war climate of self-rule and independence.

The Dutch East Indies administration surrendered on 8 March 1942, and by December the Japanese Navy had occupied the major coastal towns and islands of West Papua. In general, West Papuans, did not view the Japanese as liberating heroes, unlike the



THE OAKTREE PARTY, an intelligence-commando group that covered vast tracts of the highlands for 14 months in 1943-1944. Led by District Officer JV de Bruijen, Oaktree raided Japanese posts, cut bridges, created diversions, negotiated boundaries with tribal chiefs, trained pigeons, organised supply drops, informed the people. Its reports were sent to the Allies base in Merauke and Intelligence headquarters in Melbourne.



ADVANCE TO LONE TREE HILL, MAFFIN BAY, WEST PAPUA, MAY 1944.
 “The bloodiest ten days in the entire New Guinea campaign” (Thomas E Price)

peoples of *Nederlands-Indië* (Indonesia) who believed the Japanese would free them from the European’s exorbitant powers of censorship and exile, and from slaving for a colonial export industry that by 1938 produced 15% of the Netherland’s national income (Penders 2002:34). In contrast, by 1942 the colonial administration in West Papua only covered 5% of the territory (Poulgrain 2015: 67), and the people were much more familiar with the European missionaries—Protestant in the north since 1855, Catholics in the south since 1894—who were charged with bringing 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 although 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 West Papua’s north coast, producing horrendous casualty and destruction. The Battle for Lone Tree Hill, a coral formation just 53m 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 and 1500 wounded; 3,870 Japanese killed and 11,000 dead from sickness and starvation. Similarly, the fight for Biak Island, just 72km long x 37 km wide, produced 474 Allied deaths and 2,428 wounded; and at least 6,100 Japanese deaths. 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).

Prior to the blitz, General MacArthur appointed Jan van Eechoud—Dutch Police Commissioner before the war—as Acting Resident of West New Guinea. Eechoud



TORRES STRAIT LIGHT INFANTRY BATTALION. From 1943, Torres Strait Islanders were based in Merauke on the south-east coast of West Papua. “In proportion to population, no community in Australia contributed more to the WW11 effort than the Melanesian men of the Torres Strait Islands” (Reg Ball, 1996). An Australian Army Intelligence agent is quoted as saying “I would rather fight with them than against them” (Australian Army Intelligence Report 1943).

was required to organise ‘mopping up’ operations of the starving leaderless Japanese, and set up infrastructure for what he believed would become an independent nation. (MacArthur was bound by the eight “common principles” of the 1941 Atlantic Charter between Britain and the United States, which included the restoration of self-governments for all countries occupied during the war and allowing all peoples to choose their own form of government).

Using 2,000 Japanese prisoners-of-war as labourers, van Eechoud had by the end of 1944, established three important and enduring Papuan institutions: a Police School; the Papuan Volunteers Battalion (PVK), a professional defence force of 400 armed soldiers); and a Public Service Training School (Amapon Marey, 2012:pp95-100). Note that this was while the Netherlands itself was still occupied by the Nazis, and Indonesia (*Nederlands-Indië*) was still occupied by the Japanese.

On 25 January 1946, the Allies transferred West New Guinea back to the Netherlands by which time van Eechoud was preparing to enrol the blossoming nation in the new South Pacific Commission alongside the other Melanesian island-colonies and nascent-states. Indonesia meantime maintained its alliance with Japan, until the Axis Power surrendered in September 1945, then immediately launched a war of independence against the Netherlands that lasted until 1949.

West Papuans’ learned much from their war experience, keenly observing black American soldiers working alongside white Americans, and Aboriginal and Torres Strait Islanders alongside their colonial masters. (Papuans in fact experienced less racism from Dutch administrators than from the ‘gurus’ (Indonesian mission-graduates) who implemented the Japanese commands after all the Dutch were executed or incarcerated in 1942). After the occupation, to find themselves—under a much more enlightened administration—in the uniform of Papuan institutions, and as part of an international organisation, the South Pacific Commission, increased their confidence 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 extremely fragile Indonesian state.



HMAS ARUNTA, 22 April 1944, with F McGuinness of Liverpool (NSW) and R Gough (VIC) readying their torpedoes for the bombing of Tanahmerah Bay on the north coast of West Papua.

Gough Whitlam (Australian Prime Minister 1972-1975; Pilot Officer 13th Squadron RAAF 1944) took part in the Allies assault on Hollandia in 1944.

Frank Robertson, father of Geoffrey Robertson QC, was also in the 1944 blitz, as Flying Officer in the 75th Kittyhawk Squadron in Biak.

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

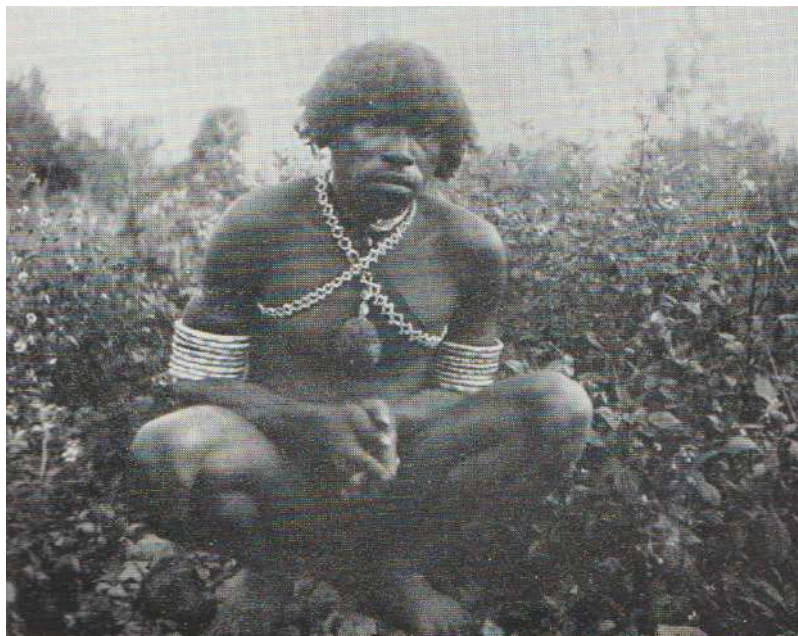


The Australian Curtiss Kittyhawk 78 Squadron was based in Noemfoor Island (Geelvink Bay/ Cenderawasih Bay) in 1944, including Len Waters, the first Aboriginal RAAF pilot. *below*—Allied Memorial Service, Noemfoor Island, 1944 ... “At the war cemetery where Americans and RAAF members who fell at Noemfoor are buried”.





THE FAMOUS MANOKWARI (ARFAK) CHIEF BAREND MANDATJAN. "Barend and his brother Lodewijk were completely trustworthy for the Dutch cause". *below*—"A guide who provided invaluable service as he was able to, among other things, smell water" (*We fought in the Jungle*)



PAPUAN POLICE, 2 October 1944, guiding civilians back to Hollandia through Japanese-occupied territory. The police were graduates of the Police Training School set up by Resident Jan van Eechoud after the Allies blitz between April and July 1944.



PVK SOLDIERS IN THE DUTCH ARMY, MANOKWARI, 1949. "As bush soldiers the Papuans excelled, couldn't be matched. They knew the jungle inside out, and just as they tracked down Japanese during WWII, so they tracked down Indonesian infiltrators throughout the 1950s" (Dutch Veteran). Papuans in the Oaktree and the Kokkelink commando-groups formed the PVK (Papuan Volunteers Battalion) established in 1944.

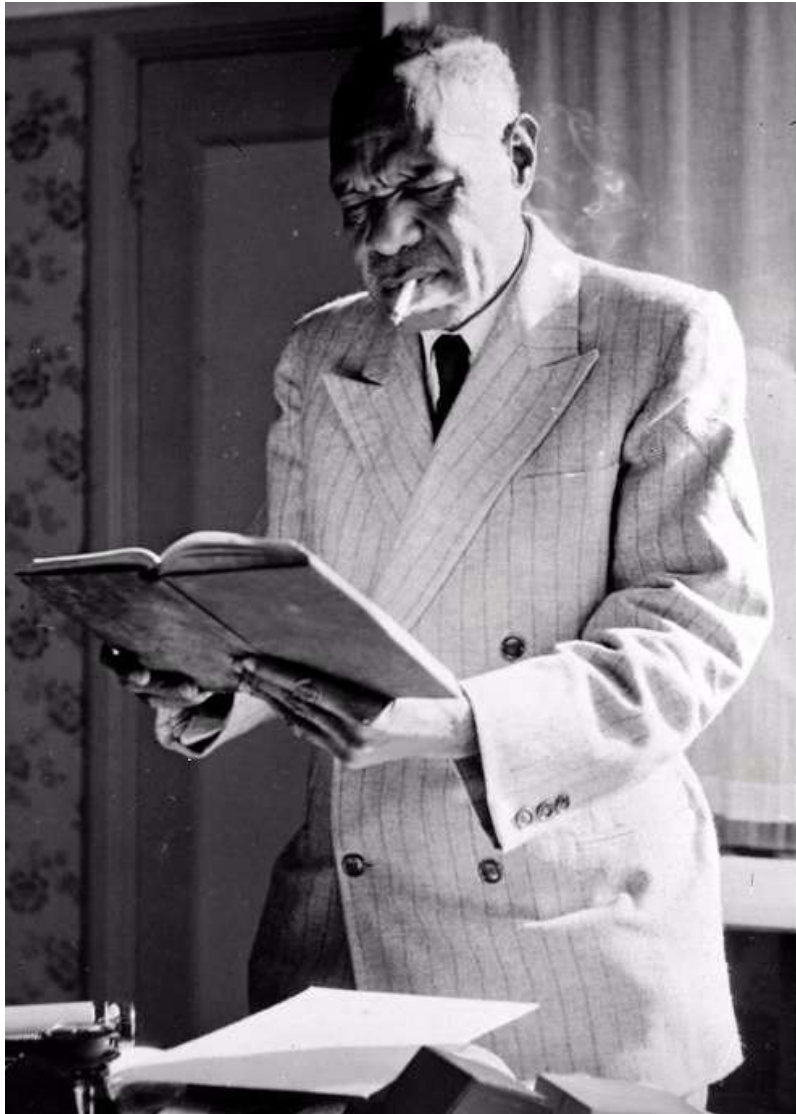


PAPUAN VOLUNTEER BATTALION (PVK) WITH JAPANESE PRISONER IN 1945. The PVK was established in 1944 from the two West Papuan war-time commando-intelligence groups. In November 1945 200 PVK soldiers stood alongside Resident Bessems in Manokwari for the Japanese Surrender Ceremony.



above—LANDING AT HOLLANDIA, Dutch New Guinea 1944.
below—AIRCRAFT CEMETERY, BIAK ISLAND, Dutch New Guinea, 1947.





JOHAN ARIKS: born an Arfak man in the Kebar Plains of the Birds Head, educated in theology in West Java; pastor of Mansinem Island from 1914; lecturer after 1931 at the teacher-training college in Mei where the first generation of Papuan freedom thinkers and fighters were educated. In 1949 Ariks was the first Papuan to direct international attention to the Papuan national cause. On 1 July 1965 he was jailed for 'anti-Indonesian' speech, and in 1967 he died in prison aged 70 (At Ipenburg 2004).

3. WEST PAPUA AND THE UNITED NATIONS

(i) West Papua as a UN Non-Self-Governing Territory 1950-1962

For twelve years between 1950 and 1962, the Dutch and West Papuans implemented a well-funded well-organised self-determination program in their Non-Self-Governing Territory. "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" (Visser, L 2013:3).

In Nederlands-Nieuw Guinea, social, economic and political development 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. Major advances were generated in health and education (primarily through long established Christian institutions and networks); and export economies (designed to dovetail Papuan subsistence economies); and institutions for an emerging state. Investment in the territory by 1961 was Fl 91 million per year (up from Fl 15 million in 1950) with plans to 'papuanise' the civil service (to 90-95%) with teachers, health workers, administrators, and police (Penders, CLM 2002:391).

The 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 the territory-wide elections early in 1961 for the national Nieuw-Guinea RAAD (Penders, CLM 2002:385-400).

During the same period, Indonesia, desperate for recognition of 'its' sovereignty over Nederlands-Nieuw Guinea, wilfully misinterpreted international law, refused to subject its claim to the UN International Court of Justice, burdened its impoverished citizens with a massive weapons debt, and earned itself recognition as a belligerent colonising state. Nevertheless, its military, political and media attacks on the Non-Self-Governing Territory between 1950 and 1960 all failed.

15 June 1949: Before the Round Table Talks between the Netherlands and Indonesia in August, Johan Ariks (*left*) 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

UN Resolution 448 (V), 12 December 1950

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 Res. 222 (III), and to report thereon to the General Assembly.

UN Res. 448 (V): Official Records

Indonesia *voted for* Res. 448 (V). (Par. 221, UNGA, 16th Session, Official Records, 1055th meeting, 15 Nov 1961, Pars 197–255).

Following Res. 448 (V) the Netherlands submitted annual Article 73e Reports on West New Guinea, 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 (*ibid.*, 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 (*ibid.*, Par 224).

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;

iii) pointing to many regions in Indonesia where the number of tertiary and secondary educated was much smaller than in West New Guinea; and that power was being transferred to just 0.0035% of the population (Penders, CLM 2002:154-56).

28 August 1949: After the UN-auspiced Round Table Talks began in the Hague on 5 August 1949, Ariks wrote to the President of UN General Assembly:

“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” (Penders, CLM 2002:154-56).

5 August—2 November 1949: UN-auspiced Round Table Talks transfers sovereignty of Nederlands-Indië to a *federal* United States of Indonesia **but without West Papua**. No West Papuans invited to the three-month conference, but late in October Johan Ariks, Nicholas Jouwe and Marcus Kaisëpo managed to get to the Netherlands (but not to the talks) where their articulate arguments stiffened the resolve of Dutch negotiators to keep West Papua out of Indonesia.

12 December 1950: UN Resolution 448 (V) directs the Special Committee on Information to examine Article 73e Reports from the Non-Self-Governing Territory of West New Guinea (left) which track the development of self-government, and are a legal obligation of the Administering Power until the territory attains full self-government (i.e., an act of self-determination).

January-February 1961: Territorial elections for New Guinea RAAD, which “officiated as a Parliament with all its powers” (Dutch Governor Plateel) with 22 West Papuans in the 28-seat body (including Mrs Tokoro-Hanasby). The RAAD was tasked with making known, within a year, the peoples wishes on self-determination.

5 April 1961: The Netherland’s Government formally 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 governments of Britain, New Zealand, France and Australia. The US accepted the Netherlands invitation, but didn’t attend. Australia’s delegation included Sir Paul

Indonesia's 'negotiations' with the Netherlands 1950–56

Article 2 of the 1949 Sovereignty Transfer Agreement, stipulated that negotiations over West New Guinea continue for twelve months. 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 Dec 1950 Conference collapsed when Indonesia demanded sovereignty by June 1951. A meeting in Jan 1952 collapsed when 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, and February 1956 Indonesia dismissed UN decolonisation principles as 'irrelevant' and 'inadmissible' (Penders, CLM 2002:178-265).

Indonesia's 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).
- 1960 9 Nov, South coast (23 Irianese in 'Guerilla Force 100').
- 1961 14 Sep, Sorong, just before UN General Assembly (includes 32 Irianese in 'Guerilla Force 200').
- 1962 15 Jan, Kaimana: includes 111 Irianese in 'Guerilla Force 300', 3 x US C130 Hercules, 4 x West German jaguar torpedo boats.
- 1962 21 March, Raja Ampat (151 Irianese in 'Guerilla Force 300' Indonesian police rangers, with US AR-15 automatic rifles, trained secretly by US Army Special Forces on Okinawa).
- 1962 26 April, 75 parachutes drop on Fak Fak and 80 on Kaimana.
- 1962 15 May, Parachute drops on Fak Fak, Kaimana, Sorong, police rangers and 'Guerilla Force 400' inserted.
- 1962 25 June, Merauke, 214 commandos parachute into Merauke.
- 1962 31 July, Sorong, 89 'Guerilla Force 500' + celebrity Herlina.
- 1962 July, Battalions to Seram, Kei & Sulawesi for invasion of Biak.
- 1962 7 Aug, Commandos into Fak Fak; Guerilla Force 600 on Misool.
- 1962 14 Aug, Parachute drops on Sorong, Merauke, Kaimana.
- 1962 15 Aug, 45 commandos and 3 x 12 Soviet submarines invade Hollandia. (Data: Ken Conboy 2002:61-80).

Indonesia's expensive media campaign in West Papua

Directed by the Indonesian Government's 'National Front for the Liberation of West Irian' (see van der Kroef, J 1961:52).

Indonesia's failed UN motions: 1954, 1955, 1957, 1961

Hasluck—Minister for Territories; Sir Alistair McMullin—President of the Senate; Brigadier Cleland—Administrator of Papua & New Guinea, and ten of the PNG Legislative Council that was opening ten days later. (see bibliography for video of the elections and launch of RAAD: 'Dutch New Guinea in HD Color 1949-1962').

24 April 1961: Nineteen days after the launch of the Nieuw Guinea RAAD in West Papua, President Kennedy meets President Sukarno in Washington. 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 handshake agreement became the core of the UN 1962 New York Agreement brokered by the United States that dismissed the Netherlands decolonisation program in West Papua and pilloried a cardinal principle of international law.

18 September 1961: UN Sec-General Hammarskjöld murdered three days before 1961 General Assembly where he planned to introduce an OPEX Plan for West Papua, whereby the Papuans would be recognised as the sovereign owners of their land, and UN technical officers would assist an independent Papuan government for five years (Poulgrain, 2020:150; 2022:109).

19 October 1961: New Guinea RAAD names the emerging state Papua Barat (not Irian), its people 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. The Netherlands Government accepts the manifesto but defers the flag-raising ceremonies to 1 December to allow for passage of its decolonisation motion in the UN General Assembly (after the murder of Dag Hammarskjöld).

16 November 1961: The UN fails to pass the Netherlands decolonisation motion, negating the principle of self-determination in the context of West Papua. The debate took place in the context of the UN Declaration on Granting Independence to Colonial Countries and Peoples and the formation of a Committee on Decolonisation after the passage of a motion by thirty-eight Third world countries led by Indonesia.

1 December 1961: In West Papua, the New Guinea RAAD and the Netherlands Administration implement the RAAD's 19 October legislation, raising the two flags and playing the two anthems in Decolonisation ceremonies across the territory.

19 December 1961: Sukarno declares war on 'the Dutch puppet state' ("Crush the

In 1961, Indonesia was the most powerful military power in Asia outside China

The Air Force had the latest Mig-19 and Mig-21 jet fighters, Ilbushin-28 medium bombers, Tupolev-16 heavy bombers, Soviet Mi-6 helicopters; American Dakota C-47 transports and ten US-made C-130 Hercules.

The Navy had the latest Soviet destroyers, 12 Soviet submarines with diving equipment (plus training in Vladivostock), Italian MTBs, a Sverdlovsk-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; West German & British Irvin parachutes and Yugoslavian parachutes, Lee-Enfield 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 in the US. Early in 1962 there were 300 Soviet military advisers in Jakarta.

(CLM PENDERS 2002; KEN CONBOY 2003).

President Kennedy dumps Self-determination for West Papua

Asked why the United States extolled self-determination as a high and holy principle for West Berlin and elsewhere, yet abandoned it for West New Guinea, President JF Kennedy replied:

“Oh, that is entirely different because there are something like two and a quarter million West Berliners where there are only seven hundred thousand of those Papuans. Moreover, the West Berliners are highly civilised and highly cultured, whereas those inhabitants of West New Guinea are living, as it were, in the Stone Age” (President John F. Kennedy in 1962, in conversation with Netherlands Ambassador J.H. van Roijen).

(David Webster *Self-determination abandoned: the road to the New York Agreement on West New Guinea (Papua) 1960–1962*).

councils in West Papua, Plant the Indonesian flag, Take control of the territory”).

Indonesia’s use of military force to annex the Non-Self-Governing Territory breached 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’. With supplies from the US and especially the USSR, Indonesia is at this time, ‘the most powerful military power in Asia outside China’ (Penders 2002:370).

15 January 1962: Indonesia invades West Papua with three of its ten US C-130 Hercules and 4 West German torpedo boats, but is easily repelled by Dutch Navy and Airforce. Yos Sudarso, Deputy-Commander of the Indonesian Navy is killed. President Kennedy is encouraged by CIA Director Allen Dulles to force the Netherlands and Indonesia to negotiate under UN Acting Sec-General U Thant, who is soon replaced by Ellsworth Bunker (American diplomat, businessman, and friend of Allen Dulles).

15 August 1962: New York Agreement: a USA-driven UN-sponsored ‘peace treaty’ between Indonesia and the Netherlands signed at UN Headquarters in New York, which illegally transferred the administration of a UN Non-Self-Governing Territory from the Netherlands to the United Nations for six months, and then to Indonesia.

26 September 1962: UN General Assembly votes (84,0) to accept New York Agreement.

George Lambert, International Commission of Jurists

“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. The UN’s failure to recognise self-determination in the context of West Papua on 16 November 1961, Indonesia’s subsequent declaration of war on 19 December 1961, and invasion on 15 January 1962 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 2000:2).

Illustrations of Economic Development in the Non-Self-Governing Territory of Netherlands New Guinea, 1950-1962



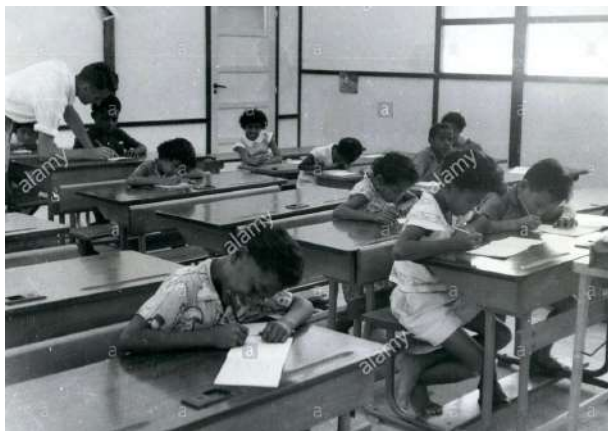
left—Netherlands New Guinea money 1949-62.

above—Mass immunisation program for malaria, yaws and tuberculosis in association with World Health Organisation and the UN Childrens Fund (UNICEF).

below—School in Sorong in the Birdshead 1962.

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

below—Road-making in the interior in 1959.





Highlander greeting Dutch Franciscan nuns in the 1950s.



The washing machine comes to New Guinea (© Keystone Pictures USA/ZUMAPRESS.com). The photo was originally in a Dutch newspaper article in 1962 about oil with the following caption ...

“In Sorong an oil company (40% Dutch Shell, 40% Stanvac, 20% Pacific Investments) has a concession of two 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 Klamono 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.”

Some Development Data in the UN Non-Self-Governing Territory 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; widely scattered in relatively small pockets					
<i>Table prepared by Louise Byrne, 2015. Data Source Penders, CLM 2002: p391—400)</i>					

Political Development in the UN Non-Self-Governing Territory of Netherlands New Guinea, 1950-1962



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.....”



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.’



24 APRIL 1961, Presidents Sukarno and Kennedy, Andrews Air Force Base, Maryland (two weeks after launch of New Guinea RAAD in West Papua on 5 April 1961). At this meeting, the two presidents assembled the nuts and bolts of the 1962 New York Agreement.

MAY 1961, New Guinea RAAD voting on a proposal (www.alamy.com)



top—February 1961, Voting for New Guinea RAAD.

middle—5 April 1961, Launch of New Guinea RAAD Dutch Governor Plateel and RAAD member Mrs Tokoro-Hanasby.

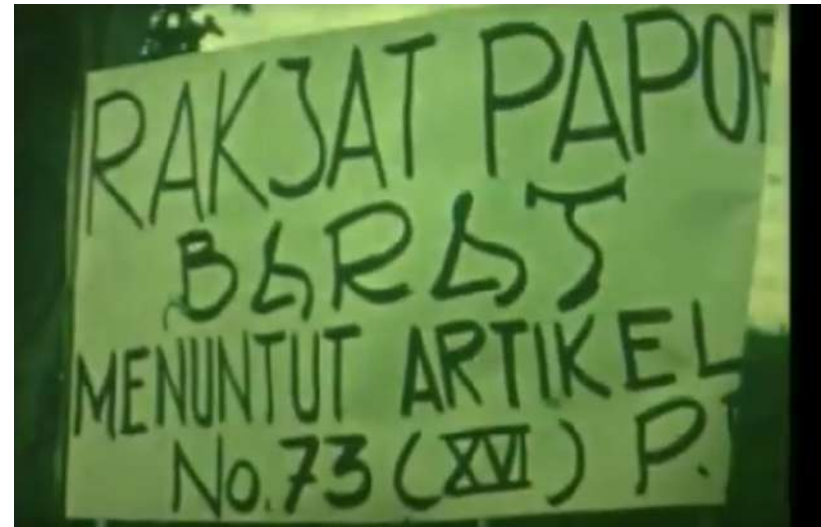
bottom—Sir Alistair McMullin, President of the Australian Senate, arriving in Hollandia for launch of New Guinea RAAD.

Political Development in the UN Non-Self-Governing Territory of Netherlands New Guinea, 1950-1962

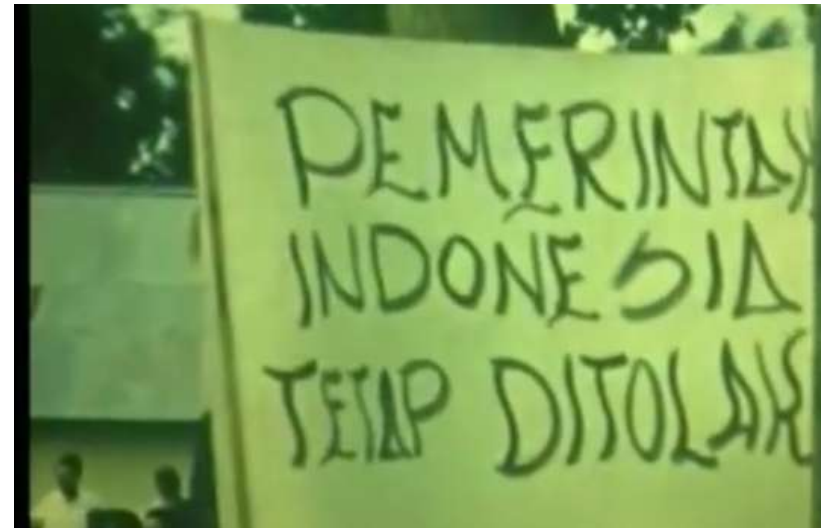
Manokwari hijsen van de NG vlag 1-12-1961 (Ruud Bauwens)



Ruud Bauwens 2006



1 December 1961 Decolonisation Ceremonies organised by New-Guinea RAAD: in Manokwari (*above*) and Hollandia (*below*). The Morning Star flag was raised alongside the Netherlands flag, the two national anthems were played, and the Papua Volunteer Korp (PVK) marched alongside the Netherlands Army. Words on the banners for the ceremony in Sorong (*right*) translate as 'West Papua people demand Article 73' of the UN Charter, and 'Indonesia government rejected'.



Article VII of the 1962 New York Agreement excised the PVK's 400 soldiers from the Netherlands Armed Forces and placed them under Indonesian officers. Three years later, in 1965, the Papuan Cassowary Battalion, led by the PVK's Ferry Awom, and supported by the Arfak chiefs Barend and Lodewijk Mandatjan, routed the Indonesian Army from its barracks in the Arfak Mountains and took control of Manokwari for three days.



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 UN Sec-General Hammarskjöld not been murdered on 18 September 1961. Fifteen UN executives, staff and airline crew were also killed in the aeroplane that crashed at Ndola on the border between Zambia and the Democratic Republic of Congo.

The UN Secretary-General was killed three days before the 1961 UN General Assembly where he planned to introduce his OPEX Program of technical assistance for West Papua, which would have required listing the Non-Self-Governing Territory on the UN Decolonisation Agenda (Greg Poulgrain, 2020: Chapter 5)

Without Hammarskjöld's influential and incorruptible presence, the UN Member-States got caught up in a debate over Indonesia's claim of sovereignty over West Papua, and on 16 November 1961 they over-rode West Papua's right to self-determination. Having done so, they should have, but didn't consider their option to seek an advisory opinion from the International Court of Justice. This 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 what became known as the New York Agreement (15 August 1962) that was in accord with the USA agenda of accommodating the Indonesian demand (George E Lambert, 2000:5).

New Guinea RAAD, Papuan Peoples Congress, Hollandia, 19 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 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;

V. 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.

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

Statement by New Guinea RAAD (Council) to 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 5 April 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, the Council 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), which says:

“All people have the right to self-determination and 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 27 December 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 by the United Nations on the strength of the resolution of the General Assembly Resolution 448 (V), dated December 12, 1950.

The people of West Papua have therefore a right to the continuation of their development to self-government, and the Netherlands as a member of the United Nations is bound to promote this development to the best of its ability pursuant to Article 73e of the U.N. Charter, and has a right to the support of the United Nations 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 17 August 1945 is rejected. The people of West Papua were not represented at the issuance of the proclamation; and 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 by the West Papuan people. The essential point at present is that the right to freely decide on the matter be given to this people.

II. As set out in item 6 of the UN Decolonisation Resolution No. 1514 (XV), an insufficient economic or social development of the population should 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 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 Papuan 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 ‘papuanisation’ for which a ten year plan has been drawn up should be accelerated as much as possible and by all available means. It will be necessary to forego to some extent the current conditions of appointment consisting of a university training and many years of experience, while for a number of political appointments preference will have to be given to those who have distinguished themselves in terms of wisdom, integrity, resoluteness, and by a political backing. Decentralisation and democratisation should be developed with unflagging zeal, both for reasons of principle and to give as many individuals as possible some idea of the problems of government.

No self-governing territory can prosper without a sound economic basis, so much activity should be generated around the national resources of the country. More than half of the budget should, in principle, be financed from 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. Missions from other countries could be invited for a better acquaintance of West Papua.

IV. The consideration mentioned fills such an extensive program that an estimate of time can’t be given. However, the New Guinea Council believes 1970 is deadline for the realisation of the right to self-determination of the people of West Papua. The precise time and concomitant technical problems should be reviewed by the NG 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 view it would seem 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 right to make a free decision. 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 22 January 1962, that the United Nations send a commission to West Papua at 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 states that voted for the Netherlands motion in November 1961 affirming West Papuan's right to self-determination:

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, most Latin American states.

UN states that voted for Indonesia's motion in November 1961, denying West Papuan's right to self-determination:

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.

"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 Res. 1514 (XV)" (Garfield Barwick, Australia's Representative at the United Nations General Assembly, 1055 Plenary Meeting, Pars 24-53, 15 Nov 1961).

"I am very favourably 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 United Nations, in Annette Culley 2016:p90).

The Brazzaville Group (13 African States): Cameroon, Central African Republic, Chad, Congo-Brazzaville, Dahomey, Gabon, Ivory Coast, Madagascar, Mauritania, Niger, Senegal, Togo, Upper Volta.

Indonesia objected to the Brazzaville motion's stress on self-determination, arguing that self-determination had already been exercised for all of Indonesia in 1945 and that West New Guinea could not be "amputated" from Indonesia.

Indonesia demanded support from other Third World countries and was able to call in debts from many in Asia and Africa, threatening in one case to break diplomatic relations (David Webster *Self-determination abandoned: The road to the New York Agreement on West New Guinea (Papua) 1960–1962*).

UN Plenary Meetings, 9th & 16th November 1961

The debate on West New Guinea's decolonisation took place in the context of the 1960 UN Declaration on the Granting of Independence to Colonial countries and Peoples.

The Netherland's motion (from UN Legal Records, Ch XI, Art 73, Pars 846-868).

- Recalling Res. 1514 (XV), and noting that the Netherlands had been administering Netherlands-New-Guinea under the terms of Ch XI;
- Recognising that the Netherlands wanted to implement the Declaration on Decolonisation under UN supervision and assistance, and was prepared to transfer sovereignty to the people of the territory;
- Understanding that the Netherland's power would be exercised by a UN-designated international authority that would provide the territory with technical and economic assistance;
- The Netherlands would maintain its financial aid to the territory;
- Set up a UN Commission for Netherlands New Guinea to investigate implementation of Res. 1514 (XV) and the Declaration on Decolonisation; the political, economic, educational and social conditions in the Territory; the peoples' view of their present and future; the possibility of a plebiscite and an international development authority.

The Brazzaville Motion

A group of thirteen African states (Brazzaville Group) introduced a motion to counter Indonesia's numerous and contradictory objections to the Netherland's motion.

- Recalls the principles in Resolution 1514 (XV);
- Recommends the dispute could be ended by negotiated settlement under the auspice of the Sec-General, with respect for the will and self-determination of the people;
- Appoint a commission of five to carry out an investigation—if the parties had not reached a settlement by 1 March 1962—of 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 Brazzaville Amendment won a simple majority (53-41, 9) but not two-thirds majority. Indonesia's counter motion also failed (41-40, 21).



JUSTICE GEORGE E LAMBERT, INTERNATIONAL COMMISSION OF JURISTS
Yumi Wantaim Seminar for West Papua, Australia West Papua Association-
Melbourne 2001.

Such was the level of debate without Dag Hammarskjöld's leadership that a paragraph in an amendment to the Brazzaville motion that was voted on separately, failed (53-36, 14)! The motion wanted "the General Assembly to state 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".

A few days later, on 27 November, the Indonesian-led motion to establish a Special Committee on Decolonisation passed as Res. 1654 (XVI).

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; pp76-77).

George Lambert, International Commission of Jurists

"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 E Lambert, 2000:5).



UN SECRETARY-GENERAL U THANT WITH MUHAMMAD KHAN (PRESIDENT OF THE GENERAL ASSEMBLY), 21 September 1962, when the General Assembly authorised the UN to carry out tasks set forth in the Agreement on West New Guinea (West Irian).

3. WEST PAPUA AND THE UNITED NATIONS (ii) New York Agreement 1962–1969

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 depended the 'socio-economic health' of the Pacific (freedom from communism). Ultimately, the President's gift 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 not afraid of violating its legal obligations. Now, more than half-a-century later, many UN member-states believe that their organisation needs to admit its failure to uphold self-determination for the 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 that it acquired because of that failure.

17 January 1962: After the UN failed to recognise self-determination in the context of West New Guinea on 15 November 1961, Acting Sec-General U Thant invited the Netherlands and Indonesia to negotiate directly. The dialogue stalled when Indonesia insisted, as usual, that negotiations had to be based on a precondition that West New Guinea would pass to Indonesian control (John Saltford, 2003).

11 March 1962: The Kennedy administration instructed U Thant to appoint American diplomat Ellsworth Bunker to mediate talks between the Indonesians and the Dutch, which began on 20 March 1962. The next day, 151 Irianese and Indonesian Police secretly trained by US Army Special Forces on Okinawa (with US AR-15 automatic rifles) landed in the Raja Ampat islands off the coast of West Papua (details on p13).

24 March 1962: Four days after the talks began Indonesia withdraws.

26 April 1962: 40 Indonesian commandos parachute into Fakfak and 32 into Kaimana (details on p13). "U Thant declines Dutch request for UN observers noting that such action could only be considered if both governments made the request."

"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 ... and they report on our movements to the Dutch" (Lt Heru parachuted into Kaimana on 26 April 1962).



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, SENTANI AIRPORT IN WEST PAPUA. Papuans protesting against the New York Agreement as Brigadier General Rikhye and the twenty-one UN Military Observers (UNMO) led by Swedish Naval Commander OW Melin land at Sentani Airport.



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, but Indonesian battalions proceed to Sulawesi, Kei and Seram to prepare for invasion. Incursions continue until the UN-auspiced treaty (New York Agreement) between the Netherlands and Indonesia is signed on 15 August 1962.

31 July 1961: 89 guerilla-fighters into Sorong.

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, New York Agreement: A US-driven UN-auspiced peace treaty between the Dutch and Indonesians that over-rode West Papuans well-funded well-organised self-determination project. It transferred the administration of the Non-Self-Governing Territory from the Netherlands to Indonesia, with a UN-led seven-month transition period. The final negotiations were held at UN Headquarters under the chairmanship of UN Secretary-General U Thant, with Ambassador Bunker continuing to act as mediator (<https://peacekeeping.un.org/en/mission/past/unsfbackgr.html>)

The New Guinea RAAD was not consulted. Furthermore “there was no clause concerning the obligation under Article 73e of the UN Charter that requires the Administering Authority to transmit regular reports to the Sec-General about the economic, social, and educational conditions in the territory for which it is responsible” (Annette Culley 2016:p65).

During the signing ceremony, the Indonesian and Dutch representatives passed a MOU to U Thant asking him to implement ceasefire functions as an ‘extraordinary measure’. “Although there was no explicit reference to military observers in the memorandum, the Sec-General agreed to select them, and to dispatch them without the prior authorisation of the General Assembly or Security Council, a step never before taken by a Secretary-General” (<https://peacekeeping.un.org/en/mission/past/unsfbackgr.html>)

U Thant appointed his military adviser Brigadier General Indar Jik Rikhye to organise a UN Military Observer Force (UNMO) to supervise a ceasefire between Indonesia and the Netherlands. The 21-member multi-national force was led by



20 AUGUST 1962, SENTANI AIRPORT IN WEST PAPUA. Papuans protest against the New York Agreement and the Indian Brig-General IJ Rikhye as head of a UN Military Observer Force (UNMO). India had led Indonesia's argument in the UN General Assembly on 9 and 16 November 1961.

“PAKISTAN TROOPS LEAVE FOR SERVICE AS UN SECURITY FORCE (UNSF) 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 of the Pan Islamic Line for west New Guinea to serve as the Security Force of the United Nations Temporary Executive Authority (UNTEA). Vice-Admiral A.R. Khan (left), Commander-in-Chief of the Pakistan Navy, during a ceremonial farewell for the troops” (Karachi, Pakistan, 18 September 1962)



Swedish Naval Commander OW Melin, with soldiers from Brazil, Ceylon, Ireland, India, Nigeria and Sweden then serving in the Congo. The 13th US Task Force for the Far East and the Royal Canadian Air Force provided the aerial support that U Thant had also requested (<https://peacekeeping.un.org/en/mission/past/unsfbackgr.html>).

20 August 1962: The UNMO assembled in West Irian two days after the Netherlands announced its ceasefire. It helped supply food and medicine to Indonesian troops, although the Netherlands military provided most emergency supplies and medical treatment (<https://peacekeeping.un.org/en/mission/past/unsfbackgr.html>).

18 September 1962: Three days before the UN General Assembly endorsed the New York Agreement, 1100 troops (ultimately 1500) left Pakistan to serve as UN Security Force (UNSF) under Major-General Said Khan.

21 September 1962: UNGA authorises (89-o, 14) the Sec-General to carry out tasks entrusted to him in the New York Agreement (UNGA Res. 1752 (XVII)). BG Rikhye reports UNMO ceasefire completed without incident and he was making arrangements for the UN Security Force (UNSF). Besides the 1500 Pakistani troops UNSF included 16 Royal Canadian Airforce personnel, 60 US Air Force personnel, Papuan Police, and 350 Papuan PVK troops (not assigned any law and order duties).

Thomas Franck: 1985 “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.”

Annette Culley 2016 : pp64, 141 (citing UN Records, 1127th Plenary Meeting, 21 Sept 1962) “Members were given no time to study the resolution, or agreement, or to seek legal advice before voting ... After the vote Australia’s representative, Garfield Barwick, stated the dispute should have been taken to the International Court of Justice (par. 213). He spoke of the Papuans right of self-determination ... [that] Australia would not regard a forceful solution as binding (par. 216) ... and he deplored both the use of force and the threat of it during the period between the 16th Session and the conclusion of the agreement” (Par. 19).

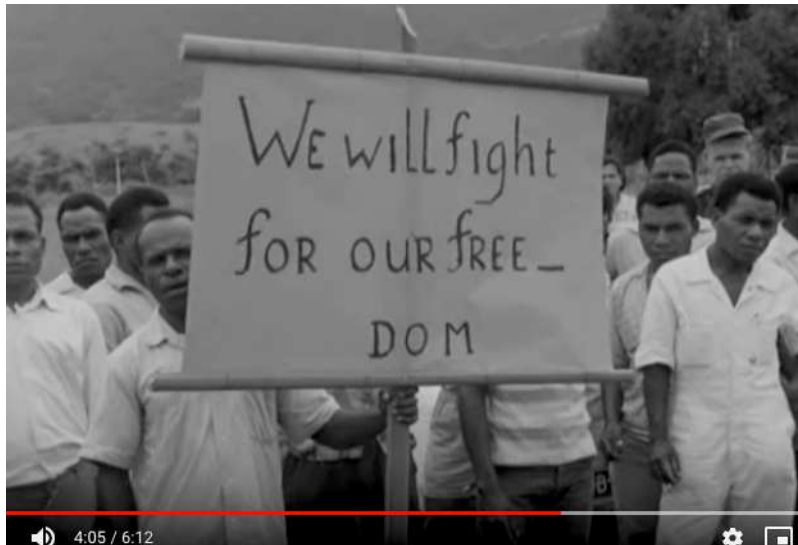
George Lambert 2001, ICJ “The General Assembly must be held responsible to a significant extent for brokering the Treaty in terms which clearly reflected the proposition that the merits in the dispute were entirely in favour of Indonesia.”

WHAT DID THE 1962 ROME AGREEMENT DO?

- 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 what became the Freeport mine;
- iii) Guaranteed that Indonesians would eventually outnumber indigenous Melanesians (via transmigration with World Bank funds);
- iv) Diluted the influence of ongoing Dutch funds (\$US30 million) with a matching Asian Development Bank grant to the UN Fund for Development of West Irian/FUNDWI (Culley, Annette, 2016:p91).

Herman Wajoy, a graduate of the civil service school established by Jan van Eechoud in 1944, risked his life pillaging the Rome Agreement files from the Foreign Ministry archives in Jakarta. He instructed Herman Wainggai to publish them after his death (Jacob Rumbiak).

AIRPORT, WEST PAPUA, 20 AUGUST 1962. West Papuans protest New York Agreement as the UN Military Observers (UNMO) land at Sentani Airport.



30 September 1962: Nine days after the UNGA vote for the New York Agreement, the United States of America, Indonesia and the Netherlands signed the Rome Agreement, affirming quid pro quo understandings between Indonesia and the US, 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 companies;*
6. *US to underwrite Asian Development Bank grant for \$US30,000,000 and guarantee World Bank funds for transmigration program starting in 1977 (Culley, A 2016:91).*

September 1962: An outbreak of cholera on the Casuarina Coast, west of Merauke claimed 1200 lives by the time a World Health Organization medical team arrived (<https://anzacportal.dva.gov.au/wars-and-missions/peacekeeping/summaries/west-new-guinea-1962>)

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 until the transfer to Indonesia on 1 May 1963.

April 1963: Indonesian Government announces that New Guinea RAAD's EJ Bonay to be installed on 1 May 1963 as the first Governor of Irian Barat (Indonesian name for West Papua) with an Indonesian deputy; and that **the territory would be administered as a province of the Republic of Indonesia**. Thirty Indonesian warships and squadrons of the Indonesian airforce arrive in Biak and Hollandia for the transfer ceremony (<https://peacekeeping.un.org/en/mission/past/unsfbackgr.html>)

1 May 1963: UN transfers administration of the Non-Self-Governing Territory to Indonesia. Indonesia immediately issues a presidential decree that closes West Papua, classifies it an Operational Military Zone (DOM), and establishes Anti-Subversion regulations (Jacob Rumbiak 2001). The Morning Star flag and national anthem *Hau Tanakhu Papua* are outlawed, and there are massive (Dutch) book-burning events.

Nov-Dec 1963: Indonesian Army forces 11 Papuan leaders to sign a document ceding West Papua's right to self-determination. All the district councils are abolished. Papuans arrested who rallied for the act of free choice to be held during the UN administration; some never seen again, including the New-Guinea RAAD's Nicolaas Tanggahma, and Penehas Torey who had attended the South Pacific Conference (Saroy, L 2012:181-202).



UNTEA HEADQUARTERS, 31 DECEMBER 1962. Ceremony at residence of UNTEA Administrator Dr. Djalal Abdoh to raise Indonesian flag alongside the UN flag. An Indonesian detachment and a Pakistani contingent of the UN Security Force (UNSF) present arms. This flag-raising, on Indonesia's insistence, took place four months before UNTEA passed the administration to Indonesia on 1 May 1963.

UN SECRETARY-GENERAL U THANT (1961-71) WITH NETHERLANDS FOREIGN AFFAIRS MINISTER JOSEPH LUNS (1952-71) ON 7 APRIL 1968. Luns was ridiculed for his long-term championing of the West Papuans right to self-determination.



7 January 1965: Indonesia resigns from UN, and in October 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” (CIA Report 1968).

July 1966: New regulations enable government to set up *Dewan Musyawarah Pemilihan* (Election Consultative Council) so that Indonesia can use *musyawarah* (‘reach consensus’) for the Act of free choice, not one-man one-vote (Jacob Rumbiak, 2001).

George Lambert 2001, ICJ “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.”

28 September 1966: Indonesia under General Suharto, rejoins the United Nations.

July 1968—August 1969: The Indonesian military selects 1026 Papuans to vote in the Act of Free Choice (one tenth of 1% of the population). The UN Sec-General's Representative Ortiz-Sanz didn't much object, telling Australian journalist Hugh Lunn "West Irian is like a cancerous growth on the side of the UN and my job is to surgically remove it." The 1026 mostly men are distributed into eight assemblies for *musyawarah* (‘reach consensus’) on whether ‘to remain with or sever ties with Indonesia’ over a period of nineteen days (not one) in July-August 1969. Article XVIII of the New York Agreement stipulated all adults, male and females to participate, [and] in line with international practice meaning the choice should have been between independence, integration, or free association).

19 November 1969, UNGA Resolution 2504 (XXIV): UN member-states voted (84-0, 14) to ‘note’ the Secretary-General's Report, that UN representatives fulfilled the tasks entrusted to them in the New York Agreement of 15 August 1962.

George Lambert 2001, ICJ “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. 1025 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”.

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 anxiety and a glimpse of the President who wore a special brown uniform of the Supreme Commander of the Armed Forces.

Took salute

Earlier, three Hercules built TU-16 long-range jet bombers and six U.S. Hercules transports flew overhead as the President stepped ashore at the landing zone half an hour before his scheduled arrival 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 Indonesia'.

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

The landing stage to welcome the President was the 78-year-old Papuan Governor of the West Irian Province, Mr Elazar Rumay, and members of the Government-appointed West Irian Council.

Djakarta was represented by Indonesia's Foreign Minister, Dr Subandrio, and the deputy, Dr Sudharjo, and Indonesian.

A West Irian Papuan

police platoon was among the honour guards of Indonesian armed forces in ceremonial uniform while parading the silent Papuan crowd

Red-beretted troops of the Palace guard, carrying submachine guns, also were in his entourage.

Indonesian army trucks brought hundreds of Papuan villages from making the 18-year-old Kota Baru to sea frontiers.

According to the news agency Antara, Dr Soekarno has announced that the Indonesian Government will spend 30 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 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 engaged to help in developing programs as part of the Indonesian armed forces "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 in the interior into civilization.

Envoy's denial

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

The Indonesian Ambassador to Australia, he said that the Government is preparing to send an official to an Australian 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

INDONESIA'S ANGRY MAN



INDONESIA's President Dr Soekarno, clenches his teeth as he 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" (Sun-Herald, 5 May 1963)

TRANSCRIPT: Tom-toms in welcome to Soekarno (lightly edited for space)

"Dr Sukarno came ashore at Kota Baru from his Russian-built cruiser 'Irian' Papuans in war paint and 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 ... and as Dr Soekarno stepped ashore on West Irian for the first time he took the salute from the military guards as the West Java Siliwangi Division band played the national anthem 'Great Indonesia' The President was surrounded by officials and plainclothes security men Red-beretted troops of the Palace Guard with submachine guns, were also 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 to Kota Baru to join festivities ... According to Antara news agency [Foreign Affairs Minister] Dr Subandrio announced that the Indonesian Government will spend \$us10 million each year on West Irian, which was handed over to Indonesia on Wednesday ... and 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" said Dr Subandrio ... 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 help develop programs as part of the Indonesian armed forces "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 in the interior into civilisation....

Envoy's Denial He said there would be no transmigration of people from other regions to West Irian On relations with Australia, he said the Government had no objection to an Australian request to open a Consulate in Kota Baru ... 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, 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."

Two West Papuan experiences of the act-of-free-choice in 1969 (which West Papuans have always called the act of no choice).

1. Clemens Runawery and Willem Zonggonau

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 men 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’.

2. Joel Boray

During the Act of Free Choice I was a civil servant working for the *bupati* in Biak [where] Soedjarwo Tjondronegro, who worked at the Indonesian Embassy in the Netherlands, was an organiser. When I met him 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 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:p161-81).

4. LEGAL COMMENTARY ON THE NEW YORK AGREEMENT (1962-1969)

James Crawford *The creation of states in international law* (in Culley, A 2016:p108).

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, 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.

Pieter Drooglever *Een Daad van Vrije Keuze (An Act of Free Choice)*

There is 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” .

Mishla Pomerance *Self-determination in law and practice: the new doctrine in the United Nations*, 1982:33.

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’.

Andrew Johnson presents a comprehensive argument that West Papua is still a UN Trust Territory. “Indonesia did not organise an act of self-determination, which means 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. Res. 2504 (XXIV) in 1969 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 Annette Culley 2016, Chapter 11).

Antonio Cassese *A Self-determination of peoples—a legal reappraisal, 1995*:p86. In Culley, Annette 2016:67-69).

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 and UNGA Res. 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'.

Andrés Rigo Sureda *The evolution of the right of self-determination: a study of United Nations practice, 1973*:p151. In Culley, Annette 2016:67-69.

The General Assembly approved the Agreement of 1962 without any reference to the fact that West Irian was a Non-Self-Governing Territory ... 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 Res. 742 (VIII) and Res. 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.

Thomas Musgrave *An analysis of the 1969 Act of Free Choice in West Papua* (In Chinkin C and Bactens F, 'Sovereignty, Statehood and State responsibility: essays in honour of James Crawford', Cambridge University Press, 2015, Chapter 12).

There were other irregularities in the 1962 Agreement between Indonesia and The Netherlands. West Papua was a Non-Self-Governing Territory and its inhabitants 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 UNGA 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 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.

**ABSTRACT 'WEST PAPUA : REAL-POLITIK V INTERNATIONAL'
GEORGE E LAMBERT ICJ 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:

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.
2. 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. 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 Nations 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 FreeChoice. I mention one briefly.

Ortiz Sanz, in his report to the Secretary-General, lists senior Indonesian military, administrators, and security in attendance at all the sessions of the consultation assemblies between 13 July and 2 August 1969. It includes Ali Murtopo, 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.

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 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.

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 Sept 2001.

5. REBUTTAL OF INDONESIA'S ERRONEOUS HISTORICAL CLAIMS OVER WEST PAPUA, JACOB RUMBIK 2001

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

REBUTTAL West Papuans not invited to any resistance, nation-making, or peace meetings between 1945 and 1949, whether hosted by Republik Indonesia, Netherlands Government, Federal Consultative Assembly, or UN Security Council. The exception was Frans Kaisepo, founder of the Freedom Party of Indonesia, at the Malino Conference in 1946, who criticised the State of East Indonesia for not integrating Papua. Any discussion *about* West Papua in these gatherings *always* resulted in 'to be determined later' including 1949 Round Table Talks, the constitutions of the State of East Indonesia and the (federal) United States of Indonesia. Below is a list of these assemblies.

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

C'ttee, Preparatory Work for Independence of Java/BKUPK, Jan-Aug '45 Set up by Sukarno with permission of Japanese military; quasi-legislature with 67 representatives from most ethnic groups including Chinese, Arab and Dutch *but not West Papuans*; developed Pancasila as the ideological basis of the state and the Jakarta Charter (draft constitution).

Preparatory C'ttee for Indonesia's Independence/PPKI, 7-29 Aug 1945 21-person c'ttee approved by Japan, incl. Sukarno, Hatta, Soepomo, Yamin, tasked to prepare transfer of authority to Indonesia. Promulgated BKUPK's draft constitution after removing obligation on Muslims to abide by Sharia Law; set up (new) Indonesian National Party (PNI) and People's Security Agency (BKR, forerunner of Indonesian Armed Forces); partitioned Indonesia into 8 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*. PPKI became Central Indonesian National C'ttee (KNIP) advisor 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 Netherlands the day after the Allied Forces handed back authority. Formed *federal* United States of Indonesia: Java, Sumatra (incl. Bangka, Riau, Belitung) Kalimantan, and Great East (incl. Lesser Sunda). *No West Papuans except Franz Kaisepo.*

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, Sumatra. No representative from West Papua.

Den Pasar Conference, Bali, Dec 1946 Hosted by the Netherlands. Fixed laws for State of East Indonesia (listed as North Celebes, Central Celebes, Timor, South Sulawesi, Moluccas, Bali-Lombok and nine smaller constitutions, *but not West Papua whose relationship with the State of East Indonesia and United States of Indonesia '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; each state to decide via referendum to join Republik Indonesia or United States of Indonesia. Federal Consultative Assembly (BFO) set up to lead the federal states.

Parliamentary Mission, 16-18 February 1948 State of East Indonesia (*not including West Papua*) visits Republik Indonesia and attends Renville Dinner.

Federal Consultative Assembly, 15 July 1948 Created provisional gov't for federal United States of Indonesia (*all 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 Dutch and Republik Indonesia hosted by UN. *No West Papuans.*

Inter-Indonesian Conf., Jogjakarta 19-22 July, Jakarta 31 Jul-2 Aug 1949 Republik Indonesia and Federal Consultative Assembly draft 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* 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 Nederlands-Nieuw-Guinea in Provisional Constitution.

Johan Ariks, Nicolaas Jouwe and Marcus Kaisepo got to Holland late in October (but not to conference) where their articulate arguments and petitions (from Geelvink Bay, Lake Sentani, Hollandia) stiffened the resolve of the Dutch negotiators to keep West Papua out of Indonesia.

CLAIM *West Irian was part of the Majapahit Empire*

REBUTTAL The Majapahit Empire was 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 mission 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 it demise a century later, in 1478, and surviving until 1530). Majapahit had no significant administrative power outside Java, Bali and Madura, but 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 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. In 1775 the Royal Navy's Captain Thomas Forrest, and in 1778 the Governor of Ternate also said the Sultan had no power or claim over the territory. An 1850 Dutch Report described Biak-Numfoor-Ansus islanders as victims of Tidore *hong*i expeditions involving 'thievery, pillage, abduction, rape' 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.*

REBUTTAL 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 in 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 Moluccas, and until World War II the West Papuan experience with foreigner 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 *Nederlands-Indië* which remained under Japanese control until September 1945, and then at war with the Netherlands until 1949.

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

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 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’).

Negotiations in 1950 failed because Indonesia insisted that UN decolonisation principles were ‘irrelevant’ and ‘inadmissible’; and because within six months of the transfer of sovereignty (i.e., 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” (Herb Feith *The Decline of Constitutional Democracy* 1962:69).

15 August 1950 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, using force to crush separatists movements in 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 Franck *Nation against nation: What happened to the U.N. dream and what the U.S. can do about it* 1985:77).

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*, which is not a binding norm of international law and there is no legal requirement to use it’ (Annette Culley 2016:18, 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 rejected all 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 in 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 sovereignty dispute over territory should be referred to the International Court of Justice. Indeed, the Netherlands have 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).

7. 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 (Culley, A 2016:49, citing UN Yearbook 1957).

8. 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 (Culley, A 2016:85, citing Crawford J *The creation of States in International law* 2006:748).

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: 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 or 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” (Culley, A 2016:147 citing Crawford J *The creation of States in international law* 2006:617-618).

UN 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.

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

REBUTTAL It has been suggested 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 Res. 2625 (XXV). However the principle of territorial integrity is confined to the sphere of relationships between States. For James Crawford ‘... secession is neither legal nor illegal in international law, but a legally neutral act the consequences of which are regulated internationally (Culley, A 2016:124, citing Crawford J *The creation of States in international law*, 2006:390).

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 (Culley, A 2016:126, citing Sharf MP *Earned sovereignty; juridical underpinnings* 2004:387-5).

6. INDONESIA'S FAILED 'WEST PAPUA' MOTIONS IN UN

1. 10 Dec 1954, 9th UN General Assembly. Failed two-thirds majority vote

On 22 September 1954 Indonesia requested that its demand for the transfer of sovereignty over Dutch New Guinea be added to the agenda of the 9th session of the General Assembly. In November, by a vote of 34-14, with abstentions, the Political Committee called on Indonesia and the Netherlands to reach a settlement. When the matter came before the UN Assembly on December 10th 1954, the resolution was defeated (CASEY, R.G. *Friends and Neighbours Australia, the U.S. and the World* 1955:146).

2. 16 Dec 1955, 10th General Assembly. Resolution. 915 (X)

Introduced by 15 African and Asian states. Shortly before the item was considered, 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.

3. 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 introduced to the General Assembly failed to obtain a two-thirds majority vote.

4. 29 Nov 1957, 12th General Assembly. Failed two-thirds majority vote

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

Majority favoured inviting the parties to find a peaceful resolution; 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 arguments were based on two assumptions:

1. West New Guinea was part of Indonesia; illegally occupied by the Dutch.
2. Territory 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, but the second assumption denied self-determination and was contrary to the UN Charter.

Indonesia's mendacious warnings included:

1. It 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 and *fighting for* the principle of reunification and national unity;
5. The replacement of democratic Indonesia with a different political system risked the stability, peace and security of South-East Asia;
7. Indonesia would have to replace the rule of international law with the rule of the jungle if the Dutch persisted with its rigid position about sovereignty;
6. Australia and Netherlands statement on 6 November 1957 had military implications with forebodings of a military alliance against Indonesia;
7. Indonesia would advance education and the social in West Irian.

The Netherlands position:

1. In terms of Article 73 obligations, to transfer the territory without verifying 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 a part of Indonesia;
2. Its 1957 agreement with the Netherlands was a solemn undertaking, was consistent with Ch XI of the UN Charter, and had no military implications.
3. Australia and the Netherlands were both preparing the peoples of the two Non-Self-Governing Territories for self-determination and independence.

(UN Yearbook 1957, Part 1, Section 1, Ch 8, The Question of West Irian)



PARLIAMENT HOUSE, CANBERRA, 9 SEPTEMBER 2019. Delivering Federal Republic of West Papua petition to Canberra. After a media conference in the Parliament Garden, Australian Greens Leader Richard di Natale tabled the petition in the Senate.

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.

7. WEST PAPUA: RETURNING TO THE UNITED NATIONS

As the Netherlands UN Representative said on 21 September 1962 (after the UN member-states voted, 89-0, 14, in favour of the New York Agreement) “the ‘free choice’ granted to the population of the territory in the act-of-free-choice 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.” (UNGA, 21 Sept 1962).

There has never been an act of self-determination in West Papua and the root cause of the long-standing issue remains Indonesia’s (illegal) colonisation of the indigenous Papuans and their homeland. The right to self-determination is guaranteed by the UN Charter, and under customary international law, and in the New York Agreement that Indonesia signed with the Netherlands in 1962. West Papua’s case is therefore an international legal issue—not a domestic issue of separatism as Indonesia claims—which demands scrutiny by the International Court of Justice, the UN’s principle judicial organ.

A key objective of the West Papua Provisional Government (2020—), following the United Liberation Movement for West Papua (2015—), is to register West Papua on the UN Decolonisation List, a motion that will require a two-third majority (127) of the 193 UN Member-States. Indonesia’s determination to hold onto its key source of its wealth means lobbying for that necessary support is difficult, and dangerous, but not insurmountable given the West Papuans unbreakable bond with their land and the quality of their resistance and nation-making endeavours.

This chapter enters the Papuan resistance and nation-making story in 2015 with the formation of the United Liberation Movement for West Papua and subsequent West Papua Provisional Government in 2020. It also addresses Australia’s position, and Indonesia’s, as being outside the boundary of international law on West Papua.



MELANESIAN SPEARHEAD GROUP SUMMIT, 24 JUNE 2015. Edison Waromi, Prime Minister, Federal Republic of West Papua with Manasseh Sogavare Prime Minister of the Solomon Islands.

United Liberation Movement for West Papua (ULMWP)

In 2014, during a Reconciliation and Unity Summit for West Papuan leaders in Port Vila (Vanuatu) the United Liberation Movement for West Papua (ULMWP) was established as an ‘inclusive, representative united body’ to carry the peoples’ independence program. The summit was a regional initiative generated by the 2013 World Council of Churches Assembly in Korea and Melanesian churches and women’s organisations. It was supported by the Protestant church in West Papua; sponsored by the Pacific Conference of Churches and the Vanuatu Government; and 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 a pillar of **Political Power** constituted by the nation’s three key political identities: West Papua National Parliament (KNPB), West Papua National Coalition for Liberation, and the Federal Republic of West Papua (FRWP). Each of these political identities is also accountable to a pillar of **Civilian Power** that includes the churches; the ADAT (tribal) structures; youth, student, workers, womens’ groups, and NGOs.

In 2015, ULMWP lobbying effected an historic shift for West Papuans from ‘darkness to light’ when the Melanesian Spearhead Group Leaders Summit granted West Papua Observer Status in their inter-governmental organisation. Naming this hard-fought deliverance of a closed militarised colony to an international political platform as a shift from ‘darkness to light’ embodies the particular spirituality of the West Papuan independence movement. For their part, the MSG Leaders renewed their commitment to “uphold independence as the inalienable right of colonial countries and peoples.”

At the 2016 UN General Assembly, the prime ministers of seven Pacific UN Member-States raised West Papua in terms of human rights and self-determination: Nauru, Marshall Islands, Tuvalu, Vanuatu, Solomon Islands, Tonga, Palau:

Hon. Enele Sosene Sopoaga, Tuvalu: “This great body cannot and must not ignore these deplorable situations, it must not hide behind the guise of the principles of non-interference and sovereignty.”

Hon Manasseh Sogavare, Solomon Islands: “In West Papua, human rights violations and the pursuit of self-determination are two sides of the same coin If the jurisdiction of sovereignty rests on a series of decisions that are questionable, then there is a case about the legality of sovereignty pursued through the New York Agreement and Act of Free Choice.”

Montevideo Convention (1933): the pre-requisites of State Formation

Article 1: a state must possess a permanent population, a defined territory, a government, and capacity to conduct international relations.

Article 3: the political existence of the state is independent of recognition by the other states. Indeed, even before recognition, the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.

Article 6: the recognizing-state accepts the personality of the other with all the rights and duties determined by international law. Recognition is unconditional and irrevocable.

Article 7: recognition of a state may be expressive, or tacit—resulting from any act which implies the intention of recognizing the new state.

Article 11: the contracting states definitely establish as the rule of their conduct the precise obligation not to recognize territorial acquisitions or special advantages which have been obtained by force whether this consists in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure. The territory of a state is inviolable and may not be the object of military occupation nor of other measures of force imposed by another state directly or indirectly or for any motive whatever even temporarily.



In 2019 the Pacific Islands Forum (18 UN Member-states, including Australia and New Zealand) and the African Caribbean Pacific Group (79 UN Member-states) both passed motions **calling on all parties to address the ‘root cause’ of the conflict in West Papua and on Indonesia to allow the UN Human Rights Fact-Finding Mission that it agreed to in 2017**. The ACP Group reiterated its call in 2021 (*African, Caribbean and Pacific seek UN Rights access to Papua*, Radio New Zealand 7/9/21).

Equally supportive since 2019 are the European Union, and the Parliaments of the United Kingdom, Poland, the Netherlands and Spain. In November 2022, Canada, Slovenia, Australia, and even the United States of America reported to the UN on Indonesia’s serious and serial human rights violations. All of this support may mean that Indonesia has squandered its opportunities to negotiate directly with the Papuans and will now have to suffer exposure of its brutal colonial occupation during **international mediation** of the long-standing conflict.

West Papua Provisional Government

On 1 December 2020, after a petition for independence, hand-signed by 1.8 million West Papuans, was presented to the UN in 2017 and 2019, the United Liberation Movement for West Papua (ULMWP) established the West Papua Provisional Government. The new structure was formed in terms of the Montevideo Convention (1933) that codified existing legal norms and principles and established the standard definition of a state in terms of international law.

Raising the status of Papuan resistance and nation-making from non-government organisation (ULMWP) to a legal declarative state with a constitution means that dialogue with Indonesia will now be between equals. The parliamentary system has a President and Prime Minister, 12 Cabinet Ministers of working bureaucracies, and seven executive regional bodies. Like the ULMWP, the West Papua Provisional Government is accountable to the people’s key political and civilian institutions (Benny Wenda, Report to Oxford Town Hall, England 1 December 2021).

During the 2021 UN Climate Summit in Glasgow, the WP Provisional Government launched its ‘Green State’ initiative, President Benny Wenda telling the assembled media, politicians, and NGOs **“We now have a constitution, government, cabinet, and a Green State policy framework to restore balance between the human and non-humans in our homeland”** (New Internationalist, 4 November 2021).

THE LOMBOK TREATY ignores the fact that Australia has embedded the Rome Statute in Australian laws through the 2002 *International Criminal Court Act*, 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).

COMPLETING THE ROAD MAP FOR WEST PAPUA’S INDEPENDENCE
(Jacob Rumbiak, 2019, United Liberation Movement for West Papua)

UNITED NATIONS



UN REGIONAL GROUPS

1. Pacific Islands Forum (16 August 2019, Tuvalu)
2. African Caribbean Pacific Group (10 Dec 2019, Nairobi)
3. European Union (March 2021)
4. United States of America (UNHCR, November 2022)
5. Canada (UNHCR, November 2022)



UN SUB-REGIONAL GROUP

Melanesian Spearhead Group (July 2015)



BASIC ELEMENTS OF ESTABLISHING THE STATE
(MONTEVIDEO CONVENTION 1933)

1. Defined territory
2. Permanent population
3. Government
4. Capacity to enter into relations with other states
5. Sponsor (Vanuatu).

Australia & Indonesia: allies squatting outside international law on West Papua

For Australia to be in compliance with international law, it needs to review its support for Indonesia’s special autonomy regime in West Papua. In 2010 Special Autonomy 2001 was formally rejected by all major West Papuan institutions, as much for the exponential growth of military infrastructure and personnel it enabled as for its failure to achieve meaningful sustainable development. In 2021 Indonesia imposed another 20-year autonomy regime, and increased the number of provinces from two to six.

In ‘addressing the root cause of the conflict’ (PIF, 2019) Australia—and other UN Member-States—will inevitably land on the West Papuans’ right to self-determination and then find itself in the midst of a political stoush in the UN General Assembly and out-of-compliance by the International Court of Justice (‘Third Party Responsibilities’).

For almost two decades Australian governments have been quoting the Lombok Treaty signed with Indonesia in 2006 whereby [T]he 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 (Article 2).

Indonesian political scientist Soedjati Djiwandono, founder of the Centre for Strategic and International Studies, and described after his death in 2013 as ‘a beacon of light on dark truths’ pondered what a break with West Papua might mean:

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

Successive Australian governments mindlessly cite the 2006 Lombok Treaty in response to West Papuans serious geo-political concerns



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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=h1HYaiRtkQ>). 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



West Papuans are asking for help from the same 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 that betrayal have been disastrous: in 1962 West Papuans constituted 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 ‘a dwindling minority’ of 15% (Jim Elmslie, University of Sydney, 2010).

‘Slow motion genocide’ is blamed for up to a million missing Papuans—poisoned, assassinated, exiled, born dead or not at all. Their land, their source of spirituality and sustainability, is ravaged by miners and loggers. Their waters, pristine in 1962, are polluted. Their unique flora and fauna is flogged in black markets across Indonesia.

Furthermore, in June 2022, the Indonesian parliament passed a bill on the formation of three more new provinces in West Papua. Between 1969 and 2000 West Papua was one province; in 2001 it was partitioned into two provinces; now there are three more, each with a yet-to-be-determined number of districts in each province. **Under Indonesian administrative law, it is each district, not province, that is assigned a set formula of land, air and sea defence personnel and military infrastructure.**

Additionally, in December 2022: the Indonesian parliament passed a new criminal code that artfully bans sex outside of marriage, cohabitation between unmarried couples with *insulting the president, and expressing views counter to the national ideology*. “Indonesia’s new criminal code contains oppressive and vague provisions that open the door to invasions of privacy and selective enforcement that will enable the police to extort bribes, lawmakers to harass political opponents, and officials to jail ordinary bloggers .. In one fell swoop, Indonesia’s human rights situation has taken a drastic turn for the worse, with potentially millions of people subject to criminal prosecution under this deeply flawed law” (Andreas Harsono, senior Indonesia researcher at Human Rights Watch, 8 December 2022).

top—Aboriginal Tent Embassy, 30th Anniversary, Canberra, 26 Jan 2002. West Papuans Jacob Rumbiak and Rex Rumakiek with Kevin Buzzacott (Arabunna nation, Australia). “There are dreamtime stories that travel down from the north and go back up to the north. That’s why we have a responsibility to care for our brothers and sisters from across the water” (Kevin Buzzacott)

left—Russia’s ‘Pussy Riot’ political-pop group, campaigning for West Papua with Yothu Yindi at the 2019 Adelaide Fringe Festival on 7 March 2019 (Photo: Stu Kellaway)

AUSTRALIA & INDONESIA: CLOSE ALLIES SQUATTING OUTSIDE INTERNATIONAL LAW viz-a-viz WEST PAPUA

WEST PAPUA ACCORDING TO INTERNATIONAL LAW

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.
4. Indonesia annexed and colonised West Papua in 1969, after the act-of-free-choice that was not an act of self-determination.

(ICJ lawyer Melinda Jenki addressing European Parliament in Brussels in 2010 (<https://www.youtube.com/watch?v=vqKr4bSPP7I>); also in Jenki, M 'West Papua and the right to Self-determination under international law' West Indian Law Journal, Vol. 34, No. 1, 2010.

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Map: Melanesia, Micronesia, Polynesia by Louise Byrne 2008.
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