

# Reassessing the Implementation of the 1962 New York Agreement in West Papua: A Study on Treaty Compliance within the Framework of International Law

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KEYWORDS	ABSTRACT
<p><b>Keywords:</b> New York Agreement 1962; West Papua; International Law</p> <p><b>Conflict of Interest Statement:</b> The author(s) declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.</p> <p>Copyright © 2025 AMAR. All rights reserved.</p>	<p><b>Purpose:</b> This study reassesses the implementation of the 1962 New York Agreement in West Papua by examining its compliance with international treaty obligations and the principle of self-determination within the framework of international law. It aims to evaluate whether the Agreement was executed in accordance with its normative commitments and to identify the legal implications arising from its implementation.</p> <p><b>Research Design and Methodology:</b> This research employs a normative-doctrinal legal approach supported by historical and juridical analysis. Primary legal materials include the 1962 New York Agreement, United Nations General Assembly Resolution 2504 (XXIV) of 1969, and the Vienna Convention on the Law of Treaties (1969). These sources are complemented by scholarly articles, official United Nations reports, and archival records. The study utilizes textual, contextual, and teleological interpretations to assess treaty performance, the principle of good faith, and compliance with international legal standards.</p> <p><b>Findings and Discussion:</b> The findings reveal a significant gap between the normative commitments of the New York Agreement and its practical implementation. Although the Agreement formally guaranteed the right to self-determination, the 1969 Act of Free Choice did not fully conform to internationally accepted standards, particularly regarding popular participation, procedural legitimacy, and genuine expression of political will. The consultative voting mechanism, limited involvement of indigenous Papuans, and Cold War geopolitical pressures influenced the process. Furthermore, United Nations General Assembly Resolution 2504 (XXIV) merely acknowledged the outcome without explicitly endorsing its conformity with democratic self-determination, thereby raising enduring questions concerning treaty compliance and legal legitimacy.</p> <p><b>Implications:</b> This study contributes to international legal scholarship by offering a doctrinal reassessment of treaty compliance and self-determination in decolonization processes. It underscores the importance of good faith, transparency, and adherence to international legal norms, while providing theoretical insights and practical recommendations for strengthening the legitimacy, accountability, and interpretative integrity of international agreements.</p>

## Introduction

The aspiration for peace and stability constitutes a universal objective shared by nations and societies across the globe. Nevertheless, disputes arising from territorial claims, political interests, and decolonization processes remain an enduring feature of international relations. West Papua represents one of the most complex and contested cases in contemporary international law, shaped by historical, geopolitical, and juridical dynamics involving the Netherlands, Indonesia, the United

Nations, and global powers.<sup>1</sup> The region's political status continues to spark scholarly debate regarding the implementation of international agreements and the realization of self-determination.<sup>2</sup>

Historically, West Papua formed part of Netherlands New Guinea, a territory administered by the Dutch during the colonial period. Following Indonesia's independence in 1945, a dispute emerged between Indonesia and the Netherlands over the sovereignty of West New Guinea, drawing significant international attention.<sup>3</sup> Diplomatic tensions escalated during the Cold War, prompting the involvement of the United States and the United Nations in facilitating a peaceful resolution. These geopolitical dynamics culminated in the signing of the New York Agreement on August 15, 1962,<sup>4</sup> a landmark diplomatic instrument intended to resolve the territorial dispute through a process of decolonization.

This agreement stipulated that the Netherlands would hand over West Papua to the United Nations Temporary Executive Authority (UNTEA), which then handed it over to Indonesia in 1963. The implementation of the Act of Free Choice (Pepera) in 1969 marked the end of Dutch rule in Papua, which was implemented by UNTEA to transfer the status of Papua from the Netherlands to the power of the Indonesian government.<sup>5</sup> The transfer of Papua from the power of the Dutch government through UNTEA to the power of Indonesia later became a problem in itself because it was considered that the implementation of PEPERA was not fair and honest according to the New York Agreement 1962.<sup>6</sup> The principle of self-determination has long occupied a central position within the development of modern international law. Emerging prominently in the post-Second World War era and reinforced through United Nations resolutions on decolonization, self-determination became both a political aspiration and a legal entitlement for colonized peoples.<sup>7</sup> Within this broader historical framework, the 1962 New York Agreement represents one of the most significant diplomatic instruments addressing territorial transition and decolonization in Southeast Asia.

The Agreement was concluded between the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia under the auspices of the United Nations. Its primary objective was to resolve the dispute concerning the status of West Papua (then known as West New Guinea or Irian Barat). The Agreement established a temporary United Nations administration, the United Nations Temporary Executive Authority (UNTEA), which would oversee the transfer of authority before ultimately facilitating an act of self-determination to determine the political future of the territory.<sup>8</sup>

Although the Agreement formally provided a mechanism for self-determination, the process culminating in the 1969 Act of Free Choice has generated persistent debate among scholars, policymakers, and international legal observers. Questions have been raised concerning the interpretation of treaty provisions, the procedures adopted during the transitional administration, and the compatibility of the consultation mechanism with prevailing international standards of democratic participation.<sup>9</sup> These debates have not subsided over time; instead, they continue to influence

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<sup>1</sup> Emma Kluge, "Papuan Petitions as an Archive of Decolonisation," *The Journal of Imperial and Commonwealth History* 53, no. 3 (May 4, 2025): 658-83, <https://doi.org/10.1080/03086534.2025.2500357>.

<sup>2</sup> Yuhong Li and Anguang Zheng, "State-Building and Internal Colonialism: A Case Study of the Separatism in Aceh and West Papua, Indonesia," *Masyarakat, Kebudayaan Dan Politik* 36, no. 4 (November 29, 2023): 462-74, <https://doi.org/10.20473/mkp.v36i42023.462-474>.

<sup>3</sup> Pujiyono Pujiyono et al., "The Prevention of The Hoaxes Spreads in Papua," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 6, no. 2 (December 31, 2021): 213-21, <https://doi.org/10.22515/alahkam.v6i2.3997>.

<sup>4</sup> Susanto T Handoko and Wasino Wasino, "Discourse on Relations Between Indonesia and Papua: Content Analysis of History Textbook of 2013 Curriculum," *Paramita: Historical Studies Journal* 30, no. 1 (April 12, 2020): 23-35, <https://doi.org/10.15294/paramita.v30i1.16215>.

<sup>5</sup> Ester Yambeyapdi, "Papua: Sejarah Integrasi Yang Diingat Dan Ingatan Kolektif," *Indonesian Historical Studies* 2, no. 2 (June 21, 2019): 89-95, <https://doi.org/10.14710/ihis.v2i2.3749>.

<sup>6</sup> Margot Tudor, "Gatekeepers to Decolonisation: Recentring the UN Peacekeepers on the Frontline of West Papua's Re-Colonisation, 1962-3," *Journal of Contemporary History* 57, no. 2 (April 18, 2022): 293-316, <https://doi.org/10.1177/0022009421997894>.

<sup>7</sup> Stephen C. Druce, "Political Impasse vs Economic Development: A History and Analysis of the West Papua Conflict in Indonesia," in *Managing Conflicts in a Globalizing ASEAN* (Singapore: Springer Singapore, 2020), 89-116, [https://doi.org/10.1007/978-981-32-9570-4\\_5](https://doi.org/10.1007/978-981-32-9570-4_5).

<sup>8</sup> Emma Kluge, "West Papua and the International History of Decolonization, 1961-69," *The International History Review* 42, no. 6 (November 1, 2020): 1155-72, <https://doi.org/10.1080/07075332.2019.1694052>.

<sup>9</sup> Anna Saunders, "Constitution-Making as a Technique of International Law: Reconsidering the Post-War Inheritance," *American Journal of International Law* 117, no. 2 (April 6, 2023): 251-308, <https://doi.org/10.1017/ajil.2022.86>.

contemporary discussions regarding treaty compliance, decolonization processes, and the legal meaning of consent in collective self-determination.<sup>10</sup>

From a juridical perspective, the New York Agreement constituted an international treaty concluded between the Kingdom of the Netherlands and the Republic of Indonesia under the auspices of the United Nations. The Agreement established the United Nations Temporary Executive Authority (UNTEA) as an interim administration responsible for transferring authority to Indonesia and facilitating an act of self-determination.<sup>11</sup> Its provisions reflected the normative framework of international treaty law, particularly the principles of *pacta sunt servanda* and good faith in treaty performance. Consequently, the Agreement occupies a significant position within the broader corpus of international law governing decolonization and territorial transition.

The principle of self-determination constitutes a cornerstone of modern international law and has evolved from a political doctrine into a legally recognized norm. Enshrined in the Charter of the United Nations and reinforced by General Assembly Resolution 1514 (XV) of 1960, the principle affirms the right of peoples to freely determine their political status and pursue their economic, social, and cultural development.<sup>12</sup> Its juridical recognition has shaped the global decolonization process and influenced the emergence of newly independent states. Within this framework, self-determination functions as both a legal right and a normative standard guiding the implementation of international agreements.

In the context of West Papua, the New York Agreement formally guaranteed the right of the Papuan people to exercise self-determination through the Act of Free Choice in 1969. However, the implementation of this process has generated persistent controversy and divergent interpretations among scholars, policymakers, and international legal observers. Questions have arisen concerning the extent to which the procedures adopted conformed to international standards of democratic participation and treaty compliance. These debates highlight the enduring tension between normative commitments embodied in international agreements and their practical realization.

The discrepancy between the normative provisions of the New York Agreement and its implementation in West Papua constitutes a central legal concern in contemporary international legal discourse. While the Agreement established procedural safeguards for self-determination and the protection of civil liberties, critics argue that its execution deviated from international standards. Allegations regarding limited participation, the absence of a one-person-one-vote mechanism, and restricted international oversight have raised questions concerning the legitimacy of the Act of Free Choice. This normative-empirical gap underscores the necessity of a reassessment grounded in principles of international treaty law.

The primary legal issues addressed in this study revolve around treaty compliance, the doctrine of good faith, and the legitimacy of self-determination within the framework of international law. Specifically, the research examines whether the implementation of the New York Agreement conformed to established principles governing treaty performance, including *pacta sunt servanda* and the object and purpose rule. Furthermore, it evaluates the compatibility of the Act of Free Choice with prevailing international standards of democratic participation and decolonization. These legal issues form the analytical foundation of the present study.

The urgency of this research lies in the continuing relevance of the West Papua issue in contemporary international law and human rights discourse. The ongoing debate over the legitimacy of the 1969 Act of Free Choice and repeated allegations of human rights violations underscore the need for a systematic legal reassessment. Furthermore, evolving international norms regarding self-determination, participatory rights, and compliance with treaties require a reexamination of historical treaties based on modern legal standards. Therefore, this study seeks to provide a balanced analysis of the legal legacy of the New York Agreement.

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<sup>10</sup> Benedict Abrahamson Chigara, "Treaty-Text Loyalists' Burden with Subsequent State Practice," *Netherlands International Law Review* 68, no. 1 (May 6, 2021): 61-88, <https://doi.org/10.1007/s40802-021-00185-8>.

<sup>11</sup> Dominic Alessio and Imogen Alessio, "Re-Thinking Agents of Empire: The Role of the United Nations in the Indonesian Occupation of West Papua," *Journal of New Zealand & Pacific Studies* 11, no. 2 (December 1, 2023): 163-82, [https://doi.org/10.1386/nzps\\_00163\\_1](https://doi.org/10.1386/nzps_00163_1).

<sup>12</sup> Pedro Ivo Ribeiro Diniz and Leonardo Nemer Caldeira Brant, "O ESTATUTO JURÍDICO PRECÁRIO E CIRCUNSTANCIAL DO ESTADO ENQUANTO SUJEITO PRECÍPUO DA ORDEM NORMATIVA INTERNACIONAL," *Revista Direito, Estado e Sociedade*, no. 56 (June 22, 2020), <https://doi.org/10.17808/des.56.940>.

Studies on the implementation of the New York Agreement and the West Papua issue have been widely explored in academia and from various perspectives. For example, Cheng's (2020) study analyzes the role of the United Nations in the decolonization process and highlights the persistent civilizationalist conceptions within international legal discourse.<sup>13</sup> Similarly, Tudor (2022) explores the role of UN peacekeepers in the re-colonization of West Papua, emphasizing the complexities of international intervention and treaty implementation. These studies provide valuable historical and political insights but offer limited doctrinal analysis of treaty compliance within the framework of international law.<sup>14</sup>

Further research by Woodman (2023) examines the West Papuan liberation movement from an international human rights perspective, emphasizing issues of self-determination and settler colonialism.<sup>15</sup> While this study contributes to the human rights discourse, it primarily adopts a socio-political approach rather than a doctrinal legal analysis of treaty performance. Consequently, the normative implications of the New York Agreement remain insufficiently explored from the standpoint of international treaty law. These scholarly contributions underscore the need for a comprehensive reassessment grounded in juridical methodology.

Despite the growing body of literature, a significant research gap persists concerning the systematic evaluation of the New York Agreement's implementation within the framework of treaty compliance and international legal doctrine. Existing studies tend to emphasize historical narratives, geopolitical considerations, or human rights perspectives, often overlooking the doctrinal analysis of treaty performance and good faith. Moreover, comparative assessments of treaty interpretation and compliance in decolonization contexts remain limited. Addressing this gap is essential to advancing scholarly understanding of international legal principles governing transitional sovereignty and self-determination.

This article seeks to reassess the implementation of the 1962 New York Agreement in West Papua through the lens of treaty compliance within the framework of international law. It aims to clarify the normative structure of the Agreement, evaluate its implementation in light of principles of good faith and *pacta sunt servanda*, and examine the legitimacy of the Act of Free Choice in relation to international standards of self-determination. By situating the analysis within the broader discourse on decolonization and treaty law, this study contributes to the development of international legal scholarship and provides a balanced, objective, and academically grounded reassessment of the Agreement's legal legacy.

## Literature Review

### Self-Determination in International Law

The principle of self-determination has evolved into one of the foundational norms of contemporary international law, particularly within the framework of decolonization. Its legal recognition derives from Articles 1(2) and 55 of the United Nations Charter and was further consolidated through General Assembly Resolution 1514 (XV) of 1960 on the Granting of Independence to Colonial Countries and Peoples.<sup>16</sup> Initially articulated as a political doctrine, self-determination progressively acquired juridical status as an *erga omnes* norm closely linked to the dismantling of colonial structures. Consequently, it functions not merely as a political aspiration but as a legal entitlement of peoples under international law.

Scholarly discourse distinguishes between external and internal dimensions of self-determination. External self-determination refers to the right of a people to determine their political status, including independence, integration, or free association, particularly in colonial contexts. Internal self-determination, by contrast, emphasizes meaningful political participation, autonomy, and

<sup>13</sup> Ani Widayanti Soetjipto, "Journey to Justice: The United Nations Declaration on the Rights of Indigenous Peoples in the Context of West Papua," *JAS (Journal of ASEAN Studies)* 10, no. 1 (August 12, 2022), <https://doi.org/10.21512/jas.v10i1.8491>.

<sup>14</sup> Saliha Belmessous, "What Is a Colonial Treaty? Questioning the Visible and the Invisible in European and Non-European Legal Negotiations," *Comparative Legal History* 10, no. 2 (July 3, 2022): 137-71, <https://doi.org/10.1080/2049677X.2022.2131525>.

<sup>15</sup> Justito Adiprasetyo, "Government Loudspeakers: How Indonesian Media Amplifies the State's Narrative towards the Free West Papua Movement," *Pacific Journalism Review* 29, no. 1/2 (July 1, 2023): 113-35, <https://search.informit.org/doi/10.3316/informit.234969046783344>.

<sup>16</sup> Oğuzhan Keskin, "Peoples' Right to Self-Determination: From a Political Ideal to an Ever-Evolving Legal Right," *Istanbul Hukuk Mecmuası / Istanbul Law Review* 79, no. 1 (April 27, 2021): 303-46, <https://doi.org/10.26650/mecmua.2021.79.1.0009>.

representative governance within an existing state structure.<sup>17</sup> This dual conceptualization has shaped doctrinal debates concerning the scope and limits of the principle in post-colonial and transitional settings.

In the practice of international law, the legitimacy of a self-determination process is closely tied to procedural standards. International scholarship underscores the importance of universal adult participation, impartial supervision, freedom of expression, and the absence of coercion as essential components of a valid consultation or referendum.<sup>18</sup> The requirement that the will of the people be freely and genuinely expressed has become a central benchmark in assessing compliance with international standards. Therefore, procedural integrity is inseparable from the substantive realization of the right itself.

Within the context of the 1962 New York Agreement, self-determination constituted a core normative commitment embedded in the treaty framework. The Agreement envisaged an act of free choice conducted in accordance with international practice, thereby linking treaty performance with the realization of a recognized international legal norm.<sup>19</sup> However, scholarly debate continues regarding whether the procedural design and implementation of the 1969 Act of Free Choice fulfilled the doctrinal requirements of self-determination under international law. This ongoing debate underscores the necessity of reassessing the implementation of the Agreement through a structured legal analysis grounded in established international legal principles.

### Treaty Performance and the Principle of Good Faith

The performance of international treaties is governed by fundamental principles that ensure stability and predictability in international relations. Central among these is the doctrine of *pacta sunt servanda*, which obliges states to perform treaties in good faith. This principle is codified in Article 26 of the Vienna Convention on the Law of Treaties (1969) and reflects customary international law.<sup>20</sup> Accordingly, treaty obligations must not only be formally executed but also implemented consistently with the object and purpose of the agreement.

The principle of good faith operates as both an interpretative and substantive standard in treaty performance. Under Articles 31 and 32 of the Vienna Convention, treaty interpretation must consider ordinary meaning, context, and the object and purpose of the agreement.<sup>21</sup> Good faith thus prevents states from adopting restrictive or opportunistic interpretations that undermine substantive commitments. In transitional arrangements involving territorial sovereignty or decolonization, this principle assumes heightened importance because the legitimacy of the process depends on procedural integrity and genuine compliance.

International legal scholarship emphasizes that treaty ambiguity often generates divergent interpretations, particularly in politically sensitive contexts. Where a treaty lacks explicit enforcement mechanisms or detailed procedural safeguards, the implementing authority may exercise broad discretion.<sup>22</sup> Such discretion, if not guided by good faith, risks creating a gap between normative obligations and practical implementation. Consequently, doctrinal analysis must examine whether the execution of treaty provisions aligns with their intended legal purpose.

In the context of the 1962 New York Agreement, the obligation to conduct an act of self-determination “in accordance with international practice” constitutes a key normative commitment subject to the principle of good faith. The absence of explicit procedural enforcement mechanisms

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<sup>17</sup> Ntando Sindane, “Decolonial Musings about Constitutionalism, the Constitution, and Democratic Future(S),” *Law and Critique* 35, no. 3 (November 5, 2024): 553-70, <https://doi.org/10.1007/s10978-024-09406-4>.

<sup>18</sup> Harry Hobbs, “The Road to Uluru: Constitutional Recognition and the UN Declaration on the Rights of Indigenous Peoples,” *Australian Journal of Politics & History* 66, no. 4 (December 8, 2020): 613-32, <https://doi.org/10.1111/ajph.12707>.

<sup>19</sup> Steven Wheatley, “Revisiting the Doctrine of Intertemporal Law,” *Oxford Journal of Legal Studies* 41, no. 2 (July 22, 2021): 484-509, <https://doi.org/10.1093/ojls/gqaa058>.

<sup>20</sup> Frank Irikefe Akpoviri, Syarul Nataqain Baharum, and Zinatul Ashiqin Zainol, “Digital Sequence Information and the Access and Benefit-Sharing Obligation of the Convention on Biological Diversity,” *NanoEthics* 17, no. 1 (April 28, 2023): 1, <https://doi.org/10.1007/s11569-023-00436-3>.

<sup>21</sup> Daniel Peat, “Disciplining Rules? Compliance, the Rules of Interpretation, and the Evaluative Dimension of Articles 31 and 32 of the VCLT,” *Netherlands International Law Review* 69, no. 2 (September 1, 2022): 221-39, <https://doi.org/10.1007/s40802-022-00220-2>.

<sup>22</sup> Susanne Therese Hansen, “Exploiting and Constructing Legal Ambiguity. UK Arms Exports to Saudi Arabia during the War in Yemen,” *European Security* 32, no. 4 (October 2, 2023): 607-27, <https://doi.org/10.1080/09662839.2022.2144728>.

within the Agreement raises important questions regarding compliance and interpretative discretion.<sup>23</sup> Evaluating the implementation of the Agreement therefore requires a systematic assessment of whether the administering authority fulfilled its obligations in a manner consistent with the treaty's object and purpose. This doctrinal approach provides the analytical foundation for reassessing treaty compliance within the broader framework of international law.

### The 1962 New York Agreement in Scholarly Discourse

Scholarly discourse on the 1962 New York Agreement has predominantly situated the treaty within the geopolitical dynamics of the Cold War and the strategic contestation between Indonesia, the Netherlands, and major global powers. Many studies emphasize the diplomatic compromise engineered under United Nations auspices, portraying the Agreement as a pragmatic solution designed to prevent armed conflict rather than as a purely normative legal instrument.<sup>24</sup> Within this narrative, the role of the United Nations Temporary Executive Authority (UNTEA) is often described as a transitional administrative mechanism shaped by political expediency.<sup>25</sup> While such analyses provide important historical context, they frequently prioritize geopolitical explanation over doctrinal legal evaluation.

A second stream of scholarship focuses on the legitimacy of the 1969 Act of Free Choice, particularly the representational consultation model adopted in lieu of universal suffrage. Scholars have debated whether the deliberative mechanism complied with the requirement that self-determination be conducted "in accordance with international practice."<sup>26</sup> Some interpret the Agreement as granting discretionary flexibility to the administering authority, while others contend that international standards at the time implied broader participation. These divergent interpretations illustrate the continuing controversy surrounding the procedural integrity of the implementation process.

Another dimension of the literature examines the extent of United Nations oversight and its interpretative authority during the transitional period. Studies have highlighted the limited mandate and institutional capacity of the UN Representative, raising questions about the scope of supervision envisioned by the Agreement. In particular, the distinction between advisory participation and substantive oversight has been identified as a key factor influencing the outcome of the process.<sup>27</sup> However, much of this discussion remains embedded in historical narrative rather than systematically analyzed through the framework of treaty interpretation and compliance under international law.

Despite the breadth of existing scholarship, a doctrinal reassessment of the New York Agreement as a binding international treaty subject to principles of good faith performance remains underdeveloped. Previous research has largely emphasized political legitimacy, human rights discourse, or post-colonial critique, often without integrating a structured analysis of treaty compliance under the Vienna Convention framework. This study seeks to retain the substantive historical insights provided by earlier scholarship while advancing a normative evaluation grounded in international legal doctrine.<sup>28</sup> By repositioning the Agreement within the analytical structure of treaty performance and self-determination, the present research contributes to a more systematic understanding of its legal legacy.

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<sup>23</sup> Connor Woodman, "The West Papuan Liberation Movement, Indonesian Settler Colonialism and Western Imperialism from an International Solidarity Perspective," *The International Journal of Human Rights* 27, no. 6 (July 3, 2023): 1017-49, <https://doi.org/10.1080/13642987.2022.2132235>.

<sup>24</sup> D.D. Agusman, A. Afriansyah, and I. Fadilah, "Debunking the Pandora Box of Decolonisation," in *The Asian Yearbook of Human Rights and Humanitarian Law* (Brill | Nijhoff, 2021), 282-308, [https://doi.org/10.1163/9789004466180\\_013](https://doi.org/10.1163/9789004466180_013).

<sup>25</sup> Elai Rettig, Shani Friedman, and Benny Spanier, "Postwar Development of Offshore Energy Resources: Legal and Political Models for Developing the Gaza Marine Gas Field," *Leiden Journal of International Law* 38, no. 1 (March 3, 2025): 13-28, <https://doi.org/10.1017/S0922156524000359>.

<sup>26</sup> Gino J Naldi, "Self-Determination in Light of the International Court of Justice's Opinion in the Chagos Case," *Groningen Journal of International Law* 7, no. 2 (February 28, 2020): 216-35, <https://doi.org/10.21827/GroJIL.7.2.216-235>.

<sup>27</sup> Juliana Emilia Galindo Villarreal, "Development Programs with a Territorial-Based Approach in Colombia: An Agonistic Multi-Level Political Reconciliation Analysis," *Campos En Ciencias Sociales* 8, no. 2 (July 1, 2020), <https://doi.org/10.15332/25006681/6017>.

<sup>28</sup> Caroline Foster and Christina Voigt, "Non-Compliance Mechanisms or International Courts: How to Increase Treaty Compliance?," in *International Courts versus Non-Compliance Mechanisms* (Cambridge University Press, 2024), 3-12, <https://doi.org/10.1017/9781009373913.003>.

## Research Design and Methodology

This study employs a normative-doctrinal legal research design to reassess the implementation of the 1962 New York Agreement in West Papua within the framework of international law. The doctrinal approach focuses on the analysis of primary legal sources, including the New York Agreement, relevant United Nations resolutions, and the Vienna Convention on the Law of Treaties (1969), particularly in relation to the principles of *pacta sunt servanda*, treaty compliance, and good faith.<sup>29</sup> Secondary legal materials consist of scholarly articles from reputable international journals, academic commentaries, and historical legal analyses concerning self-determination and decolonization. Through systematic legal interpretation, the study examines the normative structure of the Agreement and evaluates its conformity with established principles of international treaty law.

To complement the doctrinal analysis, this research adopts a juridical-empirical approach by utilizing historical records, official United Nations reports, governmental documentation, and archival materials relating to the transitional administration of UNTEA and the 1969 Act of Free Choice.<sup>30</sup> The data are analyzed using interpretative and qualitative legal reasoning, including textual interpretation, contextual analysis, and teleological interpretation in accordance with Articles 31 and 32 of the Vienna Convention. Validity and reliability are ensured through source triangulation and the use of authoritative legal documents with verifiable provenance. This integrated methodological framework enables a comprehensive assessment of the gap between normative treaty obligations and their practical implementation, thereby supporting the objective of reassessing treaty compliance within the broader context of international law.

## Findings and Discussion

### Transitional Sovereignty and Treaty Performance (1962-1963)

After it became clear that the Papuan issue would be resolved, the first task the UN Secretary-General had to undertake before an agreement was reached between the Netherlands and Indonesia was to implement a ceasefire in Papua.<sup>31</sup> Therefore, on April 18, 1962, UN Secretary-General U. Thant appointed General I.J. Rikhye as his military advisor. On September 21, 1962, military observers from six member states Brazil, Ceylon, India, Ireland, Nigeria, and Sweden were tasked with overseeing these plans.<sup>32</sup> In his report to the UN Secretary-General, General I.J. Rikhye stated that the ceasefire activities had been carried out successfully.<sup>33</sup> He also reported that Indonesia had already established a military base in the region and that Indonesians detained by the Dutch had been released.<sup>34</sup> On September 21, 1962, the UN Secretary-General appointed Jozs-Rolz Bennett of Guatemala as his representative in Papua to develop a plan for the administrative transfer to UNTEA, as stipulated in the agreement. After the UN military observer team returned to New York, Bennett went to West Papua and worked with Dutch leaders to develop a more detailed plan.<sup>35</sup>

Bennett's tenure lasted only until November 19, 1962, and he quickly filled vacant positions. He recruited staff from 32 countries, who undoubtedly lacked knowledge of the region due to Papua's vast territory, their unfamiliarity with Indonesian and Dutch, and the destruction of existing archives by the Indonesian military. According to Arie Brant, a professor who worked in Papua in the early 1960s, Fak-Fak had undergone three regional changes in less than half a year: two from England and one from Jamaica.<sup>36</sup> In addition, the Pakistani military unit, the police inspectors from the Philippines who were assigned were forced to return to their home country, because their duties and

<sup>29</sup> Anton Ploeg, "A Vocation, a Task!: Two New Contributions on Dutch New Guinea," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 176, no. 2-3 (June 11, 2020): 395-403, <https://doi.org/10.1163/22134379-17602002>.

<sup>30</sup> Courtney Handman, "Defying Predictions: Global Bureaucracy and the Art of Not Making Guesses about Papua New Guinea," *Oceania* 94, no. 2 (July 30, 2024): 55-72, <https://doi.org/10.1002/ocaa.5402>.

<sup>31</sup> Agusman, Afriansyah, and Fadilah, "Debunking the Pandora Box of Decolonisation."

<sup>32</sup> Brad Simpson, "Indonesian Transmigration and the Crisis of Development, 1968-1985," *Diplomatic History* 45, no. 2 (March 14, 2021): 268-84, <https://doi.org/10.1093/dh/dhaa087>.

<sup>33</sup> Simpson.

<sup>34</sup> Druce, "Political Impasse vs Economic Development: A History and Analysis of the West Papua Conflict in Indonesia."

<sup>35</sup> Tudor, "Gatekeepers to Decolonisation: Recentring the UN Peacekeepers on the Frontline of West Papua's Re-Colonisation, 1962-3."

<sup>36</sup> Julian McKinlay King, "A Soul Divided: The UN's Misconduct over West Papua," *Portal: Journal of Multidisciplinary International Studies* 16, no. 1/2 (November 1, 2019): 59-81, <https://search.informit.org/doi/10.3316/informit.761442074817268>.

responsibilities were taken over by the Indonesian military and an accountant from Belgium was unable to work in a short time and in a hurry.

On October 22, 1962, the UN Secretary-General appointed Dr. Djalal Abdoh, a UN administrator, to replace Jose Rolz Bennett, who had been serving in West Papua since early September. In early November, he visited The Hague and Jakarta for consultations and to that end. On November 15, 1962, he arrived in West Papua to fulfill his duties. The main tasks of UNTEA were:

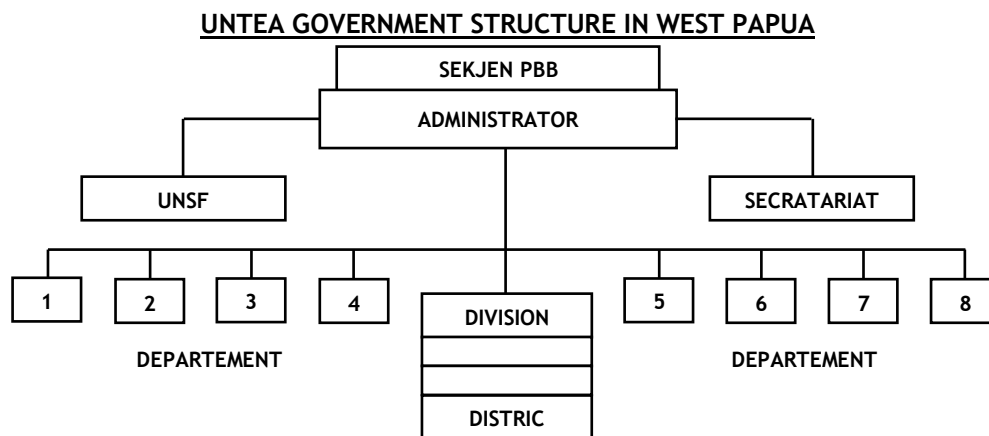
1. Accepting the transfer of government of West Papua from the Dutch.
2. Establishing a stable government in West Papua for a specified period.
3. Handing over government of West Papua to the Indonesian government.

In addition to the above main tasks, UNTEA was also required to carry out the following duties: Maintaining law and order, announcing and explaining the provisions of the agreement between Indonesia and the Netherlands, and informing the people of West Papua about the UN's transfer of power to Indonesia and the provisions regarding self-determination.

In carrying out its duties, UNTEA had the authority to establish new regulations or amend existing ones in accordance with the duties and authority granted to it (Article 11). UNTEA also had the authority to employ Indonesian and Dutch employees in various services, except for the highest positions, such as Department Director, Resident, and Chief of Police, which were to be held by officials of other nationalities.<sup>37</sup>

In accordance with its Articles, the UN force, consisting of 1,522 Pakistani military personnel, acted as mediators and oversaw the administrative transfer process. However, in practice, UN security forces were unable to take action when Indonesian security forces engaged in activities that violated the New York Agreement. These activities included: first, acts of intimidation by the Indonesian military against the people. Second, inciting the Papuan people to stone and damage UNTEA posts to urge them to leave the region immediately. Third, the Indonesian military arrested people demonstrating to demand the implementation of self-determination under UNTEA. Fourth, Indonesian security forces also prohibited Papuans from raising the Morning Star flag and singing the song "Hai Tanahku Papua." This is despite the fact that Article 22 of the New York Agreement guarantees the rights of the people of the region to freedom of speech, movement, assembly, and assembly. Instead, the Indonesian military allowed demonstrations supporting the acceleration of the administrative transfer process to Indonesia. According to the agreement, UN information staff were required to explain the plan for self-determination to the Papuan people. However, in reality, they were unable to perform optimally because they were working hastily and did not thoroughly study the contents of the agreement. These staff should have realized that the agreement was the result of hasty diplomacy. UN staff were also unable to carry out their information dissemination duties because they were hampered by the increasing number of Indonesian employees.

Schematically see the UNTEA government structure and the table of the strength of the UN security forces (UNSF) and its units in West Papua during December 1962, as follows:



**Figure 1: UNTEA Government Structure In West Papua**

Source: United Nations annual report 1962.

<sup>37</sup> Alessio and Alessio, "Re-Thinking Agents of Empire: The Role of the United Nations in the Indonesian Occupation of West Papua."

The strength of the United Nations (UN) Security Forces (UNSF) deployed in Papua in 1962 is shown in the following table:

**Table: 1.**  
**UN Troop Strength in Papua in 1962.**

No	Country Name	Staf	Troops	Air Force	Sea	Total
1.	Kanada	.....	.....	12 piece	.....	12 piece
2.	Pakistan	18 person	1,394 person	.....	110 person	1,522 person
3.	Amerika Serikat	.....	.....	64 piece	.....	64 piece

Data source: United Nations annual report, 1962.

Table 1 shows that the security forces serving in West Papua before the Act of Free Choice (PEPERA) were predominantly from Pakistan, while Canada and the United States only provided aircraft.

On December 31, 1962, the Dutch flag was lowered and replaced with the Indonesian flag (red and white) alongside the UN flag. Simultaneously, Jose Rolz Bennett ended his duties as UNTEA's chief administrator and was replaced by Djalal Abdoh of Iran. After Djalal Abdoh handed over UNTEA's administrative authority to the head of the Republic of Indonesia's representative in West Papua, Sudjarwo Tjondronegoro, on May 1, 1963, witnessed by CV Narasim, the UN representative, and Dr. Soebandrio, the Minister of Foreign Affairs/First Deputy Prime Minister Coordinating West Papua Affairs, representing Indonesia. The Indonesian government then appointed E.J. Bonay, a Papuan who supported integration with Indonesia, as Governor.<sup>38</sup>

The handover of Papua to Indonesia made the Papuan elites feel confused about the implementation of the New York agreement that had been signed on August 15, 1962, because it had not been socialized to the public before, so that in September 1962 a national congress was held which was pushed by the Chairman of the National Party (Parna), Herman Wayoi and members of the Nieuw Guinea Raad, Nicolas Youwe and Ben Tangahma. This congress was then attended by 90 Papuan elites (people's leaders) and with very deep doubts decided to accept the results of the agreement, with the hope that Indonesia, the Netherlands and the UN would respect the Papuan national anthem and the Papuan national flag would continue to fly, and elections would be held immediately after the official term of office of UNTEA.<sup>39</sup> The elite's doubts about the outcome of the New York Agreement stemmed from its explicit content, which could benefit Indonesia by integrating Papua into the Republic of Indonesia, as stipulated in Articles 2 and 8, which state, "Following the ratification of the resolution referred to in Article 1, the Netherlands will hand over the administration of the territory to the United Nations Executive Authority (UNTEA) established by and under the authority of the Secretary-General. Upon the arrival of the United Nations administrator appointed in accordance with Article IV, UNTEA will in turn hand over the administration to Indonesia in accordance with Article XIII."

However, they ultimately accepted, considering that even if Papua were to integrate with Indonesia on the specified date, there would still be a path to self-determination, namely an act of free choice, in the next phase.

### The Implementation of Self-Determination (1963-1969): Normative Commitment vs Practical Execution

Following the transfer of authority from the United Nations Temporary Executive Authority (UNTEA) to Indonesia on 1 May 1963, as stipulated in Articles XII and XIII of the 1962 New York Agreement, Indonesia assumed full administrative control over Papua during the transitional period leading to the 1969 Act of Free Choice. Although a civilian governor, E.J. Bonay, was appointed from among indigenous Papuans, effective governance was heavily influenced and coordinated by the Indonesian military structure. Presidential Instruction No. 2 of 1963 (confidential) provided that the Governor would be assisted by military commanders and senior security officials, thereby institutionalizing military oversight within the civilian administration.<sup>40</sup> During this period, the military played a dominant role not only in security matters but also in civil governance and development

<sup>38</sup> Tudor, "Gatekeepers to Decolonisation: Recentring the UN Peacekeepers on the Frontline of West Papua's Re-Colonisation, 1962-3."

<sup>39</sup> Handoko and Wasino, "Discourse on Relations Between Indonesia and Papua: Content Analysis of History Textbook of 2013 Curriculum."

<sup>40</sup> Simpson, "Indonesian Transmigration and the Crisis of Development, 1968-1985."

programs. Military-led initiatives, often framed as “civic missions,” included infrastructure development and social mobilization activities. At district and village levels, military personnel frequently coordinated community outreach and public administration, particularly where civilian institutions were weak or underdeveloped. The establishment of Military Regional Command XVII/Cendrawasih further consolidated territorial control. Successive commanders implemented various operations aimed at stabilizing the region in preparation for the Act of Free Choice.<sup>41</sup>

From a formal legal perspective, Indonesia’s authority during the transitional phase derived from provisions within the New York Agreement. Certain articles explicitly allowed for the transfer of administrative responsibility, the replacement of United Nations security forces with Indonesian forces, and the application of Indonesian national law following the transfer of governance. Articles 11 and 14, in particular, provided the legal basis for security deployment and regulatory implementation, while Article 15 assigned Indonesia responsibility for advancing social, educational, and economic development to facilitate political participation.<sup>42</sup> However, this arrangement generated interpretative controversy. Critics argue that the dominant military presence and centralized decision-making structure potentially limited the conditions necessary for the free expression of political will. Although the Agreement formally guaranteed civil liberties including freedom of expression, movement, and assembly questions remain regarding whether these guarantees were fully realized in practice. Article 18(d) emphasized participation of all eligible adult inhabitants in accordance with international practice, while Article 22 required full protection of civil rights during the transitional process. The extent to which these safeguards operated effectively during the 1963-1969 period remains subject to debate.

A further structural weakness of the Agreement lies in the absence of explicit provisions outlining legal consequences in the event of non-compliance or procedural deviation. The treaty did not establish a mechanism for dispute resolution, review, or annulment should implementation diverge from its intended object and purpose.<sup>43</sup> This omission effectively left the interpretation and execution of procedural standards largely within the discretion of the administering authority. In international legal terms, such ambiguity can create tension between formal adherence to treaty provisions and the substantive realization of protected rights. Accordingly, the transitional period from 1963 to 1969 represents a critical phase in assessing the implementation of the New York Agreement.<sup>44</sup> While Indonesia acted within a framework formally authorized by treaty provisions, the concentration of military influence and the absence of robust international enforcement mechanisms have contributed to enduring debates regarding the authenticity and legitimacy of the self-determination process. This case thus illustrates how treaty flexibility, institutional design, and political context intersect in shaping both legal interpretation and long-term perceptions of legitimacy in international law.

In accordance with the provisions of the 1962 New York Agreement, the Act of Free Choice was to be completed before the end of 1969 as the second phase of the Agreement’s implementation, following the transfer of administrative authority from UNTEA to Indonesia in May 1963. This phase was intended to provide the population of West Papua with an opportunity to exercise their right of self-determination. Rather than adopting a universal voting mechanism, Indonesian authorities implemented a consultative system based on representative deliberation.<sup>45</sup> Through consultations between government officials and regional legislative bodies, it was decided that the process would be conducted in each regency through the establishment of Dewan Musyawarah Pepera (Consultative Assemblies), whose membership was determined proportionally based on population figures, subject to administrative limitations.<sup>46</sup>

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<sup>41</sup> Agusman, Afriansyah, and Fadilah, “Debunking the Pandora Box of Decolonisation.”

<sup>42</sup> Ploeg, “A Vocation, a Task!: Two New Contributions on Dutch New Guinea.”

<sup>43</sup> Eileen Hanrahan, “An International Law Historical Narrative: Realpolitik’s Subterfuge of West Papua’s Self-Determination Processes,” in *West Papuan Decolonisation* (Singapore: Springer Singapore, 2021), 73-106, [https://doi.org/10.1007/978-981-33-4302-3\\_4](https://doi.org/10.1007/978-981-33-4302-3_4).

<sup>44</sup> Veronika Kusumaryati, “Adat Institutionalisation, the State and the Quest for Self-Determination in West Papua,” *The Asia Pacific Journal of Anthropology* 21, no. 1 (January 1, 2020): 1-16, <https://doi.org/10.1080/14442213.2019.1670238>.

<sup>45</sup> Agusman, Afriansyah, and Fadilah, “Debunking the Pandora Box of Decolonisation.”

<sup>46</sup> Stephanie Lawson, “West Papua, Indonesia and the Melanesian Spearhead Group: Competing Logics in Regional and International Politics,” *Australian Journal of International Affairs* 70, no. 5 (September 2, 2016): 506-24, <https://doi.org/10.1080/10357718.2015.1119231>.

The formation of these assemblies occurred within a political environment strongly influenced by state security structures. Historical accounts indicate that military operations and intelligence activities were closely intertwined with administrative preparations for the consultation. Observers and journalists present during the process reported instances of coercion and intimidation in certain regions, suggesting that some participants may have faced pressure in expressing their political preferences. Public “socialization” campaigns were organized across regencies to introduce the consultation framework, and demonstrations supporting integration were also reported.<sup>47</sup> However, critics have argued that these public expressions did not necessarily reflect spontaneous political consensus, but rather emerged within a highly managed political context.

From a legal perspective, controversy surrounding the formation of the Consultative Assemblies centers on whether the representative deliberative model complied with Article 18 of the New York Agreement, which emphasized participation in accordance with international practice. Critics contend that the musyawarah (consensus-based) system deviated from the “one person, one vote” principle commonly associated with self-determination processes, thereby raising questions regarding the extent to which the Act of Free Choice fulfilled the substantive requirements of free and genuine participation. This divergence between procedural design and competing interpretations of international standards remains a central issue in evaluating the legitimacy of the 1969 consultation process.

Following the completion of socialization and consultation, the Pepera Consultative Council (DMP) was formed in each district. The DMP's task was to organize the election, ratification, and inauguration of the people's representatives who would sit on the council. However, in practice, the election of council members was controlled by the authorities, so they could not be considered representative of the community. Opportunities for fair community participation were only available to the third group. However, in reality, this method of selecting additional members meant that the Indonesian authorities and the regional councils carried out the final formation of the Consultative Council. Prior to the Pepera, members of the Consultative Council were separated from the community for several weeks and housed in special locations under the supervision of the authorities.

**Tabel 2.**  
**Schedule for the Implementation of PEPERA 1969**

Date	Regency	Members of the Consultative Council	Total population
14 Juli 1969	Merauke	175	144.171
16 Juli 1969	Jayawijaya	175	165.000
19 Juli 1969	Paniai	175	156.000
23 Juli 1969	Fak-Fak	75	43.187
26 Juli 1969	Sorong	110	75.474
29 Juli 1969	Manokwari	75	49.875
31 Agustus 1969	Teluk Cendrawasih	130	83.000
02 Agustus 1969	Jayapura	110	81.240

Data Source: The author's processed data from various sources.

**Tabel 3.**  
**Number of Representatives/Delegates based on Element**

No.	Element	Number of Representatives
1.	Kepala Suku/Adat	400
2.	Daerah (Gereja/Alim Ulama)	360
3.	Ornop/Ormas	265
<b>Total</b>		<b>1.025 orang</b>

Data Source: The author's processed data from various sources.

<sup>47</sup> Lawson.

**Tabel 4.**  
**Number of Representatives/Delegates Providing Opinions**

No.	Regency	Providing Opinions	Number of Envoys	Sick
1.	Merauke	20 people	175	1
2.	Jayawijaya	18 people	175	1
3.	Paniai	28 people	175	-
4.	Fak-Fak	17 people	75	-
5.	Sorong	16 people	110	-
6.	Manokwari	26 people	75	-
7.	T. Cendrawasih	24 people	130	1
8.	Jayapura	26 people	110	1
	<b>Total</b>	<b>175 people</b>	<b>1.025</b>	<b>4</b>

Data Source: The author's processed data from various sources.

Table 4.4 shows that although the Pepera Consultative Council (Dewan Musyawa Pepera) had 1,025 delegates representing a population of over 800,000 at the time, only 175 delegates voted for the fate of 800,000 Papuans to join Indonesia. This action violates Articles 18 and 22 of the New York Agreement of August 15, 1962. Article 18d states:

"The fulfillment of the requirements for participation by all adults, men and women, not foreign nationals, who are residents at the time of signing this Agreement and at the time of self-determination, including residents who left after 1945 and returned to the territory to resume residence after the end of Dutch rule."

Article 22 (1) states:

"UNTEA and Indonesia fully guarantee the rights, including the rights to freedom of expression, freedom of movement, and freedom of assembly, for the inhabitants of the region. These rights shall include the rights existing among the inhabitants of the region at the time of the transfer of government to UNTEA."

This was inseparable from the consolidation of the strategy employed by the previous Indonesian government, namely, to win the Act of Free Choice (Pepera). The Indonesian Government, through the Ministry of Home Affairs, issued Decrees No. 31-38/1968, while concerning the realization of the consolidation and security of the Act of Free Choice (PEPERA), the Minister of Home Affairs also issued Decree No. I/X 1968 in May and June 1969. Furthermore, the working procedures of the Pepera Consultative Council Formation Committee in the Regencies were also regulated by Decree No. 12 of 1969.<sup>28</sup>

Furthermore, on January 11, 1969, the preparatory committee for the formation of the Pepera Consultative Council (PPPDMP), consisting of Mayor General Brotosowoyo (BAKIN), Soedjarwo Tjondronegoro (Indonesian representative to the UN), Sarodjo Tajono (Paniai Regent), Drs. A. Soenarto (Paniai Social Affairs Chamber of Commerce and Industry and Chair of the Paniai Regional People's Representative Council II), Major L. Sitompul (Paniai Military District Commander), Drs. Abdulkadir (Indonesian Ministry of Foreign Affairs), and Police Captain Sakunto (Jayawijaya Deputy Commander) met in Enarotali, the capital of Paniai Regency, to hold a secret meeting to devise a strategy to replace and thwart the implementation of the Act of Self-Determination using the one-person-one-vote principle.<sup>48</sup>

At that time, the military was not only intimidating the population but also involved in organizing the implementation of the Act of Free Choice. For example, this can be seen from the secret letter from Commander 172, Colonel Blego Soemarto, No: R-24/1969, regarding: Securing the Pepera, dated May 8, 1969, addressed to the Regent of Merauke as a member of the Muspida of Merauke Regency. The contents of the letter include:

"If the poll requires the replacement of a DEMUS member, the replacement should be done well before the PEPERA DEBATE. If reasonable reasons for the replacement are not obtained, while on the other hand it is considered absolutely necessary for the member to be replaced because it will

<sup>48</sup> Pamungkas Cahyo and Indriasari Devi Tri, "Preventing Religious Conflict in Papua Land: Adopting Cultural Traditions of Peacebuilding," *Asian Journal of Peacebuilding* 9, no. 2 (November 30, 2021): 331-56, <https://doi.org/10.18588/202108.00a119>.

endanger the victory of Pepera, one must be brave enough to take an unreasonable risk to remove the member concerned from the Pepera trial before the DEMUS PEPERA trial begins. In another part of the letter, the Commander of Korem 172 instructed that the conclusion of my letter is that we must reflect on the Pepera, both reasonably, considering that the work area of the Commander of Korem 172 also includes Jayapura and Jayawijaya Regencies, so it is reasonable to suspect that secret letters with the same contents were also sent to other regencies.”

Since Papua's formal integration into Indonesia in 1969, governance in the region has often been characterized by limited participatory engagement with local communities. Historical records show that development planning and major political decisions have been largely centralized, with minimal structured consultation involving representatives of indigenous Papuans. Expressions of dissent or demands for greater political inclusion have often been framed within a security paradigm, contributing to a climate of mistrust between state institutions and segments of Papuan society. This pattern, according to some observers, reflects a broader historical continuity in which local voices have been marginalized during successive governments, including the late Dutch colonial period and the UNTEA transitional authority.

Notably, prior to the 1969 Law of Free Choice, Papua had well-established customary institutions capable of articulating social and political aspirations. Religious organizations, particularly Protestant and Catholic missions that had operated in the region since the nineteenth century, played a significant role in education, literacy, and community organization. By the mid-20th century, churches such as the Evangelical Christian Church (GKI), founded in 1956 under indigenous leadership, had developed extensive grassroots networks. These institutions arguably had a deeper engagement with local communities than external political actors, and they demonstrate the existence of organized Papuan leadership prior to integration. In addition to religious institutions, representative political structures also emerged during the final years of Dutch rule. The establishment of the Nieuw Guinea Raad in 1961 reflected a limited process of political institutionalization involving indigenous representatives. Although their scope of authority remained limited, the existence of these bodies indicates that Papuans were not entirely absent from political organizations before the New York Agreement. Nevertheless, the negotiations leading to the 1962 Agreement were conducted exclusively between the Netherlands and Indonesia under the auspices of the United Nations, with no formal Papuan representation in the treaty-making process.

From an international legal perspective, the Vienna Convention on the Law of Treaties does not explicitly require the participation of affected populations in interstate agreements. However, broader developments in international legal doctrine, particularly regarding self-determination, recognize the importance of meaningful participation for peoples whose political status is directly determined by treaties.<sup>49</sup> Historical precedents, including early 20th-century minority protection regimes and subsequent human rights instruments, demonstrate a growing recognition of individuals and collective groups as subjects of international concern. The expansion of international legal personality through human rights law and decolonization norms underscores the growing expectation that peoples should be involved in decisions regarding their political future.

Some scholars further argue that movements seeking self-determination may, under certain conditions, obtain limited recognition under international law, particularly in the context of decolonization or armed conflict. While classical treaty law traditionally recognized only states as primary subjects, 20th-century developments, including humanitarian law and the Genocide Convention, expanded the scope of legal protections afforded to individuals and groups. In this context, debate has arisen over whether Papuan representatives or organized bodies should be given a more formal consultative role during negotiations determining their political status. Therefore, the absence of direct Papuan representation in the New York Agreement negotiations remains a central issue in assessing its legitimacy.<sup>50</sup> Although the Treaty is valid as an interstate agreement, questions remain as to whether the exclusion of indigenous peoples' representatives undermines its normative foundation in relation to the principle of self-determination. This case illustrates the tension between

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<sup>49</sup> Druce, “Political Impasse vs Economic Development: A History and Analysis of the West Papua Conflict in Indonesia.”

<sup>50</sup> Abdul Hadi, “The Dynamics of Ethnonationalism and Conflict Resolution in Papua,” *MUHARRIK: Jurnal Dakwah Dan Sosial* 4, no. 02 (October 25, 2021): 267-82, <https://doi.org/10.37680/muharrrik.v4i02.1054>.

classical, state-centered treaty law and emerging doctrines that increasingly emphasize the participatory rights of peoples whose collective futures are determined by international agreements.

### **PEPERA as a Test of Treaty Compliance**

In accordance with Article 17 of the 1962 New York Agreement, the United Nations appointed a Special Representative, Fernando Ortiz-Sanz, to oversee the implementation of the Act of Free Choice. Although initial plans envisioned a larger UN mission, only a limited team was deployed to Papua in August 1968, reportedly due to budget constraints. The UN office operated until August 1969, during which time preparations for the consultation process were carried out under Indonesian administrative authority.

In the period before the Act of Free Choice, governance in Papua remained heavily influenced by security-oriented policies. Although a formal civil administrative structure existed, the military exercised significant control over political and social affairs. The establishment of the XVII/Cendrawasih Regional Military Command strengthened territorial authority, and a series of coordinated operations were carried out with the stated aim of ensuring stability prior to the consultation process.<sup>51</sup> Evidence from the historical record indicates that state-led mobilization efforts targeted local leaders and influential figures to secure support for integration with Indonesia. These strategies included political persuasion, organized meetings, and structured engagement with tribal representatives.

Reports from participants and observers indicate that efforts to influence members of the Consultative Assembly (Dewan Musyawarah Pepera) included material incentives and ongoing political guidance.<sup>52</sup> At the same time, reports also describe intimidation and security pressure directed at individuals who publicly advocated for alternative outcomes, including independence or the implementation of a universal suffrage model. Some Papuan political figures publicly demanded that the consultations follow the "one person, one vote" principle in line with international practice.<sup>53</sup> This call was not adopted; instead, the process proceeded through a representative deliberative mechanism involving 1,025 elected members. Public demonstrations took place in various regions, including Jayapura, Manokwari, Sorong, Biak, and Merauke, expressing opposition to the representative model and calling for a direct vote. The security response to these protests reportedly involved arrests and restrictions on political activity. Despite these tensions, the consultation sessions themselves were conducted under tight security measures and resulted in unanimous support for integration with Indonesia.

The United Nations Special Representative then submitted a report to the Secretary-General, and the United Nations General Assembly subsequently took note of the results. However, debate continues over whether the political environment before and during the Act of Free Choice provided conditions fully consistent with the guarantees articulated in Articles 18 and 22 of the New York Agreement, particularly regarding universal adult participation and the protection of civil liberties such as freedom of expression and assembly. From a legal perspective, the central issue concerns the distinction between procedural appropriateness and the substantive realization of self-determination.<sup>54</sup> Although Indonesia implemented a consultation mechanism within the timeframe and structure permitted by the Agreement, the combination of limited UN oversight capacity, a dominant military presence, and constraints on open political contestation have contributed to the ongoing controversy. The Act of Free Choice thus serves as a critical case study in assessing how international oversight, treaty ambiguity, and domestic security policy intersected in shaping the perceived legitimacy of the self-determination process.

The New York Agreement formally stipulated that the people of West Irian would be given the opportunity to exercise self-determination in accordance with international practice, including consultation with a representative council and a guarantee that all adults would have the right to

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<sup>51</sup> Simpson, "Indonesian Transmigration and the Crisis of Development, 1968-1985."

<sup>52</sup> Simpson.

<sup>53</sup> Scott MacWilliam, "Policy Advice and Decolonisation in Papua New Guinea," *Australian Journal of Politics & History* 70, no. 4 (December 12, 2024): 741-57, <https://doi.org/10.1111/ajph.12994>.

<sup>54</sup> Woodman, "The West Papuan Liberation Movement, Indonesian Settler Colonialism and Western Imperialism from an International Solidarity Perspective."

participate. The Agreement also mandated the continued presence of UN personnel to advise and assist in preparing the process before the transfer of authority to Indonesia. However, in practice, the implementation of these provisions was highly contentious. Several experienced UNTEA officials left before the plebiscite, limiting institutional continuity and local knowledge. Although the UN Representative, Fernando Ortiz-Sanz, proposed a hybrid system combining collective consultation in rural areas with direct voting in urban centers, Indonesian authorities retained primary control over the procedure and rejected any interpretation that would expand the UN's supervisory authority.<sup>55</sup>

Further tensions arose over the interpretation of the UN mandate. While the Agreement authorized the UN Representative "to advise, assist, and participate," Indonesian officials interpreted participation as merely observation rather than exercising substantive oversight. The UN mission was also restricted from directly responding to petitions filed by Papuan groups regarding the method of self-determination. During his tenure, Ortiz-Sanz reported receiving 179 petitions from various local councils and organizations, reflecting both pro-integration and pro-independence positions.<sup>56</sup> However, archival records indicate that the vast majority of these petitions expressed opposition to integration with Indonesia, raising questions about the representativeness of the final results.

In his official report to the UN General Assembly, Ortiz-Sanz acknowledged that some residents strongly supported independence, but concluded that the consultative assembly ultimately expressed unanimous support for remaining within Indonesia. He further stated that, despite geographical and political limitations, an act of free choice had occurred in accordance with Indonesian practice. This conclusion became the core of subsequent deliberations at the 24th session of the UN General Assembly in November 1969. Resolution 2504 (XXIV) ultimately "took note" of the report and results of the process, rather than explicitly endorsing or ratifying the plebiscite as fully in line with international standards on self-determination.

Critics argued that several structural flaws undermined the integrity of the process. These weaknesses include the absence of a one-person-one-vote mechanism, the appointment of members of the representative council rather than elections, the lack of clear procedural safeguards, and the dissolution of previous representative bodies such as the Nieuw Guinea Raad.<sup>57</sup> Furthermore, Indonesian administrative and military authority had been established in the territory for years before the plebiscite, raising concerns about political pressure and restrictions on freedom of expression.<sup>58</sup> Therefore, allegations of intimidation, restrictions on political space, and limited international oversight have underpinned ongoing debates about the legal and moral legitimacy of the Act of Free Choice.

From a broader geopolitical perspective, the Agreement reflects Cold War dynamics and strategic interests involving key international actors, including the United States, the Netherlands, Indonesia, and the United Nations. These geopolitical considerations shaped both the Agreement's negotiations and its implementation. For many Papuans, the integration process is seen not simply as a legal transfer of sovereignty, but as a politically driven arrangement insufficiently based on genuine popular consent. The persistence of the pro-independence movement and repeated allegations of human rights violations in the following decades demonstrate that the legacy of the 1969 process continues to influence political discourse and contestation in Papua today.

## Conclusion

This study has examined the legal and political dimensions surrounding the negotiation and implementation of the New York Agreement and the Act of Free Choice in 1969. Although the Agreement formally guaranteed the right of Papuans to determine their political future in accordance with international practice, its implementation revealed substantial tensions between normative commitments and procedural realities. The limited involvement of indigenous Papuan representatives in the negotiation phase, combined with the limited oversight role of the United Nations during

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<sup>55</sup> Jingoo Kang and Tuula Keinonen, "The Effect of Student-Centered Approaches on Students' Interest and Achievement in Science: Relevant Topic-Based, Open and Guided Inquiry-Based, and Discussion-Based Approaches," *Research in Science Education* 48, no. 4 (August 28, 2018): 865-85, <https://doi.org/10.1007/s11165-016-9590-2>.

<sup>56</sup> Druce, "Political Impasse vs Economic Development: A History and Analysis of the West Papua Conflict in Indonesia."

<sup>57</sup> Kusumaryati, "Adat Institutionalisation, the State and the Quest for Self-Determination in West Papua."

<sup>58</sup> Ploeg, "A Vocation, a Task!: Two New Contributions on Dutch New Guinea."

implementation, raises ongoing questions about the authenticity of the self-determination process. Empirical evidence drawn from archival records, official reports, and documented petitions indicates that public opinion in Papua at the time was not uniform and did not unequivocally support integration. Although the United Nations eventually acknowledged that a process had taken place, Resolution 2504 (XXIV) merely recorded the outcome rather than explicitly endorsing it as fully in line with the principles of democratic self-determination. Structural limitations, including the absence of a one-person-one-vote system, the appointment of representatives, and allegations of political pressure, continue to shape critical interpretations of the event.

From an international legal perspective, this case illustrates the tension between classical, state-centered treaty law and evolving norms that consider people's rights and participatory legitimacy. The Papuan experience demonstrates how geopolitical considerations during the Cold War influenced the decolonization process, sometimes prioritizing strategic stability over procedural inclusiveness. Consequently, the legitimacy of the 1969 process remains contested in both academic and political discourse. Ultimately, the ongoing contestation surrounding Papua underscores the importance of meaningful participation, transparency, and international accountability in any self-determination process. Sustainable political integration requires not only formal legal instruments but also substantive recognition of the aspirations and participation of affected communities. Unresolved narratives and ongoing demands for political justice demonstrate that the 1969 historical settlement remains a crucial and sensitive issue in contemporary discussions about governance, human rights, and self-determination in Papua.

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