



Australian Treaty Series

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Australian Treaty Series 1994 No 30

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

Agreement between Papua New Guinea and Fiji, Tonga, Solomon Islands, Vanuatu, Australia and New Zealand, concerning the Status of Elements of the Defence Forces of those Countries Deployed in the North Solomons Province of Papua New Guinea as part of the South Pacific Peacekeeping Force

(Suva, 28 September 1994)

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AGREEMENT BETWEEN PAPUA NEW GUINEA AND FIJI, TONGA, SOLOMON ISLANDS, VANUATU, AUSTRALIA AND NEW ZEALAND, CONCERNING THE STATUS OF ELEMENTS OF THE DEFENCE FORCES OF THOSE COUNTRIES DEPLOYED IN THE NORTH SOLOMONS PROVINCE OF PAPUA NEW GUINEA AS PART OF THE SOUTH PACIFIC PEACEKEEPING FORCE

PAPUA NEW GUINEA, FIJI, TONGA, SOLOMON ISLANDS, VANUATU, AUSTRALIA AND NEW ZEALAND:

RECOGNIZING the need for cooperation between countries in the South Pacific;

NOTING that on 8 September 1994 Papua New Guinea entered into a Ceasefire Agreement with the Bougainville Revolutionary Army and the organisation known as the Bougainville Interim Government after five years of fighting in Bougainville, North Solomons Province of Papua New Guinea;

NOTING FURTHER that the said Ceasefire Agreement provides for a Bougainville Peace Conference to take place at Arawa and for other activities in support of the ceasefire to occur in other agreed places in the said North Solomons Province;

NOTING FURTHER that the Conference is to commence on or about 10 October 1994;

ACKNOWLEDGING the need to establish a secure and neutral environment at the said Conference site and other agreed places;

NOTING the request of Papua New Guinea for Fiji, Tonga, Vanuatu, Australia and New Zealand to contribute to the establishment of a neutral South Pacific Regional Peacekeeping Force to provide a neutral environment and security for the peace process; and

DESIRING to set out in writing the terms of the agreed conditions for contributions to the South Pacific Regional Peacekeeping Force;

HAVE AGREED as follows:

Article 1

Definitions

(a) "Force" means the South Pacific Regional Peacekeeping Forces comprised of defence and civilian personnel contributed by Fiji, Tonga, Vanuatu, Australia and New Zealand pursuant to this Agreement.

(b) "The Commander" means the Commander of the Force and other authorities of the Force designated by him.

(c) "Papua New Guinea Authorities" includes all national and local, civil and military authorities called upon to perform functions under the provisions of the Agreement.

(d) "Papua New Guinea Citizen" includes a person of Papua New Guinea citizenship and a person resident or present in the territory of Papua New Guinea other than one associated with the Force.

(e) "Area of Operations" includes all areas throughout the territory of Papua New Guinea where the Force is deployed in the performance of its functions, military installations or other premises and lines of communication and supply utilised by the Force and includes any other area in any of the participating States where elements of the Force are concentrated for the purposes of this Agreement.

(f) "Participating State" means and includes, individually, any one of Fiji, Tonga, Solomon Islands, Vanuatu, Australia or New Zealand.

(g) "Participating States" includes and means, collectively, Fiji, Tonga, Solomon Islands, Vanuatu, Australia and New Zealand.

Article 2

Standing Committee

There shall be a Standing Committee comprising one representative each of the participating States, which shall be available for any necessary mediation and consultation by the Commander and the participating State.

The Standing Committee shall have no involvement in the command of the Force or the tactical or strategic or personnel deployment decisions made by the Commander.

Article 3

Application of the present Agreement

Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by Papua New Guinea or any privilege, immunity, facility or concession granted to the Force or any member thereof

apply in the area of operations only.

Article 4

Establishment of the South Pacific Peacekeeping Force

The Participating States shall establish the Force. The Force shall perform the following tasks:

1. secure the Conference site identified in the Ceasefire Agreement;
2. secure and protect the delegates to the Bougainville Peace Conference;
3. any other tasks as requested by the parties to the Ceasefire Agreement with the approval of the Participating States subject to the approval of the Participating State taking part in the task.

Article 5

Contribution

Papua New Guinea will be responsible for the funding of the operation except as agreed bilaterally with the participating State.

Article 6

Command and control

During the period of their assignment to the Force, the personnel made available by the Participating States shall remain in their national service but shall be under the operational control of the Commander. Operational Control shall be exercised through the Senior National Officer appointed by each of the Participating States. The Commander shall have full authority over the deployment, organisation, conduct and direction of the Force. The chain of command is as set out in the Schedule.

Article 7

Entry into and exit from Papua New Guinea and Australia

1. Members of the Force shall be exempt from passport and visa laws and orders and immigration inspection and restrictions on entering or departing from Papua New Guinea territory and Australia. They shall also be exempt from any laws and orders governing the residence of aliens in Papua New Guinea and Australia, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in the territory of Papua New Guinea and Australia. For the purpose of such entry or departure members of the Force will be required to have only:

(a) an individual or collective movement order issued by the Commander of the Defence Force of their respective Participating State; and

(b) a personal identity card issued by the appropriate military authority of their respective participating State.

2. Members of the Force may be required to present but not to surrender their personal identity cards upon demand of an appropriate Papua New Guinea authority. Except as provided in paragraph 1 of this Article the identity card will be the only document required for a member of the Force.

3. If a member of the Force leaves the service of his respective Participating State while in Papua New Guinea and is not repatriated, the senior military officer from that State shall immediately inform the Papua New Guinea authorities, giving such particulars as may be required. The senior military officer of each participating State shall similarly inform the Papua New Guinea authorities of any member of the Force belonging to his State who has absented himself for more than twenty-one days. If an expulsion order against an ex-member of the Force has been made, the senior

military officer of his participating State shall be responsible for ensuring that the person concerned shall be returned to and received into his participating State.

Article 8

Respect for local law

Members of the Force shall respect the laws and orders of Papua New Guinea and shall refrain from any activity of a political character in Papua New Guinea and from any action incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present Agreement.

Article 9

Jurisdiction

1. The following arrangements respecting criminal and civil jurisdiction are made having regard to the special functions of the Force and not for the personal benefit of the members of the Force.
2. Members of the Force shall be subject to the exclusive jurisdiction of their respective participating State in respect of any criminal offences which may be committed by them in Papua New Guinea. Participating States undertake, where appropriate and where national law permits, to commence criminal proceedings in respect of any such offences.
3. Members of the Force shall not be subject to the civil jurisdiction of Papua New Guinea courts or to other legal process in any matter relating to their official duties.
4. In those cases where civil jurisdiction is exercised by Papua New Guinea courts with respect to members of the Force, the Papua New Guinea courts and authorities shall grant members of the Force sufficient opportunity to safeguard their right. If the Commander certifies that a member of the Force is unable because of official duties or authorized absence to protect his interests in a civil proceeding in which he is a participant, the Papua New Guinea court or authority shall at his request suspend the proceeding until the elimination of the disability, but for not more than ninety days. Property of a member of the Force which is certified by the Commander to be needed by him for the fulfillment of his official duties shall be free from seizure for the satisfaction of a judgment, decision or order together with other property not subject thereto under Papua New Guinea law. The personal liberty of a member of the Force shall not be restricted by a Papua New Guinea court or authority in a civil proceeding, whether to enforce a judgment, decision or order, to compel an oath of disclosure, or for any other reason.
5. If any civil proceeding is instituted against a member of the Force before any Papua New Guinea court having jurisdiction, notification shall be given to the Commander. The Commander shall certify to the court whether or not the proceeding is related to the official duties of such member.

Article 10

Military Police: arrest, transfer of custody and mutual assistance

1. Responsibility for disciplinary action with respect to military personnel made available by each Participating State shall rest with the military authorities of that State. However, the Commander shall take all appropriate measures to ensure maintenance of discipline and good order among members of the Force. To this end Military Police designated by the Commander shall police the premises referred to in Article 11 of this Agreement and such area where the Force is deployed in the performance of its functions. Elsewhere such Military Police shall be employed only subject to arrangements with the Papua New Guinea authorities and in liaison with them and in so far as such employment is necessary to maintain discipline and order among members of the Force. For the purpose of this paragraph the Military Police of the Force shall have the power of arrest over members of the Force.
2. Military Police of the Force may take into custody any person on the premises referred to in Article 11 who is subject to Papua New Guinea criminal jurisdiction, without subjecting him to the ordinary routine of arrest, in order

immediately to deliver him to the nearest appropriate Papua New Guinea authorities:

(a) when so requested by the Papua New Guinea authorities; or

(b) for the purpose of dealing with any offence or disturbance on the premises.

3. The Papua New Guinea authorities may take into custody any member of the Force, without subjecting him to the ordinary routine of arrest in order immediately to deliver him, together with any weapons or items seized, to the nearest appropriate authorities of the Force:

(a) when so requested by the Commander; or

(b) in cases in which the Military Police of the Force are unable to act with the necessary promptness when a member of the Force is apprehended in the commission or attempted commission of a criminal offence that results or might result in serious injury to persons or property, or serious impairment of other legally protected rights.

4. When a person is taken into custody under (b) of paragraphs 2 and 3, the Commander or Papua New Guinea authorities, as the case may be, may make a preliminary interrogation but may not delay the transfer of custody. Following the transfer of custody the persons concerned shall be made available upon request for further interrogation.

5. The Commander and the Papua New Guinea authorities shall assist each other in the carrying out of all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses, and in the collection and production of evidence, including the seizure of and, in proper cases and where practicable, the delivery of items constituting evidence of an offence. The delivery of any such items may be made subject to their return within the time specified by the authority delivering them. Each shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraph 2 and 3 of these arrangements.

6. The Government of Papua New Guinea will ensure the prosecution of persons subject to its criminal jurisdiction who are accused of acts in relation to the Force or its members which, if committed in relation to the Papua New Guinea Forces or their members, would have rendered them liable to prosecution. The authorities of the Force will take the measures within their power with respect to crimes or offences committed against Papua New Guinea citizens by members of the Force.

Article 11

Premises of the Force

Papua New Guinea shall provide, in agreement with the Commander, such areas for headquarters, camps, training areas, or other premises as may be necessary for the accommodation and the fulfilment of functions of the Force. Without prejudice to the fact that all such premises remain Papua New Guinea territory, they shall be inviolable and subject to the exclusive control and authority of the Commander, who alone may consent to the entry of officials to perform duties on such premises.

Article 12

National flag

Papua New Guinea recognizes the right of each Participating State to display within Papua New Guinea territory its own national flag on headquarters, camps, training areas, posts or other premises, vehicles, vessels and otherwise as decided by the Commander. Other flags or pennants may be displayed in accordance with conditions prescribed by the Commander.

Article 13

Uniform and carriage of arms

1. Members of the Force shall normally wear, while performing their official duties, their national military uniform or such variation thereof as is authorized by the senior officer from their respective Participating State present together with such distinctive items of uniform as shall be prescribed by the Commander. The conditions on which the wearing of civilian dress is authorized shall be notified by the Commander to the Papua New Guinea authorities and sympathetic consideration will be given to the observations or requests of the Papua New Guinea authorities concerning this matter.
2. Members of the Force may possess and carry arms in accordance with their orders.

Article 14

Vessel, vehicle and aircraft markings

Service vehicles, vessels and aircraft provided and used by the Force shall retain and carry their respective national markings and licences which shall be notified by the Commander to the Papua New Guinea authorities.

Article 15

Registration and licensing

Vehicles, vessels and aircraft provided and used by the Force shall not be subject to registration and licensing under the laws and orders of Papua New Guinea. Papua New Guinea authorities shall accept as valid, without a test or fee, a permit or licence for the operation of service vehicles, vessels, and aircraft issued by the participating State to which they belong.

Article 16

Privileges of the Force

Papua New Guinea recognizes the right of the Force:

- (a) to import, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of the Force or for resale in the commissaries provided for hereinafter;
- (b) to establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of the members of the Force, but not of locally recruited personnel. Such commissaries may provide goods of a consumable nature and other articles to be specified in advance. The Commander shall take all necessary measures to prevent abuse of such commissaries and the sale or resale of such goods to persons other than members of the Force, and he shall give sympathetic consideration to observations or requests of Papua New Guinea concerning the operation of the commissaries;
- (c) to clear ex customs and excise warehouse, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of the Force or for resale in the commissaries provided for above;
- (d) to re-export or otherwise dispose of such equipment, as far as it is still usable, all unconsumed provisions, supplies and other goods so imported or cleared ex customs and excise warehouse which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon, to the competent local authorities of Papua New Guinea or to an entity nominated by them.

To the end that such importation, clearances, transfer or exportation may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed between the Force and Papua New Guinea at the earliest possible date.

Article 17

Taxation and revenue matters

1. Members of the Force shall be exempt from taxation on the pay and emoluments received from their respective Participating States. They shall also be exempt from all other direct taxes, fees and charges.
2. Members of the Force shall have the right to import free of duty their personal effects in connection with their first arrival in Papua New Guinea. They shall be subject to the Papua New Guinea laws and orders governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Papua New Guinea with the Force. Special facilities for entry or exit shall be granted by the Papua New Guinea immigration, customs and fiscal authorities to regularly constituted units of the Force provided that the authorities concerned have been duly notified sufficiently in advance. Members of the Force on departure from Papua New Guinea may, notwithstanding any foreign exchange laws and orders, take with them such funds as the appropriate Pay Officer of the Force certifies were received in pay and emoluments from Papua New Guinea and are a reasonable residue thereof.
3. The Commander will co-operate with customs and fiscal authorities of Papua New Guinea and will render all assistance within his power in ensuring the observance of the customs and fiscal laws and orders of Papua New Guinea by the members of the Force in accordance with these or any relevant supplemental arrangements.

Article 18

Communications and postal services

1. The Commander shall have authority to install and operate a radio sending and receiving station or stations to make direct contact with the Participating States. The right of the Commander is likewise recognized to enjoy the priorities of government telegrams and telephone calls.
2. The Force shall enjoy, within its area of operations, the right of unrestricted communication by radio, telephone, telegraph or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of the Force, including the laying of cables and land lines and the establishment of fixed and mobile radio sending and receiving stations. It is understood that the telegraph and telephone cables and lines herein referred to will be situated within or directly between the premises of the Force and the area of operations, and that connection with the Papua New Guinea system of telegraphs and telephones will be made in accordance with arrangements with the appropriate Papua New Guinea authorities.
3. Papua New Guinea recognizes the right of the Force to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of the Force. Papua New Guinea will be informed of the nature of such arrangements. No interference shall take place with, and no censorship shall be applied to, the mail of the Force by Papua New Guinea. In the event postal arrangements applying to private mail of members of the Force are extended to operations involving transfer of currency, or transport of packages or parcels from Papua New Guinea, the conditions under which such operations shall be conducted in Papua New Guinea will be agreed upon between Papua New Guinea and the Commander.

Article 19

Freedom of movement

The Force and its members together with its service vehicles, vessels, aircraft and equipment shall enjoy freedom of movement throughout Papua New Guinea. Wherever possible the Commander will consult with Papua New Guinea with respect to large movements of personnel, stores or vehicles on roads used for general traffic. Papua New Guinea will supply the Force with maps and other information, including locations of dangers and impediments, which may be useful in facilitating its movements.

Article 20

Use of roads, waterways, port facilities and airfields

The Force shall have the right to the use of roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges either by way of registration or otherwise, throughout Papua New Guinea.

Article 21

Water, electricity and other public utilities

The Force shall have the right to the use of water, electricity and other public utilities free of charge. The Papua New Guinea authorities will, upon the request of the Commander, assist the Force in obtaining water, electricity and other utilities required, and in the case of interruption or threatened interruption of services will give the same priority to the needs of the Force as to essential Government services. The Force shall have the right where necessary to generate electricity for the use of the Force and to transmit and distribute such electricity as required by the Force.

Article 22

Papua New Guinea currency

Papua New Guinea will, if requested by the Commander, make available to the Force, against reimbursement in a mutually acceptable currency, Papua New Guinea currency required for the use of the Force, at the rate of exchange most favourable to the Force that is officially recognized by Papua New Guinea.

Article 23

Provisions, supplies and services

1. Papua New Guinea authorities will, upon the request of the Commander assist the Force in obtaining equipment, provisions, supplies and other goods and services required from local sources for its subsistence and operation. Sympathetic consideration will be given by the Commander in purchases on the local market to requests or observations of Papua New Guinea authorities in order to avoid any adverse effect on the local economy. Members of the Force may purchase locally goods necessary for their own consumption, and such services as they need, under conditions not less favourable than for Papua New Guinea citizens. The Commander and the appropriate local authorities will co-operate with respect to sanitary services. The Commander and the Papua New Guinea authorities shall extend to each other the fullest cooperation in matters concerning health, particularly with respect to the control of communicable diseases in accordance with international conventions; such co-operation shall extend to the exchange of relevant information and statistics.

2. If members of the Force should require medical or dental facilities beyond those available within the Force, Papua New Guinea shall provide such facilities. If members of the Force should require medical or dental facilities beyond those available in Bougainville they shall be evacuated by air to Australia for treatment as soon as reasonably possible as part of the logistic support plan. Any costs of such evacuation and treatment not otherwise covered shall be borne in accordance with any provisions in the Bilateral Agreement between Papua New Guinea and the Participating State concerned.

Article 24

Locally employed personnel

The Force may employ locally such personnel as required. The terms and conditions of employment for locally employed personnel shall be prescribed by the Commander and shall generally, to the extent practicable, follow the practice prevailing in the locality.

Article 25

Liaison

The Commander and the Papua New Guinea authorities shall take appropriate measures to ensure close and reciprocal liaison.

Article 26

Deceased members: disposition of personal property

The Commander, in consultation with the appointed Senior National Officer of the relevant Participating State, have the right to take and retain immediate charge of and dispose of the body of a member of the Force who dies in Papua New Guinea territory, and may dispose of his personal property after the debts of the deceased person incurred in Papua New Guinea territory owing to Papua New Guinea citizens have been settled.

Article 27

Compensation for death, injury or illness

Papua New Guinea shall pay compensation for death, injury or illness of members of the Force in accordance with Bilateral Agreements with each Participating State.

Article 28

Claims

Members of the Force and Participating States will be indemnified by Papua New Guinea in respect of all sums payable by the Member of the Force or the Participating State resulting from the imposition or award of fines, costs or damages in civil proceedings, or sums paid in reasonable settlement of such claims, arising out of acts or omissions occurring during the performance of official duty.

Article 29

Supplemental arrangements

Supplemental details for the carrying out of this Agreement shall be made as required between the Government of Papua New Guinea and the Governments of the Participating States.

Article 30

Consultations

Any matter arising under this Agreement with respect to its interpretation, application or implementation shall be settled by consultation or negotiation between Papua New Guinea and the Participating States.

Article 31

Variation and suspension

The Governments may agree at the instance of Papua New Guinea or any of the Participating States to a variation or suspension, on reasonable notice, of this Agreement or a part or parts thereof.

Article 32

Entry into force and duration

1. This Agreement shall enter into force on the date of the signature of the last of the parties and shall remain in force

for a period of 45 days from that date unless extended by prior Agreement. [1] Provided that all liabilities, rights and obligations arising out of the Agreement, and any immunity relating to actions taking place during the period of the Agreement, shall survive its expiry.

2. This Agreement shall prevail over any existing Status of Forces Agreement as between any of the Participating States and Papua New Guinea to the extent necessary to give effect to this Agreement.

IN WITNESS WHEREOF the undersigned acting with due authority have signed this Agreement.

THIS 28th day of September, One thousand nine hundred and ninety-four.

[Signatures not reproduced here.]

SCHEDULE

C² - OP LAGOON

STANDING		COMBINED FORCE COMD (AFLOAT) (CFC)	PNG GOVT			
COMMITTEE		CHIEF OF OPERATIONS (ASHORE/AFLOAT) (TONGA)	BRA			
FIELD COMD SPPKF (FIJI)		SPT COMD (AUS/NZ)				
FIJI	TONGA	VANUATU	NAVY	AIR	LOG	TRG
NATIONAL REAR LINK						