

NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

SUMMARY PAGE

Protocol, done at Sydney on 30 June 2003, concerning the Bougainville Transition Team made pursuant to the Agreement, done at Port Moresby on 5 December 1997, between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville, as amended by the Protocol, done at Port Moresby on 29 April 1998 [2003] ATS 15

Date of Tabling of Proposed Treaty Action

1. 12 August 2003.

Nature and Timing of Proposed Treaty Action

2. The Protocol entered into force for Australia on 30 June 2003 without the usual 20 tabling days.
3. The Minister for Foreign Affairs wrote to the Chair of the Joint Standing Committee on Treaties prior to signing, advising her of the urgent need for the treaty to be in force for Australia to enable Australian members of the Bougainville Transition Team (BTT) to deploy on 30 June 2003.
4. The Protocol [2003] ATS 15 was signed for Australia, New Zealand and Papua New Guinea (PNG) in Sydney on 30 June 2003. It entered into force between Australia and PNG on 30 June 2003 (Article 5.2). Vanuatu and Fiji are yet to sign the Protocol.
5. This Protocol amends the original Agreement between the Parties [1997] ATS 30, as amended by a Protocol dated 29 April 1998 [1998] ATS 12.

Overview and National Interest Summary

6. The Bougainville conflict was one of the most serious and damaging conflicts to have taken place in the South Pacific region since the Second World War. Australia has been a strong and consistent supporter of the peace process in that province of PNG, having led the regional Peace Monitoring Group (PMG) since its deployment in 1998. The decision to withdraw the PMG reflects provisions of the *Bougainville Peace Agreement*, and progress made to date in its implementation. The decision to deploy the BTT follows requests from the PNG Government and Bougainvillean leaders for a continued regional presence on Bougainville.
7. The success of the PMG, and the decision to deploy the BTT, demonstrates Australia's ongoing commitment to peace on Bougainville, and the continued capacity of the South Pacific community to work together to meet challenges to peace and security in the region.

Reasons for Australia to Take the Proposed Treaty Action

8. In October 1997, the parties to the nine year Bougainville conflict signed a truce agreement at Burnham Military Camp, New Zealand ('the Burnham Truce'). PNG and other signatories to the Burnham Truce requested that States in the South Pacific region contribute to a neutral Truce Monitoring Group (TMG) for Bougainville. Australia undertook to contribute civilian and military personnel and logistics support to the TMG. New Zealand, Fiji and Vanuatu also provided personnel to the TMG.
9. The Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville, done at Port Moresby on 5 December 1997 ('the Agreement'), was necessary to provide a legal framework for the activities of the TMG and the participation of personnel in the TMG. The Agreement was due to expire upon the withdrawal of the TMG.
10. In January 1998 parties to the conflict met again at Lincoln University in Christchurch, New Zealand. The Lincoln Agreement on Peace, Security and Development on Bougainville ('the Lincoln Agreement') was signed by all factional representatives at this meeting. The Lincoln Agreement provided for an extension of the truce until 30 April 1998, when a 'permanent and irrevocable' ceasefire would take effect. Australia agreed to extend its participation in the TMG until that date.
11. Following the provisions of the Lincoln Agreement, the PNG Government invited States participating in the TMG to constitute a new Peace Monitoring Group (PMG), to monitor the ceasefire on the ground. The Parties to the Agreement decided new treaty action was necessary to ensure the legal basis and protections afforded to the TMG by the Agreement were extended to the PMG. The legal basis and protections were extended to the PMG by a Protocol, done at Port Moresby on 29 April 1998, which amended the Agreement accordingly ('the Agreement, as amended').
12. The unarmed PMG promoted stability and helped build and maintain confidence in the peace process. It oversaw the negotiation and signing in August 2001 of the *Bougainville Peace Agreement*, a comprehensive settlement which included provisions for weapons disposal, autonomy and a referendum on the province's future. Under Article 330(c) of that agreement the parties to the peace process agreed that the PMG should withdraw around the middle of, and not later than the end of, 2002.
13. Since the signing of the *Bougainville Peace Agreement*, much has been achieved in its implementation: the PNG Parliament has passed laws to amend the PNG Constitution in order to implement the peace agreement; over 1900 weapons have been registered, with more than 90 per cent of them now contained under United Nations supervision; an agreement has been reached on amnesty and pardon; the PNG Defence Force has completely withdrawn from Bougainville; and a draft Bougainville Constitution has been prepared.
14. Following requests from the PNG Government, Australia agreed to maintain the PMG beyond the end of 2002. Assessing the peace process to be sufficiently robust to warrant the withdrawal of its military contingent, Australia announced in February 2003 that its PMG contingent would cease operations on 30 June 2003, and withdraw shortly afterwards. This decision was supported by a similar announcement from New Zealand.

15. As 30 June drew closer, the PNG Government and Bougainvillean leaders requested a continued regional presence on Bougainville beyond the PMG. In consultation with PNG, and other PMG contributing countries, Australia decided to establish a small and unarmed civilian team to succeed the PMG. The BTT began operations on 1 July 2003. It will assist Bougainvilleans in their transition from a peace process towards autonomous government. It will work closely with United Nations observers and representatives of each of the parties to the *Bougainville Peace Agreement*. It will remain in place at least until the withdrawal of United Nations observers at the end of 2003.

16. The Protocol seeks to provide the same legal protection to members of the BTT as is currently provided to members of the PMG, while seeking to retain coverage of members of the PMG until they withdraw around mid-August 2003. It was necessary to finalise the Protocol and for it to enter into force as soon as possible to provide a legal basis for the activities of members of the BTT, which was deployed at very short notice to ensure a continuity of presence beyond the PMG. It creates the Bougainville Transition Team and provides for the phasing out of the Peace Monitoring Group created in the original Agreement, as amended.

Obligations

17. The Protocol requires the Parties, including Australia, to:

- establish the BTT ('the Group') (Article 1.5);
- maintain any military members of the Group under national command but permit the Team Leader ('the Commander') to have operational control over such members (Article 1.6);
- ensure that its members of the Group carry a valid passport during the period of their deployment to the Area of Operations (Article 1.7);
- allow the Commander to take all appropriate measures to ensure maintenance of discipline and good order among members of the Group (Article 1.8);
- ensure that its members normally wear distinctive items of uniform, as prescribed by the Commander, when performing official duties (Article 1.9);
- agree that the Agreement, as amended, continues to apply to the PMG until its withdrawal from the Area of Operations (Article 2.3);
- agree to settle any matter arising under the Protocol by consultation or negotiation among the Parties (Article 3.1);
- designate a point of contact in Papua New Guinea to facilitate liaison and urgent consultations between the Parties (Article 3.2);
- continue to offer their good offices in supporting the achievement and maintenance of peace in Bougainville (Article 4); and

- notify other signatories to the Agreement, as amended, of the completion of the constitutional formalities required by its laws for the entry into force of the Protocol (Article 5.2).

18. As the Protocol is to be read together with the Agreement, as amended, some obligations from the Agreement, as amended, continue to apply to the Parties, including Australia, to:

- fund its own participation in the Group (Article 6, outlined below);
- require members of the Group to respect local laws and maintain strict neutrality (Article 9);
- commence criminal or disciplinary proceedings, in respect of offences committed by personnel contributed to the BTT by that Party, where appropriate and where national law permits (Article 10.2) – Parties have exclusive jurisdiction over their own members in respect of such offences;
- retain and carry national markings and licences for vehicles, vessels and aircraft provided and used by the Group (Article 13.3);
- allow the Commander to take charge of and dispose of the body of a member of the Group who dies in PNG territory (Article 23);
- waive certain property damage, maritime salvage and personal injury claims against other Parties and participating States arising out of acts or omissions of monitors in the performance of their official duties (Article 24.2); and
- settle third party claims in accordance with PNG law and meet the cost of claims in accordance with an agreed distribution formula which varies according to whether sole or joint liability can be attributed or not – in the case of joint liability or an inability to attribute specific liability, the cost of the claims is to be borne equally between relevant States – subject always to a best endeavours commitment from PNG to reimburse at least 25 per cent of the cost of meeting claims, if so requested (Article 24.4).

Implementation

19. No legislation is required to implement Australia's obligations. All relevant activities in pursuit of the BTT mandate take place within the Area of Operations, which is defined as the territory of PNG. Article 25 of the Agreement makes provision for supplemental details for carrying out the Agreement as amended by the 1998 Protocol to be made, as required, between the Governments of PNG and other Participating States.

20. No State or Territory action was or is required in relation to the BTT.

Costs

21. Article 6 of the Agreement, as amended, establishes that each Participating State shall be responsible for the funding of its own participation in the BTT. Australia will fund its participation following regular budgetary processes.

22. Other provisions of the Agreement, as amended, exempt Participating States and BTT members from PNG taxes, fees and charges (Article 17) and from payments and charges in relation to various facilities and public utilities (Articles 20 and 21).

Consultation

23. To ensure maximum continuity of presence following the cessation of PMG operations, the BTT needed to be deployed as soon as possible. It was, therefore, necessary to rapidly finalise the Protocol and for it to enter into force as soon as possible in order to provide a legal basis for the activities of members of the BTT.

24. The Protocol was notified to the States and Territories through the Commonwealth-State/Territory Standing Committee on Treaties process, as set out in the consultation annexure.

Regulation Impact Statement

25. The Office of Regulation Review [Productivity Commission] has been consulted and confirms that a Regulation Impact Statement is not required.

Future Treaty Action

26. Article 28 of the Agreement provides for its variation or suspension by agreement and on reasonable notice. Article 29.3 of the Agreement, as amended, provides that the Agreement, as amended, will expire on the withdrawal of the Group from the Area of Operations.

27. Article 2.3 of the Protocol confirms that the Agreement will apply to the PMG until its withdrawal from the Area of Operations. Article 2.4 confirms that the Protocol will apply to members of the BTT from the date of its deployment.

Withdrawal or Denunciation

28. Article 29.3 of the Agreement, as amended, confirms that the Agreement will expire on the withdrawal of the Group from the Area of Operations.

29. Article 29.4 confirms that expiry will not affect any liabilities, rights, obligations or immunities arising from actions that took place during the period of the Agreement.

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