

## **Contribution of the Truce and Peace Monitoring Groups**

- 5.1 Since being deployed to Bougainville in December 1997, the Truce Monitoring Group (TMG), and from 30 April 1998 the Peace Monitoring Group (PMG), played a crucial role in facilitating the peace process.<sup>1</sup> The presence of the TMG / PMG has helped build a sense of confidence in Bougainville that has allowed peace negotiations to take place between the parties, and prevented any further major outbreaks of violence.

### **TMG Agreement: December 1997**

- 5.2 The truce agreement signed at Burnham military camp, New Zealand (the Burnham Truce) in October 1997 called for a neutral regional group to monitor the terms of the truce. A subsequent meeting took place in Cairns between the PNG Government and the Bougainville parties in November 1997, to make preparations for the TMG to be established in Bougainville.<sup>2</sup>
- 5.3 The next step was a formal agreement, which was signed at Port Moresby on 5 December 1997, by PNG, New Zealand, Australia, Fiji and Vanuatu, providing a legal framework for the activities of the members of the TMG. The mandate of the TMG was to:
- monitor and report on the compliance of the parties with the terms of the Burnham Truce;
  - promote and instil confidence in the peace process; and

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1 DFAT, Submission, p. 495.

2 *The Cairns Commitment on Implementation of the Agreement Concerning the Neutral Regional Truce Monitoring Group*, 18-24 November 1997.

- provide the people on [in] Bougainville with information on the truce and peace process.<sup>3</sup>

5.4 The first TMG was deployed in Bougainville on 6 December 1997. Bases at Arawa and Buka were the first to be established, with those at Buin and Tonu operating later. The TMG's strength of approximately 250 personnel was led by a New Zealand Defence Force (NZDF) Brigadier and was predominantly military in composition. The NZDF provided 120 personnel, and Fiji and Vanuatu around 20 military personnel. Australia provided between 90 and 110 personnel over the period from December 1997 to March 1998, with 15 to 20 of these participants being civilians. The Deputy Commander of the TMG was an Australian civilian, Mr James Batley from DFAT.

## **PMG Agreement: 29 April 1998**

- 5.5 The Lincoln Agreement signed in Christchurch on 23 January 1998 extended the truce period on Bougainville until the 'permanent and irrevocable ceasefire' took effect from midnight on 30 April 1998 and established the Peace Monitoring Group (PMG) to replace the TMG.<sup>4</sup>
- 5.6 Annex 1 to the Lincoln Agreement (the Arawa Agreement of 30 April 1998) proclaimed the implementation of the ceasefire and agreed that the PNG Government would invite Australia, Fiji, New Zealand, Vanuatu and other countries in the region to participate in the neutral PMG. Australia accepted the PNG Government's invitation to assume responsibility for the leadership of the PMG.
- 5.7 The *Agreement between Papua New Guinea, Australia, Fiji, New Zealand and Vanuatu Concerning the Neutral Truce Monitoring Group for Bougainville* was amended pm 29 April 1998 by a Protocol to take into account the progression from truce to ceasefire and the replacement of the TMG with the PMG, effective from 1 May 1998.<sup>5</sup>
- 5.8 The mandate of the PMG is to:
- monitor and report on compliance with all aspects of the ceasefire;
  - promote and instil confidence in the peace process through its presence, good offices and interaction with people in Bougainville;

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3 *Agreement between Papua New Guinea, Australia, Fiji, New Zealand and Vanuatu Concerning the Neutral Truce Monitoring Group for Bougainville*, Article 5.

4 See Appendix G, articles 3 and 4.

5 DFAT, Submission, p. 496.

- provide such assistance in implementation of the Lincoln Agreement as the parties to the Lincoln Agreement and the states contributing to the Peace Monitoring Group may agree and available resources allow; and
  - cooperate by agreement in ways that assist in democratic resolution of the situation.<sup>6</sup>
- 5.9 The parties also agreed that a United Nations observer mission (UNOM) would work in conjunction with the PMG in order to monitor and report on implementation of the ceasefire.
- 5.10 The Commander of the PMG is currently Brigadier Simon Willis from the ADF, appointed on 24 March 1999. The Chief Negotiator for the PMG is currently Mr Percy Stanley from AusAID, to be replaced on 20 August by Mr John Michell, a DFAT officer.
- 5.11 As at 25 January 1999, the PMG consisted of 301 unarmed personnel, including 245 from Australia (17 civilian and 228 ADF personnel) 29 from New Zealand, 12 from Fiji and 15 from Vanuatu.<sup>7</sup> The group includes representatives from all three armed services, as well as government officials and aid agency personnel. There are around 90 peace monitors and approximately 200 support personnel. The Australian civilian monitors are drawn from DFAT, the Department of Defence (Defence), the Australian Federal Police and aid agencies including AusAID and the Overseas Service Bureau.
- 5.12 The organisation of the PMG, and location of its team sites in Bougainville, are shown in Appendix I.

## Australia's contribution to the TMG/PMG.

- 5.13 Australia is bearing the majority of the cost of the PMG operation, contributing the largest numbers of personnel. New Zealand meets the costs of its own participation as well as the costs for the small Fijian and Ni-Vanuatu contingents. Since May 1998, when Australia assumed command and took over a number of logistical functions from New Zealand, to the end of December 1998, Australia's estimated costs were around \$17 million in ADF additional costs (not including Defence personnel salaries) for which Defence has not received supplementation. The Committee remains of the view that, as indicated in the Committee

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6 *Protocol done at Port Moresby on 29 April 1998 Concerning the Peace Monitoring Group made Pursuant to the Agreement Between Papua New Guinea, Australia, Fiji, New Zealand and Vanuatu Concerning the Neutral Truce Monitoring Group for Bougainville of 5 December 1997, Article 4.*

7 DFAT, Submission, p. 495.

delegation's report of 31 March 1999, Defence should receive the customary supplementation for this activity.<sup>8</sup>

## **Recommendation 5**

- 5.14 **The Committee recommends that supplementation of the Department of Defence's annual budget be provided to cover the additional costs of Australia's contribution to the Peace Monitoring Group operation.**
- 5.15 As shown in Appendix L, Australia's current aid budget contains provision for on-going peace-related activities such as transport for delegates to peace talks and other support of around \$7 million.
- 5.16 As mentioned above (paragraph 5.10) the positions of Commander of the PMG and Chief Negotiator are both filled by Australians. The position of Commander currently operates on a six-month rotation basis, and the Chief Negotiator on a three-month rotation.
- 5.17 The Committee's interim report raised the possibility of extending the six-month rotation period of the Commander of the PMG in order to increase the level of continuity in negotiations with the various factions and the PNG Government.<sup>9</sup>
- 5.18 In evidence, the Defence indicated to the Committee that it would prefer to maintain the current cycle of postings to the PMG, explaining that the length of the cycle was designed to maintain the objectivity of the Commander and to fit in with the yearly cycle of postings at that rank level within the ADF.<sup>10</sup> Defence also pointed out that if the size of the PMG were to be reduced in the future, the position of Commander might not necessarily be filled by a Brigadier in the longer term.<sup>11</sup>
- 5.19 Australians who serve with the PMG are eligible for recognition in the form of the Australian Service Medal, which is awarded to both ADF personnel and civilian monitors. Members of the Australian Federal Police who serve with the PMG as civilian monitors are presented with the Police Overseas Medal.<sup>12</sup> The Committee is pleased to note the recognition

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8 JSCFADT, *Interim Report: Visit to Bougainville 15-18 March 1999*, p. 8.

9 Ibid, p. 18.

10 The argument being that a longer cycle may cause the Commander to become too closely involved. Defence, Transcript, 4 June 1999, p. 287.

11 Ibid.

12 DFAT, Transcript, 19 February 1999, p. 35.

accorded in this way to the monitoring personnel for the contribution made by the PMG to consolidation of the peace process.

## Evaluation of the role of the PMG

- 5.20 There were some initial Bougainvillean concerns, when Australia took over control of the PMG from New Zealand, that past involvement in Bougainville would prevent Australia from playing a neutral role in the peace process. In addition, there was suspicion among some Bougainvilleans that the PMG was really a front for further gold exploration or that the PMG members were spies gathering intelligence for the Australian government.<sup>13</sup>
- 5.21 However, these concerns largely disappeared within a few months and overall the transfer of leadership went smoothly and has been widely accepted.<sup>14</sup> The Minister for Foreign Affairs, the Hon. Alexander Downer acknowledged the success of the PMG in his Ministerial Statement of 9 June 1999:
- The presence of the PMG gives Bougainvilleans the confidence to take the peace process forward. It has been welcomed almost universally across the island. Its multinational character, its neutrality and the fact that its members are unarmed have been vital to its success. As well as monitoring the cease-fire and promoting reconciliation and negotiation, the PMG performs a useful role in disseminating information about the peace process.<sup>15</sup>
- 5.22 Mr Downer's statement was supported by Anthony Regan's submission:
- In general, most Bougainvilleans are very grateful indeed for the removal of the threat of conflict that came with the TMG and the PMG. As a result, both monitors and support personnel have been accepted remarkably well in most areas.<sup>16</sup>
- 5.23 Anthony Regan agrees that the PMG has helped create the conditions necessary for building confidence and trust among the parties and that 'because people feel relatively secure and safe, they are able to deal with differences through political processes, without resorting to violence'.<sup>17</sup>

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13 World Vision, Submission, p. 281; A Daiwa, Transcript, 7 May 1999, p. 197; R Gillespie, Transcript, 21 May 1999, p. 240.

14 DFAT, Transcript, 4 June, p. 280; E Whelan, Transcript, 13 April, p. 124; A regan, Submission, pp. 603-604.

15 Hon. Alexander Downer MP, House of Representatives, *Hansard*, 9 June 1999, p. 5158.

16 A Regan, Submission, p. 608.

17 Ibid, 601-602.

- 5.24 The key to the success of the TMG / PMG has been the widespread acceptance of their neutrality. The involvement of a number of Pacific nations in the PMG — Australia, Fiji, New Zealand and Vanuatu — and the fact that members of the group are unarmed, have contributed to this perception of neutrality. Anthony Regan expressed the view that the presence of the UNOM, and its close association with the PMG, has offset any lingering doubts about the neutrality of the monitoring operation.<sup>18</sup>
- 5.25 The conscious decision to exclude the PMG from aid delivery has also contributed to the acceptance by Bougainvilleans and the PNG Government of the PMG's neutrality. In evidence, DFAT explained that the PNG Government and the parties in Bougainville realise that the PMG is not a permanent body and that the operation will eventually reduce in size.<sup>19</sup> Nevertheless, the PMG has enabled AusAID to provide assistance to parts of Bougainville that could not be accessed before the formal peace process began.<sup>20</sup>
- 5.26 The involvement of unarmed military personnel seems also to have played a role in the success of the PMG, holding strong symbolic value for the PNGDF, BRA, and Resistance groups who believe they are meeting standards monitored by 'foreign warriors' to whom they endeavour to prove their own professionalism.<sup>21</sup>
- 5.27 The provision of transport, particularly a unit of Iroquois helicopters, has allowed parties from all sides to attend peace meetings.<sup>22</sup> The PMG has also provided support to NGOs involved in the peace process by making transport and information available.
- 5.28 The ADF health element,<sup>23</sup> which has a level 3 surgical capability in order to provide health support to the PMG, has also provided emergency medical services for the local communities and has reportedly saved a number of lives.<sup>24</sup>
- 5.29 The TMG and the PMG appear to have built excellent relations with ordinary Bougainvilleans in towns and villages. The production of a weekly newsletter distributed in both English and Pidgin was cited in evidence as an example of the mechanisms adopted by the PMG to

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18 Ibid, p. 572.

19 DFAT, Transcript, 4 June 1999, pp. 274-275.

20 AusAID, Transcript, 4 June 1999, p. 283.

21 A Regan, Submission, p. 602; JSCFADT, *Interim Report*, p. 18 and Defence, Transcript, 19 February 1999, pp. 17-18.

22 World Vision, Submission, p. 281 and Defence, Transcript, 19 February 1999, p. 30.

23 For the current organisational structure of the PMG, see Appendix I.

24 World Vision, Submission, p. 281; Defence, Transcript, 19 February 1999, p. 30 and R McDonald, Transcript, 12 April, p. 95.

facilitate information dissemination with local communities. In evidence, DFAT highlighted the importance of the PMG's role in communicating information about the peace process to the more remote locations in the province, through its patrols and in meetings with the various communities.<sup>25</sup> In addition, the PMG has played a positive role through its interaction with Bougainvilleans in promoting a better understanding of Bougainville as part of the pacific region.<sup>26</sup>

- 5.30 Despite a shoot-to-kill order by Francis Ona issued for any PMG members entering his 'no-go zone',<sup>27</sup> no PMG personnel have been seriously injured while serving in Bougainville to date. In addition, the no go zone is the only area the PMG has not visited.<sup>28</sup> In effect, the security of the PMG personnel has been guaranteed by the faction leaders in Bougainville, as a result of the working relationships established from the start of the PMG operations.<sup>29</sup>
- 5.31 There have been some incidents of theft. On 25 June 1998, armed men robbed PMG headquarters in Arawa of water containers. The event was referred to in the media at the time as the latest in a series of crimes against the monitors.<sup>30</sup> Overall, however, crime has not been a serious problem for the PMG.
- 5.32 Several submissions advocated the PMG broadening its role or taking a more pro-active role in the peace process.<sup>31</sup> The majority of submissions however, indicated that limiting the role of the PMG to *supporting* the peace process has been vital to its success. This is a view endorsed by Anthony Regan, who believes that adopting a more pro-active role would involve risks that the PMG would unwittingly become involved in local conflicts and could destroy perceptions of neutrality.<sup>32</sup>
- 5.33 It was suggested in evidence from one NGO that rotating the PMG members between the different PMG team sites would increase their awareness of the differences between Arawa and other areas and increase their understanding of the situation generally.<sup>33</sup> In similar vein, Anthony

25 World Vision Australia, Submission, p. 281; DFAT, Transcript, 19 February 1999, p. 15. Australian aid funding has provided 200 wind-up radios to Bougainville communities.

26 A Regan, Submission, p. 605.

27 *Post-Courier*, 'Alarm as Ona issues shoot-to-kill Order', 4 May 1998.

28 *Post-Courier*, 'Peace Monitors Ready to Conduct Arms Disposal', 5 May, 1999.

29 Defence, Transcript, 19 February 1999, pp. 17-18.

30 AFP, 'Armed Men Hold up Peace Forces on Bougainville', Auckland, 25 June 1998.

31 For example, the Bougainville Survivors of Trauma Assoc. Inc., Submission, p. 11 suggested that the PMG should have included trauma counsellors or have received trauma counselling training. See also A Dawia, Transcript, 7 May 1999, p. 197.

32 A Regan, Submission, p. 602.

33 World Vision, Submission, p. 281.

Regan argues that there is a need for more training and education of the PMG to promote a greater understanding of Bougainville.<sup>34</sup> According to his submission, at the moment civilians receive a few days training but that provided for military personnel is more limited.<sup>35</sup> It is possible this discrepancy is due to an assumed level of knowledge amongst the military personnel as a result of their training. Anthony Regan suggests that, if the PMG is to remain active for an extended period, there may be a need for improved training.<sup>36</sup>

- 5.34 The Committee's interim report in March 1999 acknowledged the delegation's appreciation of the professionalism and commitment of the PMG personnel at the teamsites visited, and the effectiveness of the regular communications with local communities and faction leaders. The delegation noted as well the wisdom of establishing the TMG and PMG as unarmed monitors. Without the monitors' continued presence in the medium term at least, the delegation had no doubt that historical differences and tensions could re-surface whenever the peace negotiations faltered.<sup>37</sup>

## **Duration of the Peace Monitoring Operation**

- 5.35 Following the Committee delegation's visit to Bougainville in March 1999, the Committee reached some preliminary conclusions concerning the duration of the PMG operation. The delegation recognised that there are many factors to be considered in deciding when to withdraw the PMG resources and was of the view that any substantial revision of the operation would require consultation with the governments of PNG, New Zealand, Fiji and Vanuatu as the regional partners in the monitoring operation. While acknowledging that the PMG operation is a developing one and should be 'event-driven' rather than 'date-driven', the delegation also concluded that there should be clearly stated benchmarks for the withdrawal of the PMG in order to avoid confusion about the duration of the PMG presence.<sup>38</sup> In evidence, Defence explained the difference between the exit strategies for the PMG operation in Bougainville compared with a peace-keeping operation such as the one conducted in Somalia:

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34 A Regan, Submission, p. 602.

35 Ibid.

36 Ibid, pp. 602, 609.

37 JSCFADT, *Interim Report*, p. 18.

38 JSCFADT, *Interim Report*, pp. 18-19.

In Bougainville the exit strategy is aimed not so much at a time but a set of actions, and that is Bougainville being part of [PNG] in an autonomous way. How fast the Melanesians move to that of course then defines the time zones that we are on here. The strategy is in place but it is not fixed in time as it was in the Somali circumstance. . . . In Somalia we were there for a limited period of time to separate two parties and then let another group come in and take that activity up.<sup>39</sup>

- 5.36 Mr Downer's Ministerial statement of 9 June 1999 reaffirmed Australia's continued participation in and support for the PMG although it also reinforced his earlier statement that the PMG cannot continue forever.<sup>40</sup>

From the outset, the government agreed that the PMG should not become a permanent fixture on the island. This is well understood by the Bougainvilleans and also by the Papua New Guinea government. Given positive developments in the peace process, the government plans to discuss shortly with its PMG partners a strategy for the phased reduction in the PMG and its eventual withdrawal. In making any reductions, we will be careful not to jeopardise the considerable gains already made. Numbers will not be reduced too quickly, and changes will only be undertaken following close consultation between all the relevant players.<sup>41</sup>

- 5.37 In his response to Mr Downer's Ministerial statement, Mr Brereton also addressed the question of the duration of the PMG:

The opposition welcomes [the Minister's] assurances that care will be taken not to jeopardise the gains already made and that numbers will not be reduced too quickly and only following close consultation with all the key players. For our part, notwithstanding the significant expense and possibility of more demanding peacekeeping commitments, we urge caution before any major reduction in the PMG – especially while the peace process still faces major challenges including the issue of disarmament.<sup>42</sup>

- 5.38 There has been some concern that the PMG arrangement is too open-ended and related fears that the PMG could become too embedded in Bougainville, making eventual withdrawal difficult.<sup>43</sup> Similar criticisms

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39 Defence, Transcript, 19 February 1999, p. 21 and Submission, p. 423.

40 Hon. Alexander Downer, MP, House of Representatives, *Hansard*, 10 December 1998, p. 1868.

41 Hon. Alexander Downer, MP, House of Representatives, *Hansard*, 9 June 1999, p. 5158

42 Hon. L.J. Brereton MP, House of Representatives, *Hansard*, 9 June 1999, p. 5160.

43 A Regan, Submission, p. 602.

have been directed at the lack of benchmarks or a firm timetable for PMG involvement.<sup>44</sup>

- 5.39 A number of tensions remain in Bougainville and are unlikely to be resolved quickly. The disposal of weapons and negotiations about the future political status of Bougainville are yet to take place and pose risks of a renewal of conflict.<sup>45</sup> The recent change of government in PNG could also see new policies regarding Bougainville, which could in turn result in increased tensions.
- 5.40 In light of these remaining tensions and considerable progress yet to be made, Anthony Regan argued in his submission that the PMG needs to remain in Bougainville for one to three years, depending on progress made, although the total numbers could be reduced over the coming months if progress continues. He also indicated, however, that the PMG need not maintain exactly the same role and strength throughout the term of its deployment to Bougainville, as Defence and DFAT also pointed out.<sup>46</sup> Mr Regan's views support the suggestion in the Committee's interim report that to a large extent the role of the PMG is continually evolving in response to the changing situation in Bougainville.<sup>47</sup>
- 5.41 The Committee is of the view that the PMG will need to reduce its numbers as progress is made in the peace process. As Defence explained, the PMG has been instrumental in creating a suitable environment for the peace negotiations to continue, and highlighted the links between political developments and the reduction of the PMG presence in Bougainville:
- ... in terms of substantial reductions, we really are linked to the political process and the success of that and the relationship with Papua New Guinea.<sup>48</sup>
- 5.42 Mr Downer indicated on 9 June 1999 that discussion could take place 'soon' regarding a phased reduction and eventual withdrawal and that any reductions will be by small groups and with close consultation with all parties.<sup>49</sup> The Committee endorses this phased reduction approach.
- 5.43 The Committee appreciates that the peace process itself is largely event-driven, rather than date-driven. It is desirable to retain the PMG in Bougainville as long as the monitors are needed to ensure the peace process continues to move forward.
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44 World Vision, Submission, p. 282; A Regan, Submission, p. 602. ACFOA, Submission, p. 479.

45 A Regan, Submission, p. 604.

46 Ibid, pp. 602-609; Defence and DFAT, Transcript, 19 February 1999, p. 22.

47 JSCFADT, *Interim Report*, p. 18.

48 Defence, Transcript, 4 June 1999, p. 274. See also A Regan, Transcript, p.266.

49 Hon Alexander Downer MP, House of Representatives, *Hansard*, 9 June 1999, p. 5158.

5.44 While the Committee acknowledges that it may not be constructive to set firm dates for the withdrawal of the PMG, it may be possible to develop clearly stated indicators for phasing out the operation. Some possible indicators could include:

- withdrawal of the PNGDF<sup>50</sup>
- disarmament
- an elected government fully in place<sup>51</sup>
- an adequately trained police force in place<sup>52</sup>
- sufficient community-based aid programs established.<sup>53</sup>

### Recommendation 6

5.45 **The Committee recommends that the Australian Government, in conjunction with regional partners in the Peace Process Steering Committee, develop clear indicators for the phasing out and eventual withdrawal of the Peace Monitoring Group.**

5.46 As mentioned in the Committee delegation's report, the Committee understands that Cabinet reviews the Bougainville situation every three months, and considers that the presentation of a Ministerial statement in the Parliament at such times, as delivered by Mr Downer on 9 June 1999, would be a valuable mechanism for continuing to monitor progress towards peace.<sup>54</sup>

### Recommendation 7

5.47 **The Committee recommends that a ministerial statement to the Parliament follow cabinet's three-monthly review of the situation in Bougainville.**

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50 BFM, Transcript, 13 April 1999, pp. 118-119.

51 R Smart, Transcript, 7 May 1999, p. 198 and OSB, Transcript, 12 April 1999, p. 82.

52 Moral Re-armament, Submission, p. 183 and OSB, Transcript, 12 April 1999, p. 82.

53 World Vision Australia, Transcript, 12 April 1999, p. 95.

56 JSCFADT, *Interim Report*, p. 19.

## Peace Process Steering Committee

- 5.48 Under Articles 2 and 3 of the *Agreement ... Concerning the TMG*, of 5 December 1997, two committees were established. The Peace Consultative Committee (PCC) was to receive regular reports from the Commander of the TMG on the implementation, progress and success of the Burnham Truce. The Truce Steering Committee (TSC), comprising the Commander and a representative of each of the participating nations and chaired by New Zealand, was to meet and consult as required on issues arising out of the TMG, including with the PCC. Neither committee was to have direct involvement in the command of the TMG or its deployment decisions.
- 5.49 When the PMG replaced the TMG on 1 May 1998, the two committees were renamed accordingly. Article 3 of the original *Agreement Concerning the TMG* was amended and the TSC was renamed the Peace Process Steering Committee (PPSC).<sup>55</sup> Its role is to consult regularly on issues arising from the activities of the PMG.
- 5.50 The PCC was renamed the Peace Process Consultative Committee (PPCC). Its responsibilities are to 'receive regular reports from the Commander on the implementation, progress and success of the Lincoln Agreement, including the permanent and irrevocable ceasefire'.<sup>56</sup>
- 5.51 A PPSC meeting in Brisbane in November 1998 reviewed the state of the peace process and considered tactics for the following 12 months. Australia hosted the meeting and shared costs with New Zealand. PNG's then Minister for Bougainville Affairs, the Hon Sam Akoitai, attended that meeting, which also comprised Australian and PNG officials.
- 5.52 As the Committee concluded following the delegation's visit to Bougainville in March 1999, there is scope to enhance the capability of the PPSC to move the peace process forward by reviewing strategies and monitoring progress. The Committee believes that the PPSC would be a more effective facilitation mechanism if it met regularly, at least quarterly. In Chapter 4, the Committee has recommended that consideration be given to increasing Australian financial support for the PPSC as a means of moving the peace process forward.

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55 Protocol, op. cit., Article 5.

56 Ibid, Article 3.

## Recommendation 8

- 5.53 **The Committee recommends that the PPSC meet regularly, at least quarterly.**

## Criminal Jurisdiction over the PMG

- 5.54 In evidence, the Attorney General's Department identified an omission in Australian criminal jurisdiction whereby the civilian members of the PMG are not covered by either the *Defence Force Discipline Act 1982* or the *Crimes (Overseas) Act 1964*.<sup>57</sup>
- 5.55 Article 10 of *The Agreement ... Concerning the Neutral Truce Monitoring Group for Bougainville* states that members of the PMG shall be subject to the exclusive jurisdiction of their respective Participating State in 'respect of any criminal or disciplinary offences, which may be committed by them in Papua New Guinea'.<sup>58</sup> Article 10 is intended, in effect, to grant PMG members immunity from the laws of PNG.<sup>59</sup>
- 5.56 Defence Force personnel are covered by the *Defence Force Discipline Act*. The *Crimes (Overseas) Act 1964* ('the Act') currently extends Australian criminal Law to (non-ADF) Australian citizens and residents serving overseas but only where that service is under arrangements made between Australia and the United Nations. The civilian members of the PMG — the result of an agreement between participating countries and the government of PNG — are therefore not subject to this jurisdiction.
- 5.57 Attorney General's Department has suggested amending the *Crimes (Overseas) Act 1964* to extend its jurisdiction to Australian civilians serving overseas in situations not covered by the agreement of the United Nations.<sup>60</sup>
- 5.58 The Department also suggested that the amendment:
- ...include situations in which the immunity from jurisdiction arises under an express agreement with the 'host jurisdiction', and could also be expressed to include more traditional examples of

57 Attorney General's Department, Submission, & Transcript 21 May 1999, p. 230.

58 Article 10, paragraph 2.

59 Attorney General's Department, Submission, p. 462.

60 Ibid.

immunity, such as that conferred upon Australian diplomatic and consular officials serving overseas.<sup>61</sup>

- 5.59 Section 3 of the *Crimes (Overseas) Act 1964* currently provides that a person to which the Act applies is

an Australian citizen, or a non-citizen ordinarily resident in Australia, who is serving in a country outside Australia under arrangements made between the Commonwealth and the United Nations, but does not include a member of the Defence Force.<sup>62</sup>

- 5.60 Attorney General's Department suggested that section 3 be amended to apply the Act to 'Australian citizens and residents (other than Defence Force members) serving overseas under a ' 'prescribed arrangement' ' followed by a definition of 'prescribed arrangement' to include:

An arrangement made between the Commonwealth and the United Nations;

An arrangement, as specified in the Regulations, made between the Commonwealth and another country;

An arrangement under which the person is serving as an Australian diplomatic or consular official;<sup>63</sup>

- 5.61 Section 4 of the *Crimes (Overseas) Act 1964* provides that persons to whom the Act applies shall be subject to criminal jurisdiction.<sup>64</sup> Attorney General's Department suggested a consequential amendment to paragraph 4(b), replacing 'under arrangements between the United Nations and the government of that country' with 'a prescribed arrangement'.<sup>65</sup>

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## Recommendation 9

- 5.62 **The committee recommends that the *Crimes (Overseas) Act 1964* be amended to extend its jurisdiction to Australian civilians serving overseas in situations not covered by the agreement of the United Nations.**

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61 Ibid.

62 Ibid.

63 Attorney General's Department, Submission, p. 462.

64 Ibid, pp. 462-3.

65 Ibid.

**Recommendation 10**

- 5.63     **The Committee recommends that section 3 of the *Crimes (Overseas) Act 1964* be amended to apply the Act to '...Australian citizens and residents (other than Defence Force members) serving overseas under a “prescribed arrangement” '.**

**The Committee also recommends that the amended section 3 be followed by a definition of 'prescribed arrangement,' to include:**

- **An arrangement made between the Commonwealth and the United Nations;**
- **An arrangement, as specified in the Regulations, made between the Commonwealth and another country;**
- **An arrangement under which the person is serving as an Australian diplomatic or consular official.**

**Recommendation 11**

- 5.64     **The Committee recommends a consequential amendment to paragraph 4(b), replacing 'under arrangements between the United Nations and the government of that country' with 'a prescribed arrangement'.**

