

No. 35263

Multilateral

Agreement between New Zealand, Papua New Guinea, Australia, Fiji and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville. Port Moresby, 5 December 1997, Suva, 10 December 1997 and Port Vila, 18 December 1997

Entry into force: *11 December 1997, in accordance with article 29 (see following page)*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *New Zealand, 1 October 1998*

Also see No. A-35263 of volume 2041

Multilatéral

Accord entre la Nouvelle-Zélande, la Papouasie-Nouvelle-Guinée, l'Australie, les Fidji et Vanuatu relatif au Groupe neutre de surveillance de la trêve de Bougainville. Port Moresby, 5 décembre 1997, Suva, 10 décembre 1997 et Port Vila, 18 décembre 1997

Entrée en vigueur : *11 décembre 1997, conformément à l'article 29 (voir la page suivante)*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Nouvelle-Zélande, 1er octobre 1998*

Voir aussi le no. A-35263 du volume 2041

Participant	Notification
Australia	11 Dec 1997 n
New Zealand	11 Dec 1997 n
Papua New Guinea	11 Dec 1997 n

Participant	Notification
Australie	11 déc 1997 n
Nouvelle-Zélande	11 déc 1997 n
Papouasie-Nouvelle-Guinée	11 déc 1997 n

[ENGLISH TEXT — TEXTE ANGLAIS]

AGREEMENT BETWEEN NEW ZEALAND, PAPUA NEW GUINEA,
AUSTRALIA, FIJI AND VANUATU CONCERNING THE NEUTRAL
TRUCE MONITORING GROUP FOR BOUGAINVILLE

The Parties to this Agreement;

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

Noting that on 10 October 1997 the parties to the Burnham Truce agreed to immediate positive measures to cease armed conflict, for peace and reconciliation and for a return of normalcy and restoration of services in Bougainville;

Noting that the Burnham Truce provides for immediate interim measures to be taken, pending a formal meeting of leaders, desirably by 31 January 1998;

Noting further that the Burnham Truce called for a neutral regional group to monitor the terms of the Truce;

Noting the South Pacific Forum's endorsement of the recent efforts made by the Government of Papua New Guinea in restoring peace to the island and the Forum's expression of readiness to assist Papua New Guinea wherever possible in its efforts to bring about a lasting and durable peace to Bougainville Province;

Noting further the request of Papua New Guinea and other signatories to the Burnham Truce for States in the South Pacific region to contribute to a Neutral Truce Monitoring Group for Bougainville;

Desiring to set out in writing the agreed conditions for contributions to the Neutral Truce Monitoring Group for Bougainville;

Have agreed as follows:

Article 1. Definitions

In this Agreement:

(a) "Area of Operations" means all areas throughout the territory of Papua New Guinea where the Group, or any member of it, is deployed in the performance of its functions, and includes military installations or other premises and lines of communication and supply utilized by the Group;

(b) "Burnham Truce" means the Truce signed on 10 October 1997 at Burnham Military Camp, New Zealand;

(c) "Commander" means the Commander of the Group or such other member or members of the Group who may be authorized by the Commander to undertake all or any of his functions;

(d) "Group" means the Neutral Truce Monitoring Group for Bougainville established pursuant to Article 5 of this Agreement and comprising military and civilian personnel contributed by Australia, Fiji, New Zealand, Vanuatu or any other Participating State pursuant to this Agreement;

(e) "Papua New Guinea Authorities" means the national and local, civil and military courts and authorities from time to time authorized or designated under the law of Papua New Guinea or by the Government of Papua New Guinea for the purpose of exercising the powers in relation to which the expression is used;

(f) "Participating State" means Australia, Fiji, New Zealand, Vanuatu or such other State of the South Pacific region which, with the concurrence of the Parties to this Agreement, contributes personnel to the Group.

Article 2. Peace Consultative Committee

The Peace Consultative Committee, established by the Parties to the Burnham Truce pursuant to the Cairns Commitment on the implementation of this Agreement of 24 November 1997, shall receive regular reports from the Commander on the implementation, progress and success of the Burnham Truce. It shall have no direct involvement in the command of the Group or the deployment decisions made by the Commander.

Article 3. Truce Steering Committee

1. There shall be a Truce Steering Committee comprising the Commander and a representative nominated by each of the Participating States.

2. The Truce Steering Committee shall be chaired by New Zealand.

3. The Truce Steering Committee shall consult regularly, including with the Peace Consultative Committee as appropriate, on issues arising from the activities of the Truce Monitoring Group and will meet as required from time to time. It shall have no direct involvement in the command of the Group or the deployment decisions made by the Commander.

Article 4. Application

Unless specifically provided otherwise, the provisions of this Agreement shall apply in the Area of Operations only.

Article 5. Mandate of the Group

The Participating States shall establish the Group which shall comprise military and civilian members. The mandate of the Group shall be to:

1. Monitor and report on the compliance of the parties to the Burnham Truce with the terms of that Truce;

2. Promote and install confidence in the peace process through presence, good offices and interaction with the local community;

3. Provide people on Bougainville with information on the truce and peace process.

Article 6. Contribution

Except as otherwise provided in this Agreement or mutually determined by the relevant Participating States, each Participating State shall be responsible for the funding of its own participation in the Group.

Article 7. Command and Control

1 . During the period of their assignment to the Group, the military members shall remain under national command but shall be under the operational control of the Commander. Arrangements for command of military members may be made between the Participating States separately.

2. The Commander shall have full authority, subject to any arrangements between Participating States, over the deployment, organization, conduct and direction of the Group.

3. The Commander may request a Participating State to withdraw any personnel contributed to the Group. The Commander shall give reasons for any such request and a Participating State shall comply forthwith with any such request.

4. A Participating State may withdraw any or all of its personnel contributed to the Group at any time on reasonable notice.

Article 8. Entry into and exit from Papua New Guinea

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

(a) An individual or collective movement order issued by the appropriate authority of their respective Participating State; and

(b) A personal identity card issued by the appropriate authority of their respective Participating State.

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

3. If a member of the Group leaves the service of his or her respective Participating State while in Papua New Guinea and is not repatriated, or absents himself or herself without leave for more than twenty-one days, the Commander shall forthwith inform the Papua New Guinea Authorities, giving such particulars as may be required. If an expulsion order against such a person is made by the Papua New Guinea Authorities, the Commander shall take all responsible steps available to ensure that the person concerned shall be returned to his or her Participating State.

Article 9. Respect for Local Law

Members of the Group shall respect the laws of Papua New Guinea and shall maintain strict neutrality and refrain from any action incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present Agreement.

Article 10. Jurisdiction

1. The following arrangements respecting criminal and civil jurisdiction are made having regard to the special functions of the Group and not for the personal benefit of the members of the Group, and, subject to any arrangements made between Participating States, may be waived by the Commander at his discretion.

2. Members of the Group 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. Participating States undertake, where appropriate and where national law permits, to commence criminal or disciplinary proceedings in respect of any such offences.

3. Members of the Group shall not be subject to the civil jurisdiction of Papua New Guinea courts, including Village Courts, or other Papua New Guinea Authorities, 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 or other Papua New Guinea Authorities with respect to members of the Group, the Papua New Guinea courts and other Papua New Guinea authorities shall grant members of the Group sufficient opportunity to safeguard their rights.

5. If the Commander certifies that a member of the Group is unable because of official duties or authorized absence to protect his or her interests in a civil proceeding in which he or she is a participant, or appear as a witness in any matter whether criminal or civil, the Papua New Guinea court or other Papua New Guinea Authority shall at the request of the Commander suspend the proceeding until the elimination of the disability, but for not more than ninety days. Property of a member of the Group which is certified by the Commander to be needed by the member for the fulfillment of his or her official duties shall be free from seizure for the satisfaction of a judgment, decision or order. The personal liberty of a member of the Group shall not be restricted by Papua New Guinea court or other Papua New Guinea Authority in a civil proceeding, whether to enforce a judgment, decision or order, to compel an oath of disclosure, or for any other reason.

6. If any civil proceeding is instituted against a member of the Group before any Papua New Guinea court or other Papua New Guinea Authority having jurisdiction, notification shall be given forthwith to the Commander. The Commander shall certify to the court or other Papua New Guinea Authority whether or not the proceeding is related to the official duties of such member. Such certificate shall be conclusive of that fact.

*Article 11. Arrest, Transfer of Custody
and Mutual Assistance*

1. The Commander shall take all appropriate measures to ensure maintenance of discipline and good order among members of the Group including the use of persons authorized by the Commander to police the premises referred to in Article 12 of this Agreement and such areas where the Group, or any member, of it is deployed in the performance of its functions.

2. Persons authorized by the Commander may take into custody any person on the premises referred to in Article 12, without subjecting him or her to any routine of arrest, in order immediately to deliver him or her 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 Group, without subjecting him or her to any routine of arrest, in order immediately to deliver him or her, together with any items seized, to the nearest appropriate authorities of the Group:

- (a) When so requested by the Commander; or
- (b) In cases in which persons authorized by the Commander are unable to act with the necessary promptness when a member of the Group 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. The Commander and the Papua New Guinea authorities shall assist each other in:

- (a) The carrying out of all necessary investigations into offences in respect of which either or both have an interest;
- (b) The production of witnesses; and
- (c) 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.

5. The Commander or the appropriate Papua New Guinea authority, as the case may be, 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 paragraphs 2 or 3.

Article 12. Premises of the Group

The Commander may establish in Papua New Guinea such areas for Headquarters, camps, training areas, or other premises as may be necessary for the accommodation and the fulfilment of functions of the Group. 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, whose consent shall be required for the entry of persons onto such premises.

Article 13. Uniforms, Emblems and Flags

1. Military members of the Group shall normally wear, while performing their official duties, their national military uniform together with such distinctive items of uniform as are prescribed by the Commander. The Commander may authorize the wearing of civilian dress.

2. Each Participating State may display within Papua New Guinea territory its own national flag on Headquarters, camps, training areas, posts or other premises, vehicles, vessels, uniforms or civilian dress and otherwise as decided by the Commander. Other flags or pennants including a distinctive flag for the Group may be displayed in accordance with conditions prescribed by the Commander.

3. Vehicles, vessels and aircraft provided and used by the Group shall retain and carry their respective national markings and licences.

Article 14. Arms

Members of the Group will be unarmed.

*Article 15. Registration, Licensing
and other Permissions*

1. A member of the Group shall not be bound by any law of Papua New Guinea that would require the member to have permission (whether in the form of a licence or otherwise) to:

- (a) Use anything;
- (b) Have anything in his or her possession;
- (c) Register anything; or
- (d) To do anything in the course of his or her official duties.

2. Without limiting the generality of paragraph 1:

(a) Vehicles, vessels and aircraft provided or used by the Group shall not be subject to registration and licensing under the laws of Papua New Guinea. Papua New Guinea authorities shall accept as valid, without a test or fee, a permit or licence held by a member of the Group for the operation of vehicles, vessels or aircraft issued by the State to which the member belongs; and

(b) Doctors and health staff of the Group shall not be subject to registration and licensing under the laws of Papua New Guinea.

Article 16. Import and Export

1. The Group shall have the right:

(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 Group;

(b) To clear from customs and excise warehouses, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of the Group;

(c) To re-export, free of duty or other restrictions, such equipment, provisions, supplies and other goods; and

(d) To dispose of within Papua New Guinea, free of duty or other restrictions, such equipment, provisions, supplies and other goods as are no longer required by the Group.

2. Such importation, clearances, transfer or exportation shall be effected with the least possible delay. A mutually satisfactory procedure, including documentation, shall be mutually determined by the Commander and the Papua New Guinea authorities at the earliest possible date.

Article 17. Taxation and Revenue

1. Members of the Group shall be exempt from taxation by Papua New Guinea on the pay and emoluments received from their respective Participating States. Participating States and members of the Group shall also be exempt from all other direct taxes, fees and charges.

2. Members of the Group shall have the right to import and export, free of duty or other restrictions their personal effects in connection with their duties in Papua New Guinea.

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.

2. The Group shall enjoy, within the Area of Operations, the right of unrestricted communication by radio, telephone, or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of the Group, including the laying of cables and land lines and the establishment of fixed and mobile radio sending and receiving stations.

3. The Group may process and transport mail addressed to or sent from the Group or members of the Group. Papua New Guinea shall not interfere with the mail of the Group.

Article 19. Freedom of Movement

The Group and its members, together with its 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 shall supply the Group with maps and other information which may be useful in facilitating its movements, including locations of dangers and impediments, in particular mines and unexploded ordnance.

*Article 20. Use of Roads, Waterways,
Port Facilities and Airfields*

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

Article 22. Locally Employed Personnel

The Group 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 23. Deceased Members

The Commander, shall have the right to take and retain immediate charge of and dispose of the body of a member of the Group who dies in Papua New Guinea territory.

Article 24. Claims

1. Claims involving the Group arising in the Area of Operations shall be dealt with in accordance with this Article.

2. Each Party or Participating State waives any claim against any of the other Parties or Participating States in respect of:

(a) Loss of, or damage (including loss of use) to property owned, hired or chartered by a Party or Participating State and used by the Group;

(b) Maritime salvage of any vessel or cargo owned by a Party or Participating State and used by the Group; and

(c) Personal injury or death suffered by any member of the Group;

which arises out of any act or omission of any member of the Group in the performance of official duties.

3. Papua New Guinea waives any claims against any of the other Parties or the Participating States in respect of loss of or damage to any of its state property and personal injury

or death suffered by any person employed by or in the service of the Papua New Guinea Government.

4. A claim by a third party in respect of the death of or bodily injury to any person or damage to any property which arises out of any act or omission of a member of the Group in the performance of official duties shall be dealt with by the Group in accordance with the following provisions:

(a) The claim shall be filed with the Group, which shall consider the claim and settle it in accordance with the law of Papua New Guinea. Papua New Guinea shall provide such assistance and advice as may be requested by the Group in establishing the applicable law;

(b) Subject to sub-paragraph (d) the cost incurred in satisfying the claim, shall be distributed between the Parties and Participating States, as follows:

(i) Where one Party or Participating State is solely liable in respect of the claim it shall meet the costs of the claim in full; and

(ii) Where two or more Parties or Participating States are jointly liable in respect of the claim, or it is not possible to attribute liability in respect of the claim specifically between two or more Parties or Participating States, the cost of the claim shall be borne equally by those Parties or Participating States;

(c) Payment of an amount in satisfaction of a claim in accordance with these procedures shall be binding and conclusive discharge of the claim; and

(d) In relation to claims where there has been no requirement for Papua New Guinea to make a payment under sub- paragraph (b), Papua New Guinea shall use its best endeavours to reimburse a Participating State 25 per cent of the cost incurred by the Participating State in satisfying any claim, if requested by the Participating State to do so.

Article 25. Supplemental Arrangements

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

Article 26. Papua New Guinea Currency

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

2. The Group may import into the Area of Operations such amounts of currency, including Papua New Guinea Currency, as may be necessary for the effective performance of its mandate.

Article 27. Consultations

Any matter arising under this Agreement with respect to its interpretation, application or implementation shall be settled by consultation or negotiation between the Parties and shall not be referred to any third party or tribunal for resolution.

Article 28. Variation and Suspension

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

Article 29. entry into force and duration

1. This Agreement shall be open for signature by Australia, Papua New Guinea, Fiji, New Zealand, Vanuatu and such other states of the South Pacific region which with the concurrence of the Parties, contribute personnel to the Group.

2. Each Signatory shall notify the others of the completion of the constitutional formalities required by its laws for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later of the two notifications by Papua New Guinea on one part and New Zealand or Australia on the other. The Agreement shall enter into force subsequently for each other Party on the date of notification by that Party.

3. Unless otherwise mutually determined by the Parties, the Group shall be withdrawn from the Area of Operations by 31 January 1998. The Agreement shall expire on the withdrawal of the Group from the Area of Operations.

4. Expiry of the Agreement shall not affect any liabilities, rights and obligations arising out of the Agreement, and any immunity relating to actions taking place during the period of the Agreement.

5. 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.

Article 30. Depository

New Zealand shall be the depository for this Agreement.

In witness whereof, the undersigned being duly authorized by their respective Governments, have signed this Agreement.

Done at Port Moresby this fifth day of December one thousand nine hundred and ninety seven.

For New Zealand:

NIGEL MOORE

For Australia:

DAVID IRVINE

For Vanuatu:

HON. VINCENT BOULEKONE

For the Independent State of Papua New Guinea:

LE GENIA

For Fiji:

COL. PAUL MANUELI