

Question

CHAIR: Article 6 (2) provides the standard immunity we'd expect, especially for our deployed military. Are there any exemptions to that immunity, or is it blanket immunity?

Mr Soar: If I can, I might refer that question to my colleagues from the Australian Department of Defence.

Cdre Bowers: It is a sufficient immunity to cover any type of deployment envisaged under the treaty and it is an immunity from legal proceedings, both civil and criminal, and in relation to their official duties. It's reasonably broad but I will take on notice the specific question you have as to exceptions

Answer

Legal immunities are set out in Article 6 of the proposed Agreement.

Members of a Visiting Contingent (defined in Article 1 as personnel comprised of an Assisting Police Force, Assisting Defence Force and/or Other Personnel) will be immune from arrest, detention and all legal proceedings in Solomon Islands courts and tribunals in relation to their official duties. The members also cannot be compelled to appear or give evidence in any legal proceedings in Solomon Islands. "Legal proceedings" is defined widely to include criminal, civil, disciplinary, administrative and customary law proceedings.

Therefore, members will have broad legal immunities so long as their actions are taken in the course of, or incidental to, their official duties.

In addition, Australia or a Third State may assert criminal or disciplinary jurisdiction over actions of a member in the Area of Operations, including actions outside of official duties. In such circumstances, the Solomon Islands will not assert, or will relinquish, jurisdiction over such actions of the member.

However, Australia or a Third State may waive any immunity under Article 6 if the circumstances warrant.

Question

CHAIR: What is the status of an Australian Federal Police officer in the Solomon Islands, who is currently unarmed, if push came to shove and they defended themselves?

Cmdr Kates: Under this treaty?

CHAIR: No, right now.

Mr Soar: If I could interrupt, Mr Chair, my understanding is that the AFP officers in the country are employed as advisers in much the same way as an AusAID adviser would be treated. They have no powers under Solomon Islands legislation to exercise the authorities of a member of a police force. They're effectively providing technical assistance to the Solomon Islands police force in the same manner as AusAID staff generally do to other departments.

CHAIR: For example, in Iraq, we couldn't get a status-of-forces agreement up, so we deployed everyone on a red passport, which were the protections in place for our non-combatant trainers. So we have AFP; are they there on a red passport or are they there on another agreement? What is the protection in place?

Cmdr Kates: When they were there, if an incident were to happen, they've got common law powers and they would be able to use their own ability to protect life and limb. They are covered for that.

Mr Soar: We can check that, Mr Chair. Perhaps it's best if we take that on notice.

Answer

The Australian Federal Police (AFP) contingent in the Solomon Islands is deployed as part of the Solomon Islands Police Development Program (SIPDP) to help develop the capabilities of the Royal Solomon Islands Police Force.

The SIPDP is confined to performing a mentoring, training and capacity building role.

The SIPDP mission takes place pursuant to a Memorandum of Understanding (MOU) between the Government of Australia and the Government of the Solomon Islands on Development Cooperation signed on 14 April 1994 (attached).

Article 16 of the MOU provides that the government of the Solomon Islands will arrange for protective services necessary to ensure the safety of the person and property of Australian personnel and their dependents.

The MOU provides some exemptions from the usual laws of the Solomon Islands. For example, Article 10 confers exemptions from certain duties, taxes and levies.

Article 15 recognises that the Government of the Solomon Islands will 'bear all risks associated with operations' under the MOU and 'will hold harmless the Government of Australia and Australian personnel' in the event of claims arising from activities under the MOU. However, the MOU does not provide the same level of privileges and immunities that were previously conferred under the RAMSI Treaty, pursuant to which AFP members were deployed to the Solomon Islands in an operational capacity.

AFP members currently deployed to the Solomon Islands do not possess the legal authority under the laws of the Solomon Islands to carry firearms, use force or exercise police powers.

The ability of AFP members to respond to threats to life, limb and property is no different to any other member of the Solomon Islands public. However, the common law doctrine of self-defence would operate to exclude criminal liability in circumstances where an AFP member applies force and that use of force is necessary and reasonable in the circumstances. This doctrine is recognised in section 17 of the Solomon Islands' Penal Code, which states:

'Subject to any express provisions in this Code or any other law in operation in Solomon Islands, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English common law.'

Question

CHAIR: One issue that always raises its head about deployments and treaties is medals. Apparently the Royal Solomon Islands Police Force international law enforcement cooperation medal is being offered. Does anyone know about the Royal Solomon Islands Police Force international law enforcement cooperation medal and whether it is a recognised medal in the Solomon Islands? Could someone enlighten the committee on this?

Mr Soar: I am afraid I will have to take that on notice. The title suggests it is a medal issued by the Royal Solomon Islands Police Force.

CHAIR: That would be a fair assessment.

Mr Soar: It is something that we would be happy to check but, I'm afraid, in my briefing notes on the treaty the issue was not covered.

CHAIR: If you could check the Royal Solomon Islands Police Force international law enforcement cooperation medal—where it is; what it is; does it exist; and is it a nationally recognised medal within the Solomon Islands? Is the Solomon Islands proposing within the framework of this treaty that a medal like this is being made available for those that serve or not? It would be very helpful.

Mr Soar: We would be very happy to take that on notice.

Answer

The International Law Enforcement Co-operation Medal is awarded by the Commissioner of the Royal Solomon Islands Police Force (RSIPF). The RSIPF Commissioner's Order on Honours and Awards indicates that the medal is awarded to:

- a group of members of an international police force, who provide direct support to the RSIPF, to assist development or law enforcement initiatives; or
- a group of members of the RSIPF who is deployed on an authorised international operation.

While the medal is not referred to in the Agreement Between the Government of Australia and the Government of Solomon Islands Concerning the Basis for Deployment of Police, Armed Forces and Other Personnel to Solomon Islands (the treaty), the Department of Foreign Affairs and Trade understands that police officers who may in future be deployed under the treaty would be eligible to be awarded the medal. The Australian Federal Police contingent in Solomon Islands currently deployed as part of the Solomon Islands Police Development Program (SIPDP) are eligible to be awarded the medal.

While the medal is recognised within the RSIPF, it is not a nationally recognised medal within Solomon Islands.

Question

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Cmdr Kates: When they were there, if an incident were to happen, they've got common law powers and they would be able to use their own ability to protect life and limb. They are covered for that.

Mr Soar: We can check that, Mr Chair. Perhaps it's best if we take that on notice. My sense is: the likelihood is they are there on diplomatic passports, as would be other Australian based staff, like AusAID staff—sorry; DFAT staff, providing technical assistance to other agencies. We can check that, Mr Chair. Perhaps it's best if we take that on notice. My sense is: the likelihood is they are there on diplomatic passports, as would be other Australian based staff, like AusAID staff—sorry; DFAT staff, providing technical assistance to other agencies.

Answer

The Australian Federal Police advisers in Solomon Islands have Official Passports, not Diplomatic Passports.