

**AGREEMENT, DONE AT TOWNSVILLE ON 24 JULY 2003,
BETWEEN SOLOMON ISLANDS, AUSTRALIA, NEW ZEALAND,
FIJI, PAPUA NEW GUINEA, SAMOA, AND TONGA CONCERNING
THE OPERATIONS AND STATUS OF THE POLICE AND ARMED
FORCES AND OTHER PERSONNEL DEPLOYED TO SOLOMON
ISLANDS TO ASSIST IN THE RESTORATION OF LAW AND
ORDER AND SECURITY**

[2003] ATS 17

Documents tabled on 9 September 2003

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**Agreement, done at Townsville on 24 July 2003, between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operations and status of the Police and Armed Forces and Other Personnel deployed to Solomon Islands to assist in the restoration of law and order and security
[2003] ATS 17**

Date of Tabling of Proposed Treaty Action

1. 9 September 2003

Nature and Timing of Proposed Treaty Action

2. The Agreement entered into force for Australia on 24 July 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 Visiting Contingent of Police and Armed Forces and Other Personnel (“the Visiting Contingent”) to deploy on 24 July 2003.
4. The Agreement [2003] ATS 17 was signed for Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga on 24 July 2003. It entered into force between Solomon Islands, Australia and New Zealand on 24 July 2003. It will enter into force for Fiji, Papua New Guinea, Samoa and Tonga when those countries issue the required notifications under Article 24.2 of the Agreement. Nine other Pacific countries signed the Agreement on 15 August 2003 in Auckland, New Zealand. Those countries are Cook Islands, Kiribati, Niue, Palau, Republic of the Marshall Islands, Vanuatu, Nauru and Tuvalu. The Agreement entered into force for Kiribati on 22 August 2003. The Agreement will enter into force for the remaining countries when they issue their Article 24.2 notifications.

Overview and National Interest Summary

5. Solomon Islands was on the verge of state failure. Without outside assistance, the Solomon Islands government would have slowly collapsed. A failed state in our immediate region would pose unacceptable security risks to Australia and the region. The Regional Assistance Mission to Solomon Islands, or Operation Helpem Fren, is a package of assistance to Solomon Islands intended to reverse this decline and restore the country to stability. It also reflects a recognition of Australia’s responsibilities towards a friend in the Pacific, and a need to address potential threats to regional security.
6. The Agreement is part of the necessary framework at international law for Australia and other regional countries to deliver assistance to Solomon Islands.

Reasons for Australia to Take the Proposed Treaty Action

7. Since ethnic tensions erupted in Solomon Islands in 1999, and following the coup of 2000, Australia has been closely involved in assisting Solomon Islands deal with instability and its consequences. Australia was instrumental in facilitating and supporting the Townsville Peace Agreement of 2000 and in the subsequent creation of the International Peace Monitoring Team (IPMT), which helped to end the fighting on Solomon Islands and collected and destroyed some 2000 weapons. We supported the 2001 elections, and our development assistance has helped maintain a basic level of government functionality.

8. It is clear, however, that despite these efforts, the problems facing Solomon Islands have grown more serious over the past few years. Criminal lawlessness replaced ethnic tension as the main problem for the stability of the country. The country's institutions have been greatly weakened and, in some cases, turned against the people they are meant to serve. Corruption became rife. Government, continually operating in an environment of threat and extortion from militants, has been unable to function, and government finances are in tatters. Severe economic decline has resulted – it is estimated that real gross domestic product has shrunk by one-third over the past few years.

9. The Solomon Islands Government has stated frankly that it is unable to address these problems, or indeed to govern effectively, without greatly increased outside help. Solomon Islands Prime Minister Sir Allan Kemakeza wrote to Australia on 22 April outlining the problems besetting Solomon Islands and seeking our support. Sir Allan subsequently visited Canberra on 5 June and met with Prime Minister Howard, along with other senior Australian Ministers, and gave a frank account of Solomon Islands' problems. A team of Australian and New Zealand officials visited Honiara from 10 to 13 June to investigate the options for assistance. On 25 June Australian Ministers agreed to offer a package of strengthened assistance to Solomon Islands provided we received a formal request, necessary legislation to protect and authorise the presence of external personnel was put in place, and the initiative was supported by the Pacific Islands Forum.

10. A meeting of Pacific Islands Forum Foreign Ministers held in Sydney on 30 June unanimously endorsed the initiative to provide assistance to Solomon Islands, and numerous Pacific Island countries have contributed, or announced their willingness to contribute, military and police personnel to the initiative. A formal request for assistance from Australia was received by the Solomon Islands Governor-General Sir John Lapli, acting on advice of the Solomon Islands Cabinet, on 4 July. Solomon Islands Parliament, having unanimously supported a motion endorsing the proposed assistance package on 11 July, unanimously passed the required legislation (the Facilitation of International Assistance Act 2003) on 17 July.

11. It is almost impossible to assist development in the absence of security. The assistance package to Solomon Islands is consequently a police-led operation, designed to stabilise the law and order situation, disarm militants, and get guns out of communities so that we and other donors can effectively implement a comprehensive package of assistance designed to rebuild the police, judiciary, finance ministry and other essential arms of government, to stabilise government finances and ensure delivery of basic government services, and to put in place the framework for economic recovery. The policing component will ultimately comprise up to 320 personnel. The military

component, numbering up to 2000, will support the police, including through logistical support and force protection. The civilian component includes the office of the Special Coordinator Nick Warner, who has overall responsibility for the initiative, and also various technical specialists who will provide advisory support to the Solomon Islands government. While the military component will be drawn-down as soon as a secure environment is established, the policing and development assistance aspects of the package will remain engaged for several years.

12. The Agreement, together with the formal request from the Solomon Islands Government, provides a basis in international law for the presence of the Regional Assistance Mission to Solomon Islands. Together with the complementary Solomon Islands legislation, Facilitation of International Assistance Bill 2003 (SI), it provides legal protection to the military, police and civilian members of RAMSI. It forms an essential underpinning of our assistance to Solomon Islands.

Obligations

13. The Agreement imposes certain obligations on the Parties, including Australia. Australia must consult with the Government of Solomon Islands over the period of time the Visiting Contingent will be deployed within Solomon Islands (Article 3.1). Australia must also consult with Solomon Islands if a significant number of Australian members of the Visiting Contingent are going to be withdrawn from Solomon Islands (Article 3.2). Other Assisting Countries must agree to such a withdrawal of personnel (Article 3.2). Australia must comply, within three months, with any written request from the Government of Solomon Islands to withdraw Australian personnel from Solomon Islands (Article 3.3).

14. Australia must nominate a person to lead the Visiting Contingent, in consultation with the Government of Solomon Islands (Article 4.1). Parties are required to comply with any request from the head of the Visiting Contingent to withdraw any particular personnel from Solomon Islands (Article 4.3).

15. Under the Agreement, the most senior Australian police officer deployed to Solomon Islands is to be the head of the Participating Police Force (Article 5.1). The Head of the Participating Police Force is to be appointed a Deputy Commissioner of the Solomon Islands Police Force. The Agreement restricts the persons who are able to give orders to members of the Participating Police Force. Also, that Force is to be responsible for its own disciplinary matters and the Government of Solomon Islands must agree that members of the Participating Police Force are not subject to Solomon Islands' administrative or disciplinary procedures. The most senior Australian defence officer is head of the Participating Armed Forces (Article 6.1). Defence personnel deployed to Solomon Islands under the Agreement remain under national command (Article 6.2).

16. Both the Participating Police Force and the Participating Armed Forces are to work co-operatively with Solomon Islands Government (Articles 5.5 and 6.3); they are able to exercise the powers, authorities and privileges exercised by Solomon Islands Police (Articles 5.8 and 6.4); and use such force as is necessary to achieve the purposes set out in Article 2 of the Agreement (Articles 5.9 and 6.5). Members of the Visiting Contingent may seize weapons and ammunition. Australia must ensure that its members of the Visiting Contingent record particulars of any weapons seized or destroyed. (Article 9).

17. Members of the Visiting Contingent have immunity from legal proceedings in Solomon Islands in relation to actions that are taken in the course of, or are incidental to, official duties (Article 10.2). Where an action is outside the course of official duties, Solomon Islands will not exercise criminal or disciplinary jurisdiction over such action if an Assisting Country (including Australia) exercises such jurisdiction (Article 10.3). Where Australia asserts jurisdiction over a member of the Visiting Contingent, it must ensure that appropriate action is taken against that member consistent with its laws and practices (Article 10.5). The Assisting Countries and Solomon Islands are to assist each other in carrying out investigations into alleged (Article 10.7).

18. Australia must take appropriate measures to ensure the maintenance of discipline and good order among its members of the Visiting Contingent (Article 11).

19. In giving effect to the Agreement, Australia is to act consistently with its obligations under international law (Article 12).

20. Australia and other Parties must waive claims against each other in respect of:

- (a) loss of, or damage (including loss of use) to, property owned, hired or chartered by a Party and used by the Visiting Contingent;
- (b) maritime salvage of any vessel or cargo owned by a Party and used by the Visiting Contingent; and
- (c) personal injury or death suffered by any member of the Visiting Contingent (Article 13.2)

21. Consultation is required on other claims not covered under Article 13 (Article 13.4).

22. Members of the Visiting Contingent are accorded rights in relation to entry and departure (Article 14), freedom of movement (Article 15), transport and financial matters (Article 16), accommodation and facilities (Article 17), communications (Article 18) and health and safety (Article 19).

Implementation

23. No legislation is required to implement Australia's obligations. However, amendments are being introduced to the Crimes (Overseas) Act 1964 that will, amongst other matters, ensure Australia is able to exercise criminal jurisdiction over its members of the Visiting Contingent.

24. No State or Territory action was or is required in relation to the Agreement.

Costs

25. Article 16.4 of the Agreement establishes that the Assisting Countries shall be responsible for the salary, allowances, removal expenses, costs of transport to Solomon Islands, and medical and dental expenses of members of the Visiting Contingent. Australia will fund its participation following regular budgetary processes.

26. Other provisions of the Agreement exempt members of the Visiting Contingent from taxation by the Government of Solomon Islands on their pay and other emoluments. Members of the Visiting Contingent are also exempt from other direct taxes, fees and charges and may produce locally produced goods and commodities required to fulfil the purposes of the Agreement free of duties, taxes and charges.

Consultation

27. In order to respond to the rapidly deteriorating law and order situation in Solomon Islands it was necessary to deploy the Visiting Contingent quickly. It was, therefore, necessary to finalise the Agreement quickly 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 Visiting Contingent.

28. The Agreement 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

29. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future Treaty Action

30. Article 23 of the Agreement provides for its variation or suspension by agreement between the Parties.

Withdrawal or Denunciation

31. Article 24.3 of the Agreement provides that the Agreement shall expire on the complete withdrawal of the Visiting Contingent from the Area of Operations.

32. Article 24.4 confirms that 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.

Contact Details

Solomon Islands Task Force
South Pacific, Africa and Middle East Division
Department of Foreign Affairs and Trade

**Agreement, done at Townsville on 24 July 2003, between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operations and status of the Police and Armed Forces and Other Personnel deployed to Solomon Islands to assist in the restoration of law and order and security
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Consultation

This Agreement has been done to facilitate the entry into Solomon Islands of the Visiting Contingent of police and armed forces and other personnel (“the Visiting Contingent”). Given the need to establish an Agreement covering the Visiting Contingent urgently, it was not possible to consult extensively within Australia prior to the Agreement’s entry into force for Australia on 24 July 2003.

The Governments of Solomon Islands and New Zealand have been consulted in preparation of this Agreement, which has been drawn up in response to a request for assistance from the Government of Solomon Islands.

Relevant Commonwealth agencies were consulted in the preparation of the text of the Agreement (Attorney-General’s Department, Department of Foreign Affairs and Trade, Department of Defence, Australian Federal Police).

State and Territory Premiers/Chief Ministers’ Departments have been notified by the Department of Foreign Affairs and Trade (Legal Branch) according to the Commonwealth-State-Territory Standing Committee on Treaties process.

Agreement between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operations and status of the Police and Armed Forces and Other Personnel deployed to Solomon Islands to assist in the restoration of law and order and security
[2003] ATS 17

Multilateral Status List as at 26 August 2003

Depositary : Australian Government

Participant	Signature	Entry into Force
Australia	24 July 2003	24 July 2003
Cook Islands	15 August 2003	
Fiji	24 July 2003	
Kiribati	15 August 2003	22 August 2003
Marshall Islands	15 August 2003	
Federated States of Micronesia	15 August 2003	
Nauru	15 August 2003	
New Zealand	24 July 2003	24 July 2003
Nuie	15 August 2003	
Palau	15 August 2003	
Papua New Guinea	24 July 2003	
Samoa	24 July 2003	
Solomon Islands	24 July 2003	24 July 2003
Tonga	24 July 2003	
Tuvalu	15 August 2003	
Vanuatu	15 August 2003	