

PAPUA NEW GUINEA

CONTENTS:

1. Agreement on Defense: Status of Forces - dated 28 Feb 89,
effective 28 Feb 89 (TIAS 11612) p. 2

PAPUA NEW GUINEA

TIAS 11612

Defense: Status of Forces

*Agreement signed at Port Moresby February 28, 1989;
Entered into force February 28, 1989.*

STATUS OF FORCES AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND THE
GOVERNMENT OF PAPUA NEW GUINEA

The Government of the United States and the Government of Papua New Guinea have agreed as follows concerning the status of personnel belonging to the Armed Forces (Services) of the United States temporarily present in Papua New Guinea in connection with their official duties (disaster relief, humanitarian and civic assistance activities) from time to time as authorized by the Government of Papua New Guinea.

- *Respect of Law.* It is the duty of members of the United States Forces to respect the laws of Papua New Guinea. US authorities will take necessary measures to that end;
- *Claims.* Claims shall be referred to the US Government. In accordance with US law regarding foreign claims, the USG will pay just and reasonable compensation in settlement of meritorious claims for damage loss, personal injury or death, caused by acts or omissions of members of the US Forces, or otherwise incident to non combat activities of the US Forces;
- *Entry and Exit.* Members of the US Forces shall be exempt from passport and visa regulations upon entering and leaving Papua New Guinea. They shall possess a US Armed Forces Personnel Identification Card and individual or collective travel or movement orders.
- *Importation and Exportation:*
 - *USG Property.* Equipment, materials, supplies, and other property imported into or acquired in Papua New Guinea by or on behalf of the US for use of US

Forces in connection with activities to which this agreement applies shall be free of all Papua New Guinea duties, taxes, and other charges. Title to such property shall remain with the US, which may remove such property from Papua New Guinea at any time, free from export duties, taxes and other charges. The exemptions provided in this paragraph shall also extend to any duty, tax or other charges which would otherwise be assessed upon such property after importation into, or acquisition within, Papua New Guinea.

- *Personal Property.* Baggage, personal effects, and other property for the personal use of United States personnel may be imported into Papua New Guinea at the time of arrival of such personnel or within six months thereafter, and used in Papua New Guinea free of all duties, taxes, and other charges during the period of their service in Papua New Guinea than US personnel shall be subject of the payment of applicable duties or taxes unless otherwise agreed by Papua New Guinea authorities.^[1] The exportation of such property and of property acquired in Papua New Guinea by US personnel for their personal use shall be free of all Papua New Guinea duties, taxes and other charges.

- *Criminal Jurisdiction:*

- *Subject to the Provision of this Article:-*

- a. United States military authorities shall the right to exercise within Papua New Guinea all criminal and disciplinary jurisdiction conferred on them by the military law of the United States over members of the US Forces.
- b. Papua New Guinea authorities shall have jurisdiction over members of the US Forces with respect to offenses committed within Papua New Guinea and punishable under the law of Papua New Guinea.

¹ Sentence construction as it appears in TIAS 11612.

- In cases where the right to exercise jurisdiction is concurrent, the following rules shall apply:-

- a. United States military authorities shall have the primary right to exercise jurisdiction over members of the US Forces subject to the military law of the United States in relation to:
 - (1) Offenses solely against the property or security of the United States or offenses solely against the person or property of members of the U.S. Forces; and
 - (2) Offenses arising out of any act or omission done in the performance of official duty
- b. In the case of any other offense, Papua New Guinea authorities shall have the primary right to exercise jurisdiction.
- c. Recognizing the responsibility of the United States military authorities to maintain good order and discipline among their forces, Papua New Guinea authorities will exercise their right to waive their primary jurisdiction except in cases of particular importance to Papua New Guinea. If the Government of Papua New Guinea determines that a case is of particular importance, it shall communicate such determination to United States authorities within 15 days of the discovery of the alleged offense giving rise to such case.
- d. When the United States military authorities determine that an offense charged by the authorities of Papua New Guinea against a member of the U.S. Forces arose out of an act or omission done in the performance of official duty, they will issue a certificate setting forth such determination. This certificate will be transmitted to the appropriate authorities of Papua New Guinea and will constitute sufficient proof of performance of official

duty for the purposes of paragraph 2.a. (2) of this article. However, Papua New Guinea authorities may request review of the determination by the next higher United States military echelon.

3.^[2] Within the scope of their legal competence, the authorities of Papua New Guinea and the United States shall assist each other in the arrest of members of the U.S. Forces in Papua New Guinea and in handing them over to the authorities who are to exercise jurisdiction in accordance with the provisions of this Article.

- Papua New Guinea authorities shall promptly notify United States authorities of the arrest or detention of any member of the US Forces.

- The custody of any member of the US Forces over whom Papua New Guinea authorities are to exercise jurisdiction shall reside with United States authorities, if they so request, from the commission of the offence until completion of all judicial proceedings. United States authorities shall, upon the request of Papua New Guinea authorities and without delay, make such persons available to those authorities for the purpose of any investigative or judicial proceedings associated with the offence with which the person has been charged. In the event Papua New Guinea judicial proceedings are not completed within one year, the United States authorities shall be relieved of any obligations under this paragraph. This one year period will not include the time necessary for appeal.

- a. Within the scope of their legal authority, United States and Papua New Guinea authorities shall assist each other in carrying out all attendance of witnesses and in the collection and production of evidence, including seizure and in proper cases, the delivery of objects connected with an offence.

² Paragraph number as it appears in TIAS 11612 - does not contain paragraphs numbered "1" or "2."

b. The authorities of the United States and Papua New Guinea shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

- When any members of the US Forces have been tried in accordance with the provisions of this Article and have been acquitted or have been convicted and are serving, or have served their sentence, or have had their sentence remitted or suspended, or have been pardoned, they may not be tried again for the same offense within Papua New Guinea. Nothing in this paragraph, however, shall prevent United States military authorities from trying members of the US Forces for any violation of rules of discipline arising from the act or omission which constituted an offense for which they were tried by Papua New Guinea authorities.

- When members of the US Forces are detained, are in custody, or are prosecuted by Papua New Guinea authorities, they shall be accorded all procedural safeguards established by the law of Papua New Guinea. In addition, procedural safeguards shall include, at the minimum, the right:

a. To have a prompt and speedy trial;

b. To be informed in advance of trial of the specific charge or charges made against them, and to have reasonable time to prepare a defense;

c. To be confronted with witnesses against them;

d. To present evidence in their defense, including legal process to compel witnesses to appear if such witnesses are within the jurisdiction of Papua New Guinea;

e. To have legal representation of their own choice for their defense, and [to] the extent provided for any person under Papua New Guinea law, to have free or assisted legal representation;

f. To have the services of an official interpreter of their own choice, if proceedings are conducted in a language not understood by the accused;

g. To communicate with a representative of the United States and to have a representative of the United States present at all judicial proceedings. These proceedings shall be public, unless the court, in accordance with Papua New Guinea law, excludes persons who have no role in the proceedings.

- Members of the US Forces serving sentences in Papua New Guinea shall have the right to visits and material assistance.

- Members of the US Forces shall be subject to trial only by courts of ordinary jurisdiction, and shall not be subject to the jurisdiction of Papua New Guinea military or religious courts.

- *Taxes.* The US Forces and the members thereof shall be exempt from all taxes and similar fees and charges of Papua New Guinea and its political subdivisions.
- *Driving Licenses and Vehicle Registration.* Papua New Guinea authorities shall accept as valid, without a driving test or fee, a driving permit or license issued by the appropriate United States authority to members of the US Forces for the operation of military or official vehicles. Vehicles owned by the United States need not [be] registered, but shall have appropriate identification markings.
- *Public Utilities.* The United States and members of the US Forces may use water, electricity, and other public utilities and facilities on terms and conditions, including rates or charges, no less favourable than those available to the Papua New Guinea Armed Forces in like circumstances unless otherwise agreed. Papua New Guinea will, upon request, assist United States authorities in obtaining water, electricity, and other public utilities and facilities.

- *Use of Transportation Facilities.* Vehicles, vessels, and aircraft operated by or for the United States Armed Forces shall not be subject to the payment of landing or port fees, navigation or overflight charges, including light and harbor duties, while in Papua New Guinea. Aircraft operated by or for the United States Armed Forces shall observe local air traffic control regulations while in Papua New Guinea. Vessels owned or operated by the United States solely on United States Government non commercial service shall not be subject to compulsory pilotage at Papua New Guinea ports.
- *Security.* US and Papua New Guinea authorities will cooperate in taking such steps as may be necessary to insure the security of US Armed Forces personnel and property present in Papua New Guinea pursuant to this agreement.
- *Bearing of Arms.* Members of the US Forces may possess and carry arms while on duty on condition that they are authorized to do so by their orders, provided that arrangements regarding the carrying of arms outside areas and facilities in use by United States Armed Forces are to be agreed between the appropriate United States and Papua New Guinea authorities.
- *Implementation.* Arrangements to implement this understanding shall be entered into by appropriate authorities of the two governments, as required.

EVERETT E. BIERMAN
 United States Ambassador
 to PNG
 For the United States
 of America
 28 February 1989

SIR KINGSFORD DIBELA, GCMG,
 K. St. J.,
 Governor-General
 For the Government of
 Papua New Guinea
 28 February 1989