

**BASIC AGREEMENT BETWEEN THE GOVERNMENT OF SOLOMON ISLANDS
AND THE GOVERNMENT OF PAPUA NEW GUINEA ON BORDER
ARRANGEMENTS**

(Port Moresby, 27 July 2004)

ENTRY INTO FORCE : 27 JULY 2004

STATUS REPORT

THE GOVERNMENT OF SOLOMON ISLANDS AND THE GOVERNMENT OF PAPUA NEW GUINEA (HEREINAFTER REFERRED TO AS THE “PARTIES”);

HAVING REGARD to the traditional bonds of friendship and the spirit of Melanesian cooperation and good neighbourly relations between their two countries;

DETERMINED to further foster cooperation, goodwill and understanding between the two countries;

BEARING IN MIND the Treaty between Solomon Islands and the Independent State of Papua New Guinea Concerning Sovereignty, Maritime and Seabed Boundaries and Cooperation Related Matters, signed at Port Moresby on 25 January 1989;

FURTHER BEARING IN MIND the Framework Treaty Guiding Relations between Solomon Islands and the Independent State of Papua New Guinea, signed at Port Moresby on 27 July 2004;

TAKING INTO ACCOUNT the United Nations Convention on the Law of the Sea, signed at Montego Bay, Jamaica on 10 December 1984;

DETERMINED to further cooperate in the administration and development of the Border Area for the mutual benefit of their people giving due consideration to the traditional way of life and livelihood of the people living in the Border Area;

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

In this treaty –

“border area” means the areas as determined in accordance with Article 2;

“fisheries resources” means all living natural resources of the Sea and Seabed including all swimming and sedentary species;

“free movement” means movement only by the traditional inhabitants for and in the course of traditional activities;

“indigenous fauna and flora” includes migratory fauna;

“maritime boundary” means the international maritime boundary between Solomon Islands and Papua New Guinea as defined under the Treaty between Solomon Islands and the Independent State of Papua New Guinea Concerning Sovereignty, Maritime and Seabed Boundaries and Cooperation on Related Matters, signed at Port Moresby on 25 January 1989;

“mile” means an international nautical mile, being 1,852 meters in length;

“sedentary species” means living organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil;

“territory” means all the land, maritime and airspace under which Solomon Islands and Papua New Guinea each exercises sovereignty in accordance with their National Constitutions and with international law;

“traditional activities” means activities performed by traditional inhabitants in accordance with Article 5. In the application of this definition, except in relation to activities of a commercial nature, “traditional” shall be interpreted liberally and in the light of prevailing custom;

“traditional inhabitants” means citizens of Solomon Islands and Papua New Guinea living in the Border Area, as determined by the Joint Border Committee, in accordance with Article 5.

Article 2

The Border Area

The Border Area shall be established; comprising of all land, sea, airspace, seabed and subsoil of constituencies within the Bougainville Province of Papua New Guinea and wards within the Solomon Islands; in respect of which the Maritime Boundary forms part of their boundaries.

The Parties shall, through the Joint Border Committee, consult and each make necessary arrangements for the survey and demarcation of the boundary and mapping of the Border Area on their respective side of the maritime boundary, a mutually agreed method.

The principal purpose of the Parties in establishing the Border Area and determining its northern, southern, eastern and western boundaries is to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants, including their traditional fishing and free movement in accordance with the principles and procedures set out in the Framework Treaty Guiding Relations between both countries and this Agreement.

A further purpose of the Parties in establishing the Border Area is to protect and preserve the marine environment and indigenous fauna and flora in and in the vicinity of the Border Area.

The Border Area may be varied from time to time by mutual agreement of the Parties.

Article 3

The Joint Border Committee

1. There shall be established a Joint Border Committee consisting of:

- (i) senior official of both Parties;
- (ii) representatives of traditional inhabitants from the respective Border Areas; and

(iii) representatives of the Western, Choiseul and Malaita Provinces of Solomon Islands and of the Bougainville Province of Papua New Guinea.

2. The Committee shall formulate guidelines and procedure for the effective implementation of this Agreement; including inter-alia, the following:

(i) the implementation of customs, immigration and quarantine matters in accordance with the respective national laws and international conventions to which both or either country is a party,

(ii) transport and communications issues;

(iii) development of natural resources so as to promote maximum benefits to both countries, especially the traditional inhabitants;

(iv) payment of traditional compensation for the settlement of disputes that may arise within the Border Area amongst its traditional inhabitants;

(v) rules of procedure in respect of arbitration and settlement of disputes that may arise;

(vi) rules regulating the procedure and conduct of meetings of the Committee; or

(vii) any other matter which may be necessary for the proper carrying out of the provisions of this Agreement.

3. Members of the Committee shall, as appropriate, advise and make recommendations to their respective Governments on all matters, procedures and arrangements relating to the implementation of this Agreement and to the development and review of border cooperation. The Committee shall meet at least once a year, and additionally as and when necessary, upon request by either Party. The venue for such meeting as much as possible shall be on a rotation in each country.

4. The Committee shall make arrangements for direct communication linkages to be established and maintained between the Parties for Border administration purposes.

5. The Parties may, if required, consult each other concerning the implementation and operation of this Article.

Article 4

Liaison Arrangements

1. To assist the Joint Border Committee there shall be established liaison meetings to discuss matters of mutual concern relating to the administration of the Border. Arrangements shall be made for the regulating functions and working procedures for such meetings.

2. The main purpose of liaison meetings shall be as follow:

(i) to exchange information on all developments in the Border Area which are of mutual interests both Parties;

(ii) to devise, amend or establish arrangements to facilitate the practical operations, particularly at local and district levels, of the provisions of this Agreement; and

(iii) to ensure that the Parties, through the Joint Border Committee, are kept informed of development of significance relating to the Border Area and that their attention is drawn to any matters which may require consultation in accordance with this Agreement.

3. The liaison meetings shall take place, as and when required, but not later than three months intervals.

Article 5

Border Crossing for Traditional and Customary Purposes

1. Each Party shall continue to recognize and permit movement across the Border by the traditional inhabitants of the other country who reside in the Border Area and are citizens of the country concerned for traditional activities within the Border Area.

2. The Parties, on recommendation of the Joint Border Committee, shall adopt Special Arrangements which will define the traditional inhabitants and activities and set out the procedures for the exercise of cross border rights by traditional inhabitants in the Border Area.

3. The laws of each country shall apply to all other people entering the Border Area who do not qualify as “traditional inhabitant” within the meaning of the Agreement.

Article 6

Exercise of Traditional Rights of Land and Waters in the Border Area

1. Where the traditional inhabitants of one country who reside in the Border Area and are citizens of the country concerned enjoy traditional rights of access to and usage of areas of land or sea, seabed, estuaries, coastal tidal areas and reefs in the Border Area of the other country that Party shall permit the continued exercise of those rights, in accordance with the Special Arrangements referred to in Article 5 and subject to its laws and the regulations, on the same conditions as those applying to its own citizens.

2. The traditional rights to use land and waters referred to in paragraph 1 of this Article shall not constitute propriety rights over the same.

3. The rights referred to in paragraph 1 of this Article shall be exercised by the persons concerned without settling permanently on that side of the Border, unless such persons obtain permission to enter the other country for residence, in accordance with the immigration and other laws and or procedures of that country.

Article 7

Border Crossings by Non-Traditional Inhabitants

1. Crossing of the Border by persons not falling under the provisions of Article 5 of this Agreement is to take place through points of entry declared by a Party in accordance with relevant existing laws and regulations. Declared points of entry shall be notified by each Party by exchange of formal communications.

2. Information shall be exchanged with respect to the Migration Laws and policies existing on each side of the Border in order to maintain more effective control of the Border Area.

3. Persons who cross the border other than in accordance with Articles 5 and 6 of this Agreement or the relevant laws and regulations relating to entry shall be treated as illegal immigrants.

4. In administering its laws and policies relating to entry of persons into its territory across the Border, each Party shall act in a spirit of friendship, good neighbourliness, bearing in mind relevant principles of international law, established international practice, the importance of discouraging the use of border crossing for the purpose of evading justice and use of its territory in a manner consistent with any provisions of this Agreement. Each Party shall also take into account, where appropriate, the desirability of exchanging information and holding consultations with the other.

Article 8

Security

1. The respective Governments shall take all necessary measures to prevent the use of their respective border areas, for the staging of any kind of hostile or illegal activities against the other. To this end, each Government shall maintain its own procedures of notification and control.
2. Each Government shall keep the other informed and where appropriate hold consultations in respect of any development in the Border Area in relation to security matters.
3. In the event of an outbreak of hostility or threat to national security in the Border Area, the Parties shall refer the matter to the Joint Border Committee for consideration and appropriate advice for action.

Article 9

Natural Disaster, Search and Rescue and Major Accidents in the Border Area

1. In the event of a natural disaster or major accident occurring in the Border Area, the Parties shall establish close contact with each other and render all possible assistance, particularly in search and rescue operations.
2. For implementation purposes, the appropriate authorities of the Parties will consult and cooperate in taking remedial measures in response to such situations.

Article 10

Transport and Communication

1. The Parties shall cooperate, in accordance with their respective established procedures and practices in:-
 - (i) establishing and maintaining direct trans-border telecommunication links for border-liaison purposes;

- (ii) aeronautical communication between the Air Traffic Services Units of the two (2) countries relating to international flights;
- (iii) maritime communication between the Maritime Agencies of the two (2) countries relating to movement of vessels in or through the Border Area;
- (iv) coordination of radio frequency for search and rescue and other emergency situations; and
- (v) matters relating to the improvement of communication systems and direct trans-border transport.

Article 11

Citizenship

The Parties, if either so requests, shall consult with each other on any problems being encountered in relation to the question of nationality or citizenship. For this purpose, the Parties shall exchange relevant information regarding their applicable laws and regulations.

Article 12

Immigration, Customs, Quarantine and Health

1. The cooperation already existing in the field of immigration, customs, quarantine and health, including mutual visits of officials and exchange of information and periodical reports; shall be continued and developed.
2. Except as otherwise provided in this Agreement, each Party shall apply immigration, customs, quarantine and health procedures in such a way as not to prevent or hinder free movement of traditional inhabitants and or the performance of traditional activities in and in the vicinity of the Border Area by traditional inhabitants of the other Party.
3. Each Party, in administering its laws and policies relating to the entry and departure of persons and the importation and exportation of goods into and from areas under its jurisdiction in and in the vicinity of the Border Area, shall act in a spirit of mutual friendship and good neighbourliness bearing in mind relevant principles of international law and established international practices and the importance of discouraging the occupancy, under the guise of free movement of traditional inhabitants and or performance of traditional activities, or illegal entry, evasion of justice and practices prejudicial to effective immigration, customs, health and quarantine protection and control.

4. Notwithstanding the provisions of paragraph 2 of this article:

(i) Traditional inhabitants of one Party who wish to enter the other country, except for temporary stay for the performance of traditional activities, shall be subject to the same immigration, customs, health and quarantine requirements and procedures as citizens of that Party who are not traditional inhabitants;

(ii) Each Party reserves the right to limit free movement of traditional inhabitants to the extent necessary to control abuses involving illegal entry or evasion of justice; and

(iii) Each Party reserves its right to apply such immigration, customs, health and quarantine measures, temporary or otherwise, as it considers necessary to meet problems which arise. In particular, each Party may apply measures to limit or prevent free movement or the carriage of goods, plants or animals in the course thereof, in the case of an outbreak or spread of an epidemic apizotic or epihytotic in or in the vicinity of the Border Area.

Article 13

Exchange of Information

1. The Parties shall, as appropriate and at the request of either Party, provide to each other information relevant for the purposes of this Agreement, including but not limited to:-

(i) the location and movement of their respective citizens across the common maritime boundary;

(ii) activities of their citizens inconsistent with the peace, good order and security of their respective territories; and

(iii) their surveillance and enforcement activities.

2. The Parties shall develop common forms and procedures for reporting under this Article and effective methods for communicating such information.

Article 14

Major Developments of Natural Resources

1. The Parties recognizing the need which either Parties may have to develop, for the benefit of its people generally, any natural resources occurring in an area adjacent to or in close proximity to the Border, agree to keep each other informed, either by consultations or through their respective representatives on the Joint Border Committee, as to particulars of such developments or proposed developments.

2. The Parties further recognize the need which may arise from time to time for them to cooperate in order to formalize mutually satisfactory arrangements which will assist in facilitating the establishment and continued operations of such developments in either country in a manner consistent with the provisions of this Agreement.

3. If any single accumulation of liquid hydrocarbons or natural gas, or if any other mineral deposit in the subsoil, extends across the Border, and parts of such accumulation or deposit that is situated on one side of the Border, is recoverable wholly or in part from the other side of the Border, the Parties will, consistent with their obligations under Article 3 of the Treaty between the Independent State of Papua New Guinea and Solomon Islands Concerning Sovereignty, Maritime and Seabed Boundaries between the two Countries and Cooperation on Related Matters, seek to reach agreement on the manner in which the accumulation or deposit shall be most effectively exploited and on the equitable sharing of the benefits derived from such exploitation.

Article 15

Protection of the Environment

When mining, industrial fisheries, or other projects are carried out in areas adjacent to, or in close proximity to the Border, the Party responsible for such developments shall ensure that all necessary precautionary measures are taken to prevent or control pollution of the environment across the Border.

Article 16

Utilization and Conservation of Natural Resources

The Parties shall, as appropriate and at the request of either Party, consult each other on matters regarding the utilization and conservation of such natural resources as fresh water and forest resources (including wildlife) in areas adjacent to, or in close proximity to the Border, with a view to preventing the adverse effects which might arise from the exploitation of such resources.

Article 17

Fauna and Flora

Each Government Party shall use its best endeavours, and shall enhance mutual cooperation to protect species of indigenous fauna and flora that are or may become threatened with extinction, in and in the vicinity of the Border Area.

Article 18

Compensation

The Parties, through the Joint Border Committee, shall, as and when necessary, adopt appropriate mechanisms and procedures for the payment of compensation claims under this Agreement.

Article 19

Promotion of the Agreement

The Parties shall, use their best endeavours, to promote amongst their people, particularly among those inhabiting the Border Area, an understanding of the Agreement, so as to foster a cordial and harmonious relationship between the people of their respective countries.

Article 20

Dispute Settlement

Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled amicably by the Parties through consultation or negotiation.

Article 21

Review and Consultation

1. This Agreement shall be reviewed upon the expiration of a five (5) year period, within three (3) months of such expiration, beginning from the date of the exchange of instruments of ratification.
2. The Agreement may be reviewed prior to the expiration of the period specified in paragraph 1 of this Article if both Governments agree on a review.
3. The Committee may, following consultations, make recommendations to their respective governments on the need for review of the Agreement or any other matter concerning border arrangements not specifically regulated by this Agreement but which may affect the implementation of the Agreement.

Article 22

Signature and Ratification

This Agreement is subject to ratification, in accordance with the laws of each country, and shall come into force on the day on which the Ratification Instruments are exchanged.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement and have affixed hereto their seals.

DONE at Port Moresby on this 27th day of July 2004.

[Signed] [Signed]

FOR THE GOVERNMENT OF PAPUA NEW GUINEA FOR THE GOVERNMENT OF
SOLOMON ISLANDS