

THE LEGAL ADVISER

DEPARTMENT OF STATE

WASHINGTON

October 31., 2001

Honorable Robert D. McCallum, Jr.
Assistant Attorney General
Civil Division
United States Department of Justice
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20520

Re: *Alexis Iolyweek Sarei, et al.*, v. *Rio Tinto* to pie,
at al., No. CV 00-11695 MMM (AIJx) (C.D. Ca)

Dear Mr. McCallum:

By letter dated August 30, United States District Court Judge Margaret M. Morrow solicited the opinion of the Department of State "as to the effect, if any, that adjudication of [the above-captioned] suit may have on the foreign policy of the United States." . . . Although Judge Morrow advises that defendants have raised the act of state and political question doctrines in a motion to dismiss, she has not expressly invited the Department to comment on these legal doctrines.

The gravamen of plaintiffs' claims is their assertion that defendants in concert with the government of Papua New Guinea (PNG) and PNG officials were responsible for despoliation of the environment of Bougainville Island, PNG, as well as for the commission of various atrocities in the suppression of an uprising on the island. As described in Judge Morrow's letter, under the environmental claims, plaintiffs contend that defendants' mining operations as a joint venture partner with the PNG under the PNG's oversight destroyed the island's river system and fish supply, and polluted the atmosphere; under the "war crimes" claims, plaintiffs contend that defendant induced the PNG to impose a military blockade preventing medical supplies from reaching the island resulting in many civilian deaths, and also that PNG defense forces committed acts of torture, killing, bombing, rape and pillage. Plaintiffs assert that these actions violated international law, and that their claims against Rio Tinto are cognizable under the Alien Tort Statute, 28 U.S.C. § 1350.

The Department of State has previously expressed its concern over human rights abuses in Bougainville during the protracted civil war with PNG authorities there, in particular in the annual publication *Country Reports on Human Rights Practices*. It would not wish any statement made today to be taken to detract from those concerns. However, the court's inquiry focuses on the foreign policy consequences today of the pending litigation. In that regard, the Department has been encouraged by progress in the multilateral, United Nations-sponsored Bougainville peace process, which is seeking a comprehensive settlement to the Bougainville conflict. On August 30, the same date as Judge Morrow's letter soliciting our opinion on potential foreign policy effects of the suit, the PNG Government and representatives of the people of Bougainville concluded the Bougainville Peace Agreement. . . . Full implementation of that agreement which provides, *inter alia*, for withdrawal of remaining PNG forces in Bougainville, for eventual establishment of an autonomous Bougainville Government, and for establishment of a commission to address human rights issues in Bougainville will require sustained effort and maintaining a delicate political balance in the years ahead.

The success of the Bougainville peace process represents an important United States foreign policy objective as part of our effort at promoting regional peace and security. In our judgment, continued adjudication of the claims identified by Judge Morrow in her August 30 letter would risk a potentially serious adverse impact on the peace process, and hence on the conduct of our foreign relations. According to local custom, the concept of “reconciliation” is at the heart of the peace process. We understand that acts of reconciliation have already occurred as a foundation to the August 30 agreement, and that adjudication in a foreign court of the issues alleged in this case could invalidate these steps and sweep away the basis of the peace agreement. Countries participating in the multilateral peace process have raised this concern with us as well.

The Government of Papua New Guinea, in particular, has stated its objection to these proceedings in the strongest terms, as set forth in the attached letter of October 17 from PNG Chief Secretary Robert Igara to U.S. Ambassador Susan Jacobs. . . . Clearly, the PNG perceives the potential impact of this litigation on U.S. -PNG relations, and wider regional interests, to be “very grave.” We cannot lightly dismiss such expressions of concern from a friendly foreign state.

I would be grateful if you could transmit the foregoing views of the Department of State to Judge Morrow in the appropriate form.

Sincerely,

~

William H. Taft, IV
Legal Adviser

Enclosures:

As stated.