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9 UNITED STATES DISTRICT COURT  
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 11 WESTERN DIVISION  
 12

13 ALEXIS HOLYWEEK SAREI,  
 et al., )

No CV 00-11695 MMM (AIJx)

14 Plaintiffs,

15 STATEMENT OF INTEREST  
OF THE UNITED STATES

16 v.

17 RIO TINTO plc, et al  
 18 Defendants.

DATE: No date set  
 TIME: No time set  
 JUDGE: The Honorable  
 Margaret M. Morrow

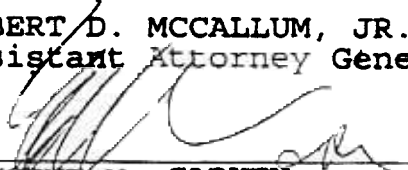
19 On August 30, 2001, this Court "solicit[ed] the  
 20 Department of State's opinion as to the effect, if any, that  
 21 adjudication of [the captioned] suit may have on the foreign  
 22 policy of the United States." See Letter from the Honorable  
 23 Margaret M. Morrow to William Howard Taft IV of August 30,  
 24 2001. Pursuant to 28 U.S.C §§ 516-17, the Attorney General, on  
 25 behalf of the Department of State, hereby submits the following  
 26 Attached hereto as Exhibit A is a letter, dated October 31,  
 27 2001, from William H Taft, IV, Legal Adviser, U.S. Department of  
 28 State, to Robert D. McCallum, Jr., Assistant Attorney General,

1 which explains the Department of State's views on the effects  
 2 that continued adjudication of the action may have on the conduct  
 3 of U.S. foreign relations.

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Respectfully submitted,

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Dated: November 5, 2001

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 Holyweek Sarei, et al., v. Rio Tinto plc,*  
et 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." Encl. 1. 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. Encl. 2. 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.

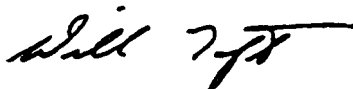
The Government of Papua New Guinea, in particular, has stated its objection to these proceedings in the strongest terms, as set forth in the attached letter of October 17 from PNG Chief Secretary Robert Igara to U.S. Ambassador

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Susan Jacobs. Encl. 3. 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

United States District Court  
Central District of California  
255 East Temple Street  
Los Angeles, California 90012

Margaret M. Murroso  
United States District Judge

Telephone  
(213) 894-2949

August 30, 2001

The Honorable William Howard Taft IV  
Office of the Legal Adviser  
United States Department of State  
2201 C Street N.W.  
Washington, D.C. 20520

Re: *Alexis Holyweek Sarei, et al. v. Rio Tinto plc, et al.*  
CV 00-11695 MMM (AJJx)

Dear Mr. Taft:

On November 2, 2000, current and former residents of the island of Bougainville Island in Papua New Guinea ("PNG"), filed an action in this court under the Alien Tort Claims Act, 28 U.S.C. § 1350. Plaintiffs allege that defendants Rio Tinto plc and Rio Tinto Limited (collectively "Rio Tinto") committed various human rights violations in connection with their operation of a mine on the island. Specifically, plaintiffs contend that Rio Tinto's mining operations on Bougainville destroyed the island's environment, harmed the health of its people, and instigated a ten-year civil war that resulted in thousands of civilian casualties. While Rio Tinto plc and Rio Tinto Limited are the only named defendants, many of plaintiffs' allegations concern actions purportedly taken by the PNG government and members of the PNG defense force. Plaintiffs allege that the PNG government acted at the direction or request of Rio Tinto, and that the company and the government were joint venture partners in operating the mine. The court has enclosed a copy of the first amended complaint for your reference, but summarizes the pertinent allegations below:

Environmental Claims

Plaintiffs allege that the mine was created and operated pursuant to a joint venture between Rio Tinto and the PNG government, and that it was an important source of income for PNG. Moreover, they allege that mining operations were governed

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by PNG law, namely the "Mining (Bougainville Copper Agreement) Act of 1974 ("Copper Agreement")," which regulated the disposal of mining waste and vested in PNG's Department of Minerals and Energy the power to control and monitor pollution generated by the mine. Plaintiffs contend that Rio Tinto's mining operations destroyed the environment of the Bougainville by, *inter alia*, depositing more than one billion tons of waste into the island's river system, destroying the supply of fish, and polluting the atmosphere with emissions from the mine. Plaintiffs maintain that these actions constitute a violation of international law.

#### Claims Regarding War Crimes

Plaintiffs additionally allege that the operation of the mine and destruction of the environment led to an uprising on Bougainville, which ultimately forced the mine to close. Plaintiffs contend that Rio Tinto responded by threatening to withdraw all investment in PNG if the PNG government did not take military action to suppress the uprising and reopen the mine. Thus, plaintiffs allege that at the behest of Rio Tinto, the PNG government imposed a military blockade, which prevented medical supplies from reaching the people of Bougainville and caused thousands of civilian deaths. Additionally, plaintiffs allege that the PNG government acted at the direction of Rio Tinto when it sent a defense force to Bougainville to suppress the uprising. According to plaintiffs, members of the defense force committed acts of torture, killing, bombing, rape, and pillage in violation of international law.<sup>1</sup>

On January 26, 2001, defendants filed a motion to dismiss, asserting, *inter alia*, that plaintiffs' suit is barred by the act of state and political question doctrines. Defendants contend that these doctrines apply because, in order to hold Rio Tinto liable, the court will have to determine that the actions of the PNG government violated international law. They assert, for example, that deciding the merits of plaintiffs' environmental claims will require that the court pass judgment on official acts of the PNG government, since operation of the mine was governed by the Copper Agreement, and the Department of Minerals and Energy was responsible for monitoring pollution. Similarly, the parties dispute whether the decision to impose the blockade

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<sup>1</sup>The complaint also contains allegations that the Australian and PNG governments assisted Rio Tinto in forcibly displacing Bougainvilleans from their land so that the mine might be constructed and operated. It is not clear the extent, if any, to which plaintiffs rely on such allegations to state claims against Rio Tinto for violation of international law. (See, e.g., Complaint, ¶¶ 101-106, 111, 125, 159-62, 230, 239, 244-45.)

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August 30, 2001  
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was a legitimate act of warfare, such that it would be deemed an official act of the PNG government, or whether it constituted torture, war crimes, crimes against humanity, or genocide in violation of international law. Finally, there is a question as to whether the acts undertaken by the PNG defense force to suppress the uprising in Bougainville constitute the official acts of a sovereign state or violations of international law.

After considering the parties' papers and conducting a hearing on the matter, the court determined that it would be appropriate to solicit the Department of State's opinion as to the effect, if any, that adjudication of this suit may have on the foreign policy of the United States. The court would appreciate your consideration of this matter and your communication of the State Department's position regarding these issues. The court leaves to your discretion whether your response is best submitted in the form of a letter or a Statement of Interest filed pursuant to 28 U.S.C. § 517. For case management purposes, the court would appreciate it if you could submit a response by October 5, 2000, or indicate the date by which you intend to respond.

Very truly yours,



Margaret M. Morrow  
United States District Judge

cc: Counsel for plaintiffs:  
Steve W. Berman, Esq.  
Kevin P. Roddy, Esq.  
Paul Luvera, Esq.  
Joel D. Cunningham, Esq.

Counsel for defendants:  
James J. Brosnahan, Esq.  
✓ Jack W. Londen, Esq.