

SOME THOUGHTS ON RAMSI AND THE FACILITATION ACT

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There were numerous attempts to resolve the Solomon Islands conflict before the Regional Assistance Mission to Solomon Islands was finally deployed in July 2003. One of the landmark peace agreements was the Townville Peace Agreement (TPA) in October 2000. The TPA managed to stop overt violence between the Isatabu Freedom Movement (IFM) and Malaita Eagle Force (MEF). However, there were numerous weaknesses in the TPA. First, it assumed that the parties to the conflict would implement the requirements of the agreement.

The Solomon Islands Government was vested with the responsibility to deal with the compensation demands of aggrieved parties, facilitate development projects and provide for disarmament of militant. Unfortunately, this was proofed to be impossible because the responsibilities and expectations were placed on a weak state. For the IFM and MEF divisions emerged after the agreement that gave a new dimension and character to it. This problem was worsened because the police force, particular the top positions, was dominated by Malaitans, many of whom had participated in the attempt coup, 5th June 2000.¹

Consequently, law and order deteriorated. There were reports of people harassing government ministers, public servants and business people. Some of those involved in the criminal activities were police officers. In and around Honiara there were police officers seen driving around in stolen vehicles. By late 2001 the Solomon Islands public was requesting outside assistance to disarm criminal elements. However, the response from Australia and foreign governments was insufficient to resolve the crisis.

Subsequently, democratic functioning of state institutions was undermined. The state was continuously blackmailed by way of outrageous compensation claims. As a result, the weakness of the state of Solomon Islands was worsened. This therefore raised the question of the state's ability to create or impose law and order, as well as maintain peace after the signing of the TPA. Due to the deteriorating law and order situation and the

¹ Kabutaulaka K "A Weak State and the Solomon Islands Peace Process" (East-West Center, Working Paper, 2002). 17.

undermining of the functions of state institutions, the Prime Minister Allan Kemakeza requested assistance from Australia in May 2003. This saw the formulation of the Regional Assistance Mission to Solomon Islands (RAMSI).

Facilitation Act 2003

An Agreement between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga was signed on the 24th May 2003. This was for the deployment of armed forces, police and other personal to Solomon Islands. On 4th July 2003, the then Governor General of Solomon Islands, Sir John Laply made a formal request. This then led to the passing of the Facilitation of International Assistance Act 2003 (No.1 of 2003). The Agreement signed on the 24th May 2003 was incorporated as part of the Act.

The Facilitation Act provided for the powers and privileges of the visiting contingent and the control of weapons. Under section 6 of the Act it states that the visiting contingent may exercise any powers that may be exercised by police officers under the Police Act. The visiting contingent also has the power to seize any weapons necessary for the achievement of a public purpose.² Section 17 states that visiting contingent is immune from legal proceedings and are exempted from taxes.³ Furthermore, under the Facilitation Act, the Governor General is vested with the power to make regulations.⁴

Mandate

The primary mandate of RAMSI is to restore law and order problem as well as help rebuild the Solomon Islands economy. Under this mandate there a four basic areas which RAMSI is requested to address:

1. Restore civil order in Honiara and throughout the rest of the country. Specific requirements include:
 - Reform RSIP
 - Confiscate illegal weapons

² See section 10 Facilitation Act 2003.

³ See section 16 Facilitation Act 2003.

⁴ See section 22 (1) Facilitation Act 2003.

- Investigate and prosecute new criminal offences
 - Strengthen courts and prison system
 - Protect key government ministries
2. Stabilised government finances. Specific requirements include:
- Secure revenue collection and control expenditure
 - Strengthen financial administrative safeguards
 - Obtain donor and International Financial Institutions' support
3. Promote long term economic recovery and revive business confidence. Specific requirements include:
- Implement economic reform
 - Deal with corruption
 - Improve debt management
4. Rebuild machinery of government. Specific requirements include:
- Reforming the way the government functions, including the Parliament, the cabinet, the public service, and electoral processes.

Constitutionality

The issue of the constitutionality of the RAMSI exercise relates to how it is set up and operates. The Facilitation Act provides the legal framework for the work of RAMSI. One of the first constitution issues is the line of accountability. Under the Act the Participating Police Force is accountable to the Deputy Police Commissioner who is a senior Australian Police Officer.⁵ Note, the Act is silent on whether the most senior Australian Police Officer should resign before taking the post of Deputy Police Commissioner of Solomon Islands. If the most senior Australian Police Officer did not resign but yet appointed as Deputy Police Commission then that would mean he/she is serving two masters. There is a parallel line of accountability within a sovereign state. Is this constitutional?

⁵ See Article 5 (4) Agreement.

The other constitutional issue is on the question of immunity. Under the Constitution of Solomon Islands an aggrieved party to apply to the High Court for redress for the contravention of his/her fundamental rights. Under section 18 (1) it provides:

...if any person alleges that any of the [human rights provisions] of this Constitution has been, is being or is likely to be contravened in relation to him for, in the case of a person who is detained, if any other person alleges such contravention in relation to the detained then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

Therefore, in a situation whereby a member of RAMSI is alleged to have violated the fundamental rights of person the courts could not do much unless if RAMSI waives the immunity. This begs the question – is the immunity provision consistent with the Constitution?

Moreover, the constitutionality of section 22 (1) of the Facilitation Act could be raised. That section empowers the Governor General to make regulations providing for any matter which is necessary or convenient to give effect to this Act. This seems to be contradictory to what is expected of the Governor General as stipulated in the Constitution. The Governor General holds a ceremonial role not a law making body. In the advice of his/her function the Governor General is expected to act in accordance with the advice of cabinet.⁶ The Facilitation Act is silent on this. As a result, section 22 (1) of the Facilitation Act is questionable.

Successes

RAMSI is about to celebrate its fifth anniversary since its arrival in Solomon Islands. The work of RAMSI is pronounced as successful. This has been so because of the number of arrests made, cases prosecuted, reviving of the government machinery, national budget back on track and the restoration of law and order. Also, there is tremendous amount of aid money rolling and some exports are picking up. Judging of RAMSI success has significance beyond the Solomon Islands. How success is judged and who does so, presents an important connection between RAMSI today, and the rest of the Pacific

⁶ See section 31 (1) Constitution Solomon Islands.

tomorrow. RAMSI was presented as an exercise for the restoration of law and order and institutional building. In that regard, one could argue that RAMSI's work so far is a success.

The crucial question is – is this enough? Is it adequate to judge RAMSI's success on the basis of the number of arrests made and the fiscal figures, largely on the deployed contingent who are made up of imported police, soldiers and consultants? Or do we need to look beyond the Rove prison, into the future of the Solomon Islands? There needs to be an independent assessment of the work of RAMSI. That is difficult to achieve from people and organisations that depend on the verdict that RAMSI is successful.

A SOLOMON ISLANDER PERSPECTIVE ON INTERVENTION

The work of RAMSI in Solomon Islands needs to move from rhetorical acknowledgement of the problem to a more focused approach on the roots of the weak state crisis. Any hope for long term solution, lie in development: fostering stable, transparent and accountable government institutions. These institutions need to meet the needs of the people by empowering them to improve their lives through lawful means.⁷

Furthermore, sustaining intervention in Solomon Islands would require more focus on effective nation building. This would require substantial investment in: disarmament, demobilisation, reintegration and skills training. Without sustained commitment to see nation building through to its eventual conclusion, it is impossible to expect lasting progress in reducing the numerous dangers posed by the weak state syndrome.

⁷ Stuart Eizenstat, John Edward Porter and Jeremy Weinstein "Rebuilding Weak States" (Feb 2005) <<http://www.foreignaffairs.org/2005010faessay84122/stuart-eizenstat-john-edward-porter-jeremy-weinstein/rebuilding-weak-states.html>>(accessed 2 July 05)..