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Hon Lawry Chan MP
Chairman Foreign Relations Committee
National Parliament Office
P.O. Box G19
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Dear Honourable Chairman

RE: REVIEW OF THE RAMSI NOTICE 2003

Enclosed please find a submission from Honourable Manasseh Sogavare, Leader of the Opposition which is self explanatory.

Honourable Sogavare left this morning for his constituency tour. I am therefore pleased to hand deliver his report to you as he had earlier promised.

Thank you.

Yours faithfully

Paul K. Daokalia
Secretary to the Leader of Opposition

**Review of the Regional Assistance
Mission to Solomon Islands**

Honorable Manasseh D Sogavare MP, Leader of
the Opposition Group in Parliament

2008



*Submission to the Foreign
Relations Committee on the Review
of "The Regional Assistance
Mission to Solomon Islands
[RAMSI] Notice [2003]"*

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Leader of the Official Opposition

SUMBISSION TO THE FOREIGN RELATIONS COMMITTEE ON THE REVIEW OF THE REGIONAL ASSISTANCE MISSION TO SOLOMON ISLANDS [RAMSI] BY THE LEADER OF OPPOSITION THE HONORABLE MANASSEH D SOGAVARE MP

1 Introduction.

i. Prelude

The '*Facilitation of International Assistance Act 2003*' [FIAA] empowers the National Parliament to review the international assistance notice every 1 year. Parliament so far has not opted to review the notice since the arrival of RAMSI 5 years ago except to lay it before Parliament, effectively allowing RAMSI to continue under the present arrangement. An attempt by the GCCG on the 4th Anniversary of RAMSI was frustrated by the recent political development, which resulted in the change of government.

It is important that the review must have a starting point, appreciating that a lot of work has been done in highlighting issues that need to be addressed. In other words, the review is an ongoing process, falling short of recommending amendments to the legal framework that govern the operations of RAMSI. It has to be noted here that this is the area that the former Solomon Islands Government and RAMSI cannot see eye to eye. In fact the Forum Review Committee strongly urged Solomon Islands Government to delay any review and

amendment to FIAA, and the Multilateral Assistance Agreement [2003] ATS 17 between participating countries¹.

ii. Concern over Forum and Government's Position on the Question

By taking the above line of thinking the forum task force demonstrates total insensitivity to issues that really matters in enhancing cordial relationship between Solomon Islands and the participating countries. It has to be noted here that the report referred to above has been endorsed by the Forum Leaders and taken onboard by the CNURA Government, indicating that both the forum leaders and the CNURA led Solomon Islands Government have agreed to delay any consideration on amending the legal framework of RAMSI.

The seriousness of this concern is premised on the fact that whether any recommendation will be implemented at all depends entirely on the position taken by the forum leaders and the Solomon Islands Government in the final analysis. Australia as the strongest force in the forum with direct vested interest in the presence of RAMSI in Solomon Islands for strategic reasons [*see argument tendered in Appendix 2*] and the present CNURA led Solomon Islands Government with greater leaning and sympathy with the position taken by Australia [*see CNURA Policy on the future of RAMSI in Appendix 2*] make a perfect partnership as far as this agenda is concern.

We hope this is not an indication that the government and the forum leaders have made up their minds on the issue and that the exercise is a mere formality to satisfy the requirements of section 23 of the Act as carried in the motion moved by the Prime Minister.

¹ Report of the Pacific Islands Forum Review of The Regional Assistance Mission to Solomon Islands April to June 2007 .p7

iii. Getting fair Results from the Review:

Judging from the responses by the provincial premiers on the roles of RAMSI in Solomon Islands it is clear that the majority of Solomon Islanders have no clue whatsoever. Sadly, this ignorance has been capitalized on by the proponents of RAMSI with unbridled powers to continue their presence in Solomon Islands to exert their influence over the ill informed. This process was well coordinated by a net work of very influential people to advance a biased view of RAMSI since it came into the country in 2003. This scenario calls into question the neutrality of any findings and content of the report that will be submitted to Parliament by the Foreign Relations Committee.

Realizing this weakness, the former GCC Government had suggested a possible process [*see Appendix 2*] that would at least provide minimum guarantee that our people will be expressing well informed views that are based on their understanding of the roles of RAMSI and the legal framework under which they operate. The process would have included a nationwide awareness program to inform our people every thing they need to know about RAMSI before they participate in the review. This is not happening in the review in progress.

Instead members of parliament were given four envelopes each containing a number of documents about the review and posters to bring to their constituencies to advertise the review and get people to express their views on RAMSI. It is a forgone conclusion that the views expressed would be based on laymen's understanding of the role of RAMSI and therefore it will certainly be a distorted view.

2 Symptoms that Suggest a Need for Review.

Understandably there are ongoing conflicting set of perceptions driven by different motives over the operation and presence of RAMSI in Solomon Islands. There are those who for very personal reasons only look at the negative aspects of RAMSI. Equally so there are people who are completely blind to the evolving nature of RAMSI that despite the emergence of what are clearly seen to be

negative consequences of actions allowed under the legal framework they stubbornly lend their support.

There are those of course who take an objective view of RAMSI that while supporting the Mission's role they would like to improve the partnership by ironing out the issues that may be seen as undermining the partnership. There are still those and unfortunately the vast majority of our people who have no clue whatsoever and flow along with the most influential of the three groups mentioned above. Of course there is RAMSI who for obvious reasons would take all challenges against them very passionately to protect their presence in the country.

That said, for the last five years Solomon Islanders have been observing and have on different occasions expressed their views and feelings about the partnership. The following is a summary of some of these observations and perceptions:

- a) That RAMSI personnel are insensitive to our worthy customs and culture in the way they deal with our people and would not be bothered about the feelings of the people who are affected by their insensitive actions. Many family breakdowns have direct link to the insensitive behavior of certain members of the visiting contingent. The recent arrest of two elderly couples in the weather coast area of Guadalcanal is based on total ignorance and disregard of the way we relate to our immediate and extended family members in the Melanesian society. Under the FIAA the VC are immune against any proceedings that seeks to enforce customary law. In other words the VC under the provisions of the FIAA can get away with this gross breach of custom.
- b) That RAMSI has no respect for our traditional chiefs in the way they handle village level breaches of national law by the village people who would normally be subject to the authority of the chiefs;
- c) That RAMSI is running a parallel government in Solomon Islands;
- d) That RAMSI has no respect for the country's sovereignty and would like to continue to perpetuate this state of affair by attempting to place the

immunities and privileges provisions in the Facilitation of International Assistance Act 2003 beyond the powers of Parliament to amend;

- e) That RAMSI personnel are sometimes careless in the way they conduct themselves in carrying out their official duties because they are immune against prosecution for crimes committed in the course of carrying out their official duties.
- f) That RAMSI police presence in the rural urban centers is poorly organized and suffers from the disease of parallel force. In terms of logistics Solomon Islands Police Force is poorly resourced to independently carry out their official duties. In this respect it is observed that the nearly \$1billion annual budget assistance to the police and national security achieved very little in terms of developing the capacity of RSIP and setting a sustainable base for long term effectiveness of police work in Solomon Islands because it is spent on Technical Assistance.
- g) That RAMSI is pursuing selective justice in Solomon Islands with very poor success rate of prosecution according to the former Commissioner of Police. Serious still is the observation that many of the cases that were successfully prosecuted were highly questionable. This development casts doubt on the seriousness of RAMSI to sustain long term peace and stability in Solomon Islands.
- h) The absence of an exit strategy for RAMSI casts doubts on the credibility of anything they say about their seriousness and also encourages them to be careless and sluggish about achieving any goals and objectives. It also raised questions as to the real motives of the intervention.
- i) RAMSI intervention is guided by the objectives of protecting the narrow strategic, national and commercial interests of Australia and therefore it failed miserably to address the real issues that matter to the country's peace process.
- j) RAMSI has always trivialized the concerns raised by concerned Solomon Islanders that they must have a timeframe within which they should accomplish their given mandates. Because they fail to do this concerned Solomon Islanders have all the reason to question their genuineness to help the country.

- k) The extension of the immunities and privileges to exempt members of the Visiting Contingent from taxation deprives Solomon Islands of the much needed revenues to sustain public investments in strategic sectors of the economy. Indeed the extension of the privileges to include tax exemption for Private Australian based companies in respect of income earned from services rendered or business carried out in Solomon Islands may be outside the ambit of the facilitating Multinational Agreement.

On the Facilitation of International Assistance Act itself the following fundamental concerns (*See Appendix 1 for a critical analysis and elaborate discussion on these concerns*) are raised: -

- l) Section 6 undermines the role of Parliament to make and unmake legislations and it is considered unconstitutional
- m) Section 7 irresponsibly allows the Visiting Contingent to exercise the powers of the police including the use of reasonable force to officers who do not pledge allegiance to the Commissioner of Police and the people of Solomon Islands. In other words they can afford to be careless and get away with it.
- n) Section 8 irresponsibly allows the appointments of foreign officers who do not pledge allegiance to the Commissioner and the people of Solomon Islands to line posts in the Police Force. This is unacceptable.
- o) Section 10 directly conflicts with the spirit of "The Facilitation of International Assistance (weapons surrender) Notice 2003. It illegally empowers the visiting contingent to seize all guns irrespective of the firearm being legally acquired.
- p) There are evidences that members of the VC may have abused the privilege of freedom of movement under Section 11 to involve in expeditions that have nothing to do with their official duties and engaged in activities that may be unacceptable under the laws of the country.
- q) There is a strong connection between the over pricing of house rents in the rental market with the high level of rents negotiated under the provisions of Section 12 with landlords by RAMSI without considering the general

affordability in the property market. This is reducing senior local executives to accommodations that are well below their status.

- r) There are concerns that Section 15(1) of the Act is opening up the country to people who may abuse the privilege to enter Solomon Islands in the pretext of being employed by RAMSI.
- s) There are concerns that the definition of public purpose is ambiguous and for the purpose of Section 15(3) raise the question as to what extent should personnel effects be allowed and what category of personal effects should qualify.
- t) There are concerns that the privileges accorded under Section 15(4) lack a monitoring mechanism to protect against possible abuse.
- u) There is also concern that no proper policing mechanism exists to properly regulate the implementation of Section 15(5). Goods other than those previously imported by members of VC may be re-exported.
- v) There are concerns that the perceived carelessness by the Visiting Contingent in carrying out their duties may be due to the understanding that they are immune from prosecution under Section 17.
- w) It is a concern that because the officers serving as PPF are not directly answerable to the Commissioner of Police, as provided under Section 19, there is all the indication that PPF is operating a parallel police force in the country. This breeds misunderstanding, misinformation and inefficient use of resources and logistics.
- x) It is a concern that section 20 and 21 concerning the control of guns may be taken overboard for the purpose of pleasing outsiders that we undermine our own security. In any case the entire Part III is totally unnecessary because it deals with guns illegally acquired, which is already illegal under present laws.
- y) It is a concern that the Office of the Governor General may be demeaned by involving His Excellency in the administration of the Act, as provided under section 22. The powers vested in the Governor General should really be exercised by a Minister of the Crown.
- z) There are concerns that the sovereign parliament of Solomon Islands is being subjected to the orders of alien interests under Section 23 to

convene the meeting of parliament on a set date to review its affairs. Parliament is a sovereign authority. In that regard, for the purpose of Section 23 Parliament should be at liberty to meet any time to review it.

aa) Section 24 is most irresponsible. The changing situation in the country makes the protection of the Facilitation of International Assistance Act totally unnecessary. As it stands, it is a license to trample upon the laws of Solomon Islands.

On the *“Multinational Agreement between Solomon Islands and some Pacific Island Countries concerning the operation and status of the police and armed forces and other personnel deployed to Solomon Islands to assist in the restoration of law and order and security”*, (see also appendix 3) the following concerns are raised:-

- bb) There are concerns that the duration of the assistance under **Article 3** is left too loose without tying it down to specific performance. As it stands currently, the visiting contingent can delay the implementation of key activities and there is nothing we can do about it. They must be tied down under a mutually agreed exit strategy to perform within a given time frame.
- cc) **Article 8** allows VC to detain and disarm people. The concern here is that while this power and the need for the VC to exercise it as a foreign force may be necessary in 2003, under the situation then prevailing, the changing environment now makes this provision out of touch with reality. Detaining and disarming of people who are criminal are powers that the RSIP already have. If there is still a need to maintain a RAMSI style operation to assist the RSIP, then members of the VC must be subject to the authority of the Commissioner of Police by taking oath of allegiance. This will guarantee discipline.
- dd) There are concerns that **Article 13** is put there only for the convenience of the VC. The general provision totally disregards the situation where the damage to state assets and property occur as a result of negligence by the VC. This is unacceptable. It is possible that RAMSI will certainly hide behind

this clause to excuse itself of any responsibility of the damages caused to properties during the April 2006 riot. It is strongly argued that sub-clause 3 of this Article must be reviewed to take up this concern.

ee) Article 24 brings the Agreement into force on the 24th of July 2003. The concern here is what is the position in law regarding the legality of all that happen on the 23rd of July 2003? Is there a need to rectify that?

3 The Review Agenda

i. The legality of the Legal Framework

The terms of reference in my view missed a very important question that needs to be resolved at the outset and that is the legality of the framework. **Appendix 3** carries a legal advice tendered on the floor of Parliament by the former Attorney General on this matter. The questions to be resolved are fully outlined in the advice. In **Appendix 5** is RAMSI's response to questions posed by the Attorney General.

My personal view is that this is a very important matter to be left suspended at the level of expressions of legal views by the different parties outside of a competent court. I would advise that these questions be properly contested in court and get the courts to advise on how to fix it.

It is obvious that RAMSI would be reluctant to go down that path for some very odd reasons. They have to be assured that any decisions to take any matters to a competent court to adjudicate on would be in the best interest of every body. The whole objective is to establish the legality of these issues and fix it.

ii. Review the Immunities and Privileges and other Provisions of the Facilitation of International Assistance Act 2003.

The committee is referred to discussion on "symptoms that suggest a need for review" above for a full listing of the sections and provisions that need to be reviewed.

iii. A decision whether the Present Legal Framework in its current form is still necessary Given the Changing Environment

The pertinent question that needs to be asked at the outset is what else under its mandate does RAMSI need to do that would continue to warrant the application of the protections provided under the present legal framework? In order to do justice to this question one has to look at the mandates of RAMSI. The original mandate of RAMSI as carried in the *“Agreement concerning the operations and status of the police and armed forces and other personnel deployed to Solomon Islands to assist in the restoration of law and order and security”* were as follows:

- a) Restore law and order and security;
- b) Strengthen the Justice system;
- c) Restore the economy and basic services

More specifically the original scope of the strengthened assistance was focused on civil order and economic recovery as follows:

Table 1 Mandate under civil order and Comment of the Existing legal Framework

Mandate under civil order	Comments
1. Re-establish security in Honiara, enabling government, business and the community to operate free of intimidation. This is to be extended beyond Honiara	<ul style="list-style-type: none"> • Fully achieved. • Law and order has returned in Solomon Islands. RAMSI officers stationed in main centers. Five years out and RAMSI officers should now be familiar with the laws and procedures.
2. In cooperation with the Police Commissioner, reform the Royal Solomon Islands Police, introducing expatriate police personnel into line positions, and providing increased resources;	<ul style="list-style-type: none"> • Ongoing. The Ministry is working on implementing the Police Capability Plan drawn up by RAMSI. RAMSI argued that they need protection to effectively perform this task. Expatriate police officers were engaged under the FIAA without taking oath of allegiance to the Commissioner of Police. • Budgetary allocations to the law and justice sector is about \$1billion annually, the majority of which is used to maintain a pool of highly paid Technical Assistance, which did very little to improve the capacity of the RSIP to do their work effectively. • Resources and logistics to the assist local police officers posted in provincial police stations are inadequate. RAMSI assistance to provincial police stations is by way of posting expatriate personnel who keep to themselves.
3. Launch a new effort to locate and confiscate illegal weapons;	<ul style="list-style-type: none"> • RAMSI successfully confiscated firearms from every body both legal and illegal arms. • RAMSI failed to remove all illegal arms in the country. • Any more efforts would doom to fail and only create

	more hatred for RAMSI because affected Solomon Islanders can no longer trust RAMSI and view their presence as an occupying force.
4. Investigate and prosecute new criminal offences vigorously;	<ul style="list-style-type: none"> • Ongoing. • Because of the immunity, privileges and protection RAMSI is blatantly careless in prosecuting people suspected of crimes. The number of cases failed is phenomenal. This only raises more questions as to the qualification of these people. It would appear that many of them were picked green and introduced into the country.
5. Strengthen the courts and prison system; and	<ul style="list-style-type: none"> • Ongoing. • Because of the immunities, expatriate magistrates were clearly careless in carrying out their duties. New prisons are being built in the main centers of the country.
6. Protect key institutions, such as the finance ministry, courts and their personnel from intimidation.	<ul style="list-style-type: none"> • Achieved. • Key Institutions are now free from harassments extortion, and intimidation.

Source: Solomon Islands Government Policy Statement on the offer by the Government of Australia for Strengthen Assistance to Solomon Islands 2003

On law and order, RAMSI had achieved what would have been difficult for the local police officers to achieve at the time because of poor logistics and the fact that the force was demoralized as a result of the coup. It would be simply unrealistic and contradictory for RAMSI or any one else to argue that after 5 years the country is still unsafe. The incidences of unlawful behavior in Honiara and elsewhere in the country is normal and comparable to any countries in the Pacific. A fully resourced local police service can contain it.

A realistic implementation of the Police plan should involve the aggressive transfer of responsibility to the local police officers in Honiara and the provincial police stations, with improved logistic support and budgetary assistance. Right now the logistics are controlled by the PPF. The local police are supported from the country's meager resources through the annual budget.

There are all the indications to suggest that the ongoing effort of RAMSI to confiscate illegal arms has hit a brick wall because it has now reached a stage after 5 years of occupation that Solomon Islanders begin to equate the program as a foreign regime trying to neutralize the country and enforce its will militarily on the country. This is hardly acceptable to some Solomon Islanders who are

concerned about foreign occupation. There is all the indication that any more efforts would lead to confrontations.

Prosecution of criminal cases by RAMSI is viewed differently by many Solomon Islanders. There is all the indication to suggest that RAMSI is pursuing selective justice and that is not acceptable. Furthermore like any normal human being Solomon Islanders would feel more comfortable to be dealt with by local officers. As long as RAMSI remains in the country, the people who still escape the law for tension related cases will never come forward.

The government will also need to be consistent in the way it handles tension related cases or crimes committed that are incidental to the tension. If the policy now is to address these through the Truth & Reconciliation Commission then the people concern must be accorded immunity. The fact that this is not case, the people concern will not come forward. Likewise any attempts by the victims to report the cases will only create more problems.

The effort by RAMSI to build more prisons is welcomed. While saying this, better result can be achieved by investing in economic development. It has to be appreciated that the cause of the tension is development related, and all common sense suggests that we should be investing more in getting the country to utilize its strength. This is not what is perceived by many Solomon Islanders in the work of RAMSI. Unless we start to aggressively address this area we will never solve the problem of this country.

The first step to addressing this issue is to remove the perception of the workings of parallel discipline force in the country and bring the entire operation of law enforcement under the authority of the Commissioner of Police. This means that all members of the VC who are police officers must take oath of allegiance to the Commissioner of Police and the people of this country. This should bring the control and distribution of logistic support and budgetary resources under one control. PPF officers must be integrated into the structure of the RSIP and appointed to posts that Solomon Islanders are not qualified to hold. They would be required to work with their local counter part and only leave when the local officer is ready to takeover.

Table 2 Mandate under Economic Recovery under the Existing Legal Framework.

Mandate under Economic Recovery	Comment
1 Stabilize government finances and balance budget by: Securing revenue collection and control outlays	Achieved.
2 Obtain donor and IFI financial and technical support;	Achieved.
3 Implement economic reform, consistent with the recommendations of the economic governance mission;	Ongoing. RAMSI personnel are posted in key ministries to implement economic reforms.
4 Focused efforts to deal with corruption	Ongoing. Special Police unit to address corruption established. Offenders prosecuted. Because of the immunities RAMSI officers are careless in carrying out their duties
5 Downsizing the civil service, cleansing the payroll and stopping extortion; and	Ongoing. Public Service Ministry implements reform designed by RAMSI. The need for immunities and privileges is not justified after five years.
6 Improved debt management	Achieved. RAMSI argue that their personnel posted in line ministries still need immunities and privileges to perform. I would agree that some level of privileges is justified to provide the incentives but a full scale immunities and privileges is simply too generous and therefore unnecessary.

Source: Solomon Islands Government Policy Statement on the offer by the Government of Australia for Strengthen Assistance to Solomon Islands 2003

I appreciate that most of the work under the economic recovery mandate is still ongoing. It would be irresponsible for RAMSI to say that they need another 5 years to work under an emergency scenario to complete the work. There should now be an aggressive process of identifying local counterpart for these posts and accord them with the appropriate training.

iv. RAMSI's Justification for Immunities, and Privileges.

The incorporation of the immunities, privileges and protection in the legal framework according to RAMSI is a normal requirement under any comprehensive multinational intervention like RAMSI. RAMSI also claims that Solomon Islands is under international obligations to grant immunities and privileges to the Visiting Contingent. **(see relevant section in Appendix 5)**

On immunities and legal protection, the rationale clearly is to provide legal and administrative protection to the foreign intervention force that may not be familiar with the systems and may in the process of carrying out their agreed mandate break the laws of the country. This is relevant in an emergency situation, where a quick response is necessary to restore some order in the operation of the government system. The provision of immunities as legal protection is important

to assist them to carry out their job without fear of being subjected to legal challenges.

One can understand the situation in 2003, which would be rightly described as emergency and which would have warranted the granting of the immunities then. The argument now is that the situation has improved tremendously with most of the original mandates fully achieved. Any extended mandate would be performed in an environment that is far different from what was experienced in 2003.

Therefore the persistence by RAMSI that they must continue to enjoy full immunities and privileges in order to continue their work in Solomon Islands is akin to a deliberate exaggeration of the situation on the ground to benefit, which tantamount to dishonesty. The fact of the matter is that RAMSI does not need the current level of protection to carry out its work.

On privileges the argument is that the officers are giving up the comforts of a working environment that is peaceful and friendly to come and work in an unfriendly environment that is fraught with danger and therefore the personnel are endangering their lives. In order to attract people to come, their assignment must be attached to attractive privileges.

After 5 years, I would agree to certain level of privileges, but nothing more than what is enjoyed by the Technical Assistants that are attached to the existing donor programs in the country. Anything more would be over-generous and unnecessary gesture on the part of the government and people of Solomon Islands.

- v. A decision as to whether there is still a need for a RAMSI style intervention to consolidate the achievements of RAMSI

This brings us to the question as to whether there is still a need for a RAMSI style intervention with full immunities and privileges to consolidate the achievements made. This is a very important question and one which will attract different answers depending on which interest group one is representing. The argument advanced by RAMSI seem to suggest that the government has no choice *[see*

appendix 5] but to grant the same level of immunities and privileges if a RAMSI style intervention at the current level and form continues.

Given the above position, the crucial decision for Solomon Islands is whether we are convinced that the current level of RAMSI operation under the existing legal framework is necessary to continue in Solomon Islands. The CNURA Government has made a position on this question, (**see Appendix 2**) which could be seen as undermining the work of the review. This is summarized as;

“...or set up permanent military and police presence as police backup support service and continue to act as an avenue through which economic development assistance can be channeled.” [CNURA Policy statements p.7]

I would argue against this proposition. (**see full detail of argument against this proposition in Appendix 2**). In my view the fundamental question to establish is, has RAMSI as an interventionist force to address a specific concern of the forum achieved the core objectives of its mission? The answer to this question is obviously yes. As observed above there is nothing more serious than the original mandate that is left for RAMSI to do in Solomon Islands in a given environment that would warrant a RAMSI style intervention to continue.

In fact the situation that is taking shape now appears to suggest that it is the continual presence of RAMSI operating within the current legal framework that would create problems for Solomon Islands. This warning is made with the full understanding that the government is working on a new partnership arrangement that would involve RAMSI to deliver under the current arrangement.

This is most irresponsible. In fact, it would be a serious mistake to take that line of thinking. RAMSI is a forum responsive initiative to address a break down of the formal system that supports the effective workings of the economy. In other words it is a specific response for a specific situation. Its role should effectively end at the completion of the restoration stage.

What the CNURA Government is trying to do is to replace the role of the traditional aid delivery agencies with RAMSI. Indeed, what CNURA Government is

effectively saying is that they favored a delivery system that is backed by firepower and unfettered legal powers with a team of highly paid individuals who sucked up all the aid assistance that should be channeled to real development. This is a very harsh assessment but unavoidable and necessary to express the reality.

Rehabilitation and long term recovery are rightly the roles of the traditional aid agencies working with Solomon Islands Government. In fact, it has never been the intention of RAMSI to take over the roles of the traditional aid agencies already operating in the country well before the birth of RAMSI itself. In this respect, I am of the view that RAMSI has accomplished its restoration tasks, and it is now time to handover the rehabilitation and recovery tasks to the traditional aid delivery agencies.

In other words we have gone past the emergency stage of the break down in social order and government system that had warranted a RAMSI interventionist style force to address. They have addressed that situation and therefore any suggestion for RAMSI to stay on and effectively take over the responsibility of the traditional aid agencies would be irresponsible on the part of the Government and question the real motives of RAMSI.

It must be acknowledged here that RAMSI is performing all the activities that would normally be performed under aid programs in the different sectors of the government set up and the economy as a whole. RAMSI has effectively become the coordinating body of all the aid agencies in the country, basically taking over the role of the Ministry responsible for aid coordination and the representatives of donor countries in Solomon Islands.

The only difference is that the personnel assigned under the aid programs do not enjoy the same level of privileges and immunities, and might I add the same level of remuneration. This makes assignment under RAMSI very attractive and one can understand why there is so much resistance over any moves to frustrate it.

Solomon Islands in my view has to decide on a number of options as follows:

- 1) Allow RAMSI to continue to operate under the present legal framework but within a mutually agreed exit strategy and a time frame, which should not be more than five years. Such mutually agreed time frame should also be specific about what RAMSI is specifically required to achieve; OR
- 2) A decision has to be made now that RAMSI has achieved the objectives of its original mandate and should now allow the established traditional aid agencies to continue to assist in the long term recovery and rehabilitation of the economy. What this effectively means is that the existing manpower deployment under RAMSI should now come under the existing aid programs addressing the specific sectors. In the case of Police the PPF should now come under the authority of the Commissioner of Police as discussed above. All other deployments should either take up line posts under supplementation scheme, working with Solomon Islands counterpart or as fully funded advisors answerable to the Solomon Islands Government; OR
- 3) Allow RAMSI to continue but review the legal framework, the scale of operation, and time frame to accommodate the concerns raised by Solomon Islanders.

vi. Should Solomon Islands be a gun-free society?

This is a thought provoking issue and one which Solomon Islanders will have different views on depending on a number of factors including personal bad experience with people using firearms; or have been listening to propagandas by people who are determined to irresponsibly pursue this policy. Some facts about the use of firearms leading to and during the ethnic crisis would be helpful.

- a) All firearms that were used during the ethnic crisis were those raided from the various armories throughout the country, homemade guns, and those illegally brought in by the conflicting forces. In other words all guns used were from illegal sources.
- b) The need to resort to the use of firearms was necessitated by an ethnic confrontation that threatened the survival of the ethnic groups. There was never an intention by the armed militants to

indiscriminately use the firearms against innocent people. There were some incidences, but the remoteness of these incidences cannot be taken as representing the norm.

- c) The armed confrontation was between the opposing militant groups of Malaita and Guadalcanal, in and around Honiara and some parts of Guadalcanal. There were some incidences in the West and Choiseul Provinces where illegally acquired guns were used by certain elements of the Bougainville Revolutionary Army [BRA] working with some local criminals.
- d) Licensed firearms and their owners were hardly involved during the ethnic crisis.

It would appear that the issue of arms in Solomon Islands was over-sensationalized by very few Solomon Islanders and RAMSI. Indeed the matter was taken overboard by RAMSI, more for its own protection than the concern for peace and harmony in Solomon Islands. If the reason for making Solomon Islands gun-free is due to the fact that guns were used during the tension than we are taking the matter beyond reason. Yes guns were used, but they were illegally acquired guns used by the militant groups against each other.

If Solomon Islanders are concerned that guns are lethal weapons capable of causing death then we might as well ban knives, axes, hoes, folks, stones and all forms of working tools because they are just as lethal when used against a target. In fact more Solomon Islanders were killed by knives, axes and other implements than guns. This is becoming unreasonable! But that's the point. The whole argument about guns and gun-free society is totally unreasonable.

Since this policy is driven by Australia, and Australia's elimination of private ownership of firearms policy, let us see how Australian's respond to this policy.

Box 1

Australia's experience on Gun Regulation

Australia was once a penal colony for the British Empire, so most of the citizens of this nation are descendents of convicts criminals. Most US citizens are not aware of the fact that Australia immediately outlawed private ownership of firearms after Martin Bryant, a so called "mad murder", killed 35 and wounded another eighteen people on the public streets of Port Author, Tasmania, in April 28 1996, using an AR-15,.223 cal., assault rifle. Within twelve months after the outlawing of guns were passed by the Australian government, 640,381 guns were bought off the streets at the cost of over AUD\$500million. Twelve months later, a study was made of the effects of such radical gun control, with the following results:-

- Australia-wide, homicides went up 3.2%
- Australia-wide, assaults went up 8.6%
- Australia-wide, armed robberies went up 44%
- In the state of Victoria, homicides-with firearms went up 300%!
- The steady decrease in homicide – with firearms that occurred during the previous 25 years become an increase in the 12 months following the ban on weapons.
- There has been a dramatic increase in break-ins-and-assaults-of –the-elderly. (At the time of the ban the Prime Minister said "self-defense is not a reason for owning a firearm"
- From 1910 to present, homicides in Australia have averaged about 1.8-per-100,000 or lower, a safe society by any standard.
- Australian politicians are on the spot and at a loss to explain why no improvement in "safety" has been observed after such monumental effort and expense was successfully expended in "ridding society of guns". There response has been to "wait longer"
- During the years 2001 and 2002, armed robberies, Australia wide, increased 34.1% over the period just before the elimination of private ownership of firearms.

Source: 'Gun Regulation' by Robert Gaylon Ross, Sr., in "We now reveal the truth about Globalization"

The above statistics revealed an interesting development. Australians obviously responded negatively to the policy. In fact the policy only encourages criminals to acquire more guns illegally or resort to the use of other implements to commit crime. The point here is that we do not need to do any more by way of enacting new laws or creating new policies to make illegal guns illegal. They are already illegal. People who acquire guns illegally are subject to huge punishment under the laws of Solomon Islands. Solomon Islanders generally respect that.

Psychologically, if one is challenged not to do something that he already knows to be illegal he will do it for the challenge. That is exactly what is happening in the country. We cannot rule out the fact that certain elements of frustrated Solomon Islanders are getting arms from illegal sources and would be prepared to use it against people they consider to be threatening their freedom. That is a development that we would be simply stupid to ignore.

In fact, it is a crucial issue of concern when one considers the effect of a foreign force enforcing that restriction. Indeed, it becomes a real challenge to people who view RAMSI as an occupying force with unfettered powers to pursue what they would consider as unclear agenda.

The point in all of this is that legally acquired firearms have hardly been a problem in Solomon Islands, and therefore the policy to make Solomon Islands a gun-free society is akin to being concern over nothing.

However, if we decide to formalize the policy of making Solomon Islands a gun-free society we will only create more problems for ourselves in that it will certainly encourage people to take on the challenge and acquire guns illegally. It would not be a conjecture to say this is already happening since RAMSI arrived five years ago. Moreover, criminals do not need guns to do what they are doing in Solomon Islands. Again, such restrictions will only encourage criminals to be creative to prove that point.

I am therefore of the view that the gun-free policy is totally unnecessary and must be reviewed so that people who need to have firearms can legally acquire one.

vii. Rearming of the Police Force

RAMSI for some very dubious reasons is very sensitive about rearming the Solomon Islands Police Force, and some so called elite Solomon Islanders and leaders are supporting this view without thinking. The issue of disarming the RSIP is taken very lightly by Solomon Islanders. It needs to be appreciated that in disarming the RSIP, RAMSI is effectively disarming the state. As a sovereign state Solomon Islands should not take that lightly, especially five years after what RAMSI claim as a very successful outcome of their work in getting the force back to order.

There are people including RAMSI who still cannot get over the events of 2000 when disciplined police officers turned against the state with the use of state firearms. All law abiding Solomon Islanders are fully entitled to condemn this action but we cannot bank on that and throw the baby with the water. The issue

here is national security and we cannot continue to rely on RAMSI forever to provide the first line of defense.

This issue is really about believing and trusting the rehabilitation of the police force by RAMSI. In other words when we continue to cast doubts on the trustworthiness of Solomon Islanders to have access to firearms, we are actually casting doubt on the rehabilitation work carried out by RAMSI. We are not talking about police officers carrying guns on the streets of Honiara. Far from it! What we are talking about is for the officers to have access to firearms. In fact that has always been the situation.

I would like to think that the most appropriate time for officers of the RSIP to have access to firearms is when RAMSI is still here to supervise the process. Accordingly, I strongly suggest that the training to get the RSIP to be armed must start now.

viii. Request by Other Regions to Participate in RAMSI.

I could not agree more. If RAMSI is a regional initiative than I do not see any reason why Japan, Taiwan and other Asian Countries cannot be included. In fact the broadening of the definition of regional to include countries in Asia would instill some form of discipline on RAMSI to behave like a true collective member of the region by respecting the rights of Solomon Islands to enter into bilateral arrangements with Asian countries.

The only country that would have serious difficulty about this proposition is Australia. As argued in **Appendix 2**, as:

“Australia wants to make it absolutely clear that the security of the Pacific region is its primary sole responsibility and they are prepared to protect it against other powers they consider foreign to the region. These include the two Chinas, Japan and India which Australia is so concerned about their bilateral and multilateral involvement with small Pacific Island countries”.

This is a very selfish reason and the regional countries must condemn it.

I would totally support the idea involving Japan and Taiwan in a reorganized RAMSI. I would also like to suggest that Solomon Islands should have the final say about which areas it wanted to engage Japan and Taiwan. Taiwan has already provided training for the Close Protection Unit only to be discouraged by Canberra for very selfish reasons as highlighted above.

4 RECOMMENDATIONS

["The Facilitation of International Assistance Act 2003"].

On the basis of the critical analysis in Appendix 1, the following recommendations are made:

- (a) That section 6 of the FIAA 2003 to be amended to allow Parliament to exercise its legislative powers to amend the sections placed beyond the legislative jurisdiction of Parliament. These are sections 7,15,16,17,and 19. The section as it stands may be unconstitutional.
- (b) Section 7 must be amended to restrict the use of police powers under the Police Act only to officers who pledge loyalty to the Commissioner of Police. The amendment basically requires all recruits under RAMSI to take oath of allegiance to the Commissioner of Police, effectively bringing the VC under the command of the Commissioner of Police.
- (c) Section 8, subsections (1) and (2) must be amended to require that only officers who are duly appointed under the Police Act be allowed to exercise the powers of a police officer. Again this amendment effectively brings the VC under the command of the Commissioner of Police.
- (d) Section 10 must be amended to require that only guns illegally acquired are to be subject to the treatment outlined in the section. This is to bring it in line with the intentions of "The Facilitation of International Assistance (Weapons Surrender) Notice 2003.
- (e) Section 11 must be amended to subject the VC freedom of movement to checks by appropriate Solomon Islands Government Authority due to the reasons tendered in the analysis.

- (f) Section 12 must be amended to require that all negotiation for rental must be reflective and in par with the general affordability of the rental market.
- (g) Section 15(1) must be amended to require as follows: That the officers must have proper travel documents and ID, and must be subject to inspection on arrival and departure. Restriction on members of VC who are homosexuals to bring their partners because same sex marriage is illegal in Solomon Islands.
- (h) Section 15(3) must be amended to define the term public purpose in this section. There is also a need to decide on what extent should we allow personnel effects and what category of personnel effects should qualify?
- (i) Section 15(4) must also be amended to incorporate the mechanism to monitor the requirement of this provision?
- (j) Section 15(5) must be amended to incorporate a mechanism to police this provision. It may be necessary to require that Customs officers must be allowed to inspect all exports.
- (k) Section 16 must be amended to subject the VC to Solomon Islands Taxation laws. There is also the option to strike a compromise to subject the VC under a special rate of tax.
- (l) Section 17 must be repealed in its entirety. All offences committed by the VC must be subject to Solomon Islands laws. The VC must also recognize their obligation to settle customary wrongs, and disrespect of chiefs.
- (m) Section 19 must be repealed and replaced by a new provision that will subject all VC under the direct command of the Commissioner of Police. As it stands now the provision does not make sense. How can one respect the laws of Solomon Islands and at the same time not subject to it?
- (n) The entire guns control provisions in sections 20 and 21 under Part III must be repealed. The issue that the country should be concerned about is guns illegally acquired, which are already illegal under the existing laws of the country.
- (o) Section 22 must be amended to bring the exercise of the powers specified in the section under a Minister of the Crown.
- (p) Section 23 of the Act must be amended to allow Parliament to review the notice any time it wants.

- (q) Section 24 must be appropriately amended to recognize the changing situation in the country. The amendments suggested in this submission would automatically make this requirement defunct.

Administrative Reorganization

- (r) RAMSI and Solomon Islands Government should now work on an Exit strategy, which should involve the setting of time frame for RAMSI to complete specific tasks.
- (s) The perception that RAMSI is running a parallel government should be addressed by subjecting the Police Force under the authority of the Commissioner of Police; Technical Assistance are to be engaged under Supplementation scheme, and advisors to be fully funded by aid programs but answerable to Solomon Islands Government.
- (t) RAMSI should now fully resource the RSIP both in Honiara and in the provincial police station both in terms of logistics and budgetary support and get RSIP officers to take responsibility in close supervision of RAMSI counterpart.
- (u) RAMSI must reconsider its approach to prosecuting people who have committed tension related crimes. Selective justice has no place in Solomon Islands.
- (v) There is a need to arrange a judicial review on the cases that have been decided on very shady evidence, and people who are in custody and have yet to convicted for lack of evidence must be released on bail.

Other Administration and Organizational Areas

- (w) The protection under Article 13 against liability for damage to state assets must be reviewed. If such damage is caused by carelessness then the VC must be held liable.
- (x) The legality of the RAMSI framework must be established. The conflicting views expressed by the former Attorney General and Special Coordinator on certain aspects of the legal framework must be settled to avoid any doubts.

- (y) The recommendations in (a) to (q) above must be viewed in relation to the question as to whether the present legal framework of RAMSI is necessary given the changing environment. (see argument in p10, 11, 12 13, &14)
- (z) The Committee to seriously consider the question as to whether there is still a need for RAMSI style intervention to consolidate the achievements of RAMSI. (see argument in p 14,15,16&17)
- (aa) The gun-free policy does not make any common sense and accordingly must be reviewed and revoked. (see argument in p17,18,19&20)
- (bb) Work on the rearming of the Royal Solomon Islands Police Force begin now. (see argument in p 20,&21)
- (cc) The request by some Asian regional countries to participate in RAMSI must be accepted, and Solomon Islands must have the last say.

Appendix 1

CRITICAL ANALYSIS OF THE FACILITATION OF INTERNATIONAL ASSISTANCE ACT 2003

THE FACILITATION ACT	COMMENTS AND SUGGESTED AMENDMENTS
<p style="text-align: center;">Part II</p> <p style="text-align: center;">Powers and Privileges of Visiting Contingent (VC)</p> <p><u>Section 6</u> Powers and privileges of the VC may be limited, varied or added. The section however restricts such review on the powers and privileges granted under sections 7, 15, 16, 17 and 19.</p>	<p>The government may use this section to effect a piece meal review of the powers and privileges of the VC. However important powers and privileges that are directly responsible for the undesired actions of the VC are restricted by this section. They are as follows:-</p> <ul style="list-style-type: none"> (a) The exercise of the powers reserved for the Solomon Islands Police under the Police Act by the VC (s7) (b) Exemptions from Visa requirement, Immigration inspection and restrictions, departure tax, exemption from license or restrictions or registration and customs duties and taxes or other charges on import of equipment (including vehicles and weapons) and other supplies required for a public purpose, together with <u>personal effects</u> of members of VC. They are also exempt from any charges in respect of re-export of any materials imported under this section. (s15) (c) Exempt from direct taxation, all other fees and charges. (s16) (d) Immunity from legal proceedings in Solomon Islands courts and tribunals in relation to actions of the VC or its members, taken in the course of, or are incidental to, official duties. The section further provides as follows:- that, criminal and disciplinary jurisdictions shall not be exercised over a member of VC in

<p><u>Section 7</u></p> <p>This section provides that armed forces and police of the VC may exercise the powers of police officers under the Police Act and may use reasonable force to achieve public purpose.</p>	<p>relation to actions taking place in Solomon Islands <u>if such jurisdiction is asserted by his or her country</u>. It further provides that any action commencing against any member of VC will be relinquished to his or her country. (s17)</p> <p>(e) Powers of internal command, control, discipline and administration of the personnel of the VC. This power is purported to be exercised while respecting the laws of Solomon Islands. (section 19).</p> <p>The constitutionality of this section as to the power of the Parliament to make and unmake law is an issue that needs to be established here. The section basically protects itself from any interference whatsoever, even for Parliament to exercise its legislative powers.</p> <p>It is accordingly recommended that the section be amended to allow Parliament to amend the sections placed beyond the legislative jurisdiction of Parliament.</p> <p>The regulation that may be made under section 6 of the Act to vary, limit or add to the powers and privileges set out in Part II of the Act restricts any amendment to this power. There is room for conflict of interest here in that whilst the VCs are effectively not answerable to the Solomon Islands Government (Commissioner of Police) and more importantly not subject to disciplinary actions in Solomon Islands, they are allowed to exercise the powers of the Solomon Islands Police Force. There may be justification for this, five years ago. It is argued however that the situation no longer warrants the continual application of the provision. There has to be a clear demarcation. Police officers who are not subject to the direction and command of the Commissioner must not be allowed to exercise the powers of police officers. Simple as that</p> <p>The granting of powers to use reasonable force to achieve public purpose to a foreign force that did not take an oath of allegiance to the Commissioner is simply absurd. This privilege (to</p>
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<p><u>Section 8</u></p> <p>(1) A member of the VC shall be deemed to be eligible for appointment to any office in the Police Force. The section makes it clear though that the exercise by any member of the VC of the powers that may be exercised by any Police officer under the Police Act is possible whether or not the member of the VC takes up any line post.</p> <p>(2) Section 11 of the Police Act shall not apply to any person appointed to an office in the Police Force by reason of this section.</p>	<p>use reasonable force) must now be restricted to members of the Solomon Islands Police Force. If there is a need to retain this provision than it must be restricted to the VC Police Officers who have taken oath of allegiance to the Commissioner of Police. Alternatively, the PPF must now come under the Commissioner of Police and the same rules and laws apply to all.</p> <p>The provision is more for the convenience of RAMSI than anything. The disadvantage of this arrangement is seen in the direct influence of RAMSI on the SIPF. The provision has outlived its purpose. Recruiting personnels to perform the duties of sworn police officers and not to be answerable to the Commissioner of Police is simply unacceptable.</p> <p>It is important therefore that recruitment to the SIPF must be done outside of RAMSI arrangement to ensure the independence of the SIPF. The exercise of the powers under the Police Act must be protected and only by officers that must pledge full loyalty to the Government and people of Solomon Islands. It is suggested that this section must be amended to reflect this policy.</p> <p>This is simply not on. Taking of oath and loyalty to the Solomon Islands Government and the people of Solomon Islands is an important aspect of discipline. We are carried away with the highly exaggerated situational analysis compiled by the foreign so-called experts in Pacific Island that the situation in Solomon Islands leading to the Parliament forced approval of the engagement of RAMSI is so precarious that a Rambo type intervention is necessary to bring back law and order in Solomon Islands.</p> <p>What we end up having is strategies that</p>
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Section 10

This section empowers the VC to seize any weapons; destroy seized weapons with the permission of the Commissioner; record particulars of the seized weapons.

systematically undermine the acceptable cultures of the Solomon Islands Police Force to a position that even the simplest of discipline matters like respect for higher authorities is no longer there. If we are not careful the Solomon Islands Police Force will become a totally undisciplined Force.

The underlying question and consideration in the long term is whether we should still maintain the decision to make Solomon Islands gun free. If we decide to go down that path than we would be simply fools.

The issue of guns is simply taken over board by many Solomon islanders without giving it a proper thought. It is just unfortunate that some people may have been threatened and therefore cannot get over the thinking of seeing firearms in the hands of Solomon islanders. It is also unfortunate that the intervention force is capitalizing on this fear and urged Solomon Islanders to reject any rearming policy.

We can understand the seizing and destruction of illegally acquired fire arms, but when the policy extends to legally acquired firearms including the disarming of the discipline police force the question arise as to the real motive of the policy and all right thinking Solomon Islanders are fully entitled to know why?

That concern aside, the indiscriminate exercise of this power has caused many Solomon Islanders to be deprived of their legally acquired firearms. These have yet to be properly compensated. To date nothing has yet been done about it.

The real issue here is when are they going to collect all the illegal arms that are known to be still in the hands of people illegally? RAMSI pride itself that they have the technology to detect weapons even if they are hidden in the thick of jungle etc. They have failed miserably. It would now appear that the non-return of arms is more for protection against RAMSI.

<p><u>Section 11</u></p> <p>(1) This section provides that members of the VC together with their vehicles, vessels, aircraft and equipment shall enjoy freedom of movement throughout the areas which is covered by the Act.</p> <p>(2) VC may use roads, bridges, canals and other waters, port and airfield facilities without payment of dues, tolls or any other charges or fees.</p> <p>(3) Members of the VC may operate vehicles, aircraft and other equipment without a permit or license.</p>	<p>The longer RAMSI continues to take control of things; it will create a permanent stand-off. We cannot allow that situation to continue. Indeed we cannot rely on RAMSI forever to take charge of our internal security. Solomon Islanders must now learn to trust their own police force.</p> <p>The strategy now is to work on a definite plan to reestablish the armed units of the RSIPF within 12 months.</p> <p>The section must be amended to provide that only guns illegally acquired are subject to the treatment provided under the section.</p> <p>Recent proven cases where VC's helicopters were seen lifting crates from the sea just opposite the GBR raises a lot of questions on what exactly are they up to. Accordingly, it is suggested that Solomon Islands Government must reserve the right to board, check and clear incoming and outgoing aircrafts, and helicopters trips throughout and out of the country. There were also cases where VC military personnel were seen in places that have nothing to do with law and order. The reason given was that the officers were on adventure trips. This is unacceptable.</p> <p>No big deal but unnecessary.</p> <p>The concern here is the safety of Solomon Islanders. There have been a number of accidents involving vehicles driven by members of the participating force, which raises the question whether these people have valid</p>
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<p>(4) Vehicles, vessels, aircraft or other equipment provided and used by the visiting contingent shall not be subject to registration and licensing laws.</p>	<p>drivers' licences. It is important therefore that the government is satisfied that members of the VC have valid operating licenses.</p> <p>Again it is the safety of Solomon islanders that we must be concerned about here. In the case of road vehicles and equipment, only roadworthy ones must be allowed to use public roads. This means that the vehicles must be subject to road tests and licensing and registration requirement, short of paying for the licenses.</p>
<p><u>Section 12</u></p> <p>(1) Members of the VC may use such premises, including facilities, as may be necessary for their accommodation while engaged in fulfilling a public purpose free of charge, unless otherwise negotiated.</p> <p>(2) Members of the VC may use water, electricity and other public utilities free of charge, unless otherwise negotiated.</p> <p>(3) The VC may generate, transmit and distribute electricity for its own use without being subject to regulation or licensing requirement and free of charge.</p>	<p>The rent negotiated by the VC has inflated the rental market to an extent that it placed the industry beyond the ability of organizations and institutions in Solomon Islands to rent decent houses. Amendment is required to negotiate rental that are reflective and in par with the general affordability of the rental market.</p> <p>Unreasonable, this people are engaged under very lucrative packages and the least they could do to assist SIWA and SIEA is to pay for the use of electricity.</p> <p>Totally unnecessary, the provision is put in place on the over exaggerated situation in 2003 based on reports of foreigners who assume to know about the situation in the country. Should now be removed.</p>
<p><u>Section 13</u></p> <p>Members of the VC may wear their national uniforms when on official duty.</p>	<p>No comments, but unnecessary when a decision is taken on the continual existence of RAMSI in Solomon Islands.</p>
<p><u>Section 14</u></p> <p>Members of the VC who are medical,</p>	<p>No comments</p>

nursing, or paramedic staff may treat members of the VC and other persons without being subject to regulation or licensing requirement.

Section 15

(1) Members of the VC shall be exempt from any visa laws and immigration inspection and restrictions when entering or departing from Solomon Islands.

The privileges provided under this section is protected under section 6. This is akin to opening Solomon Islands for any Tom, Dick and Harry to enter and reside. In the case of section 15(1), there is no justification whatsoever for such a blanket exemption. Cases are known where foreigners have entered Solomon Islands using RAMSI and reside illegally in the country. It must be required that the officers must have proper travel documents and ID, and must be subject to inspection on arrival and departure.

There is also the issue of members of the VC are bringing into the country partners of same sex. This cannot be accepted in Solomon Islands. Marriage of same sex is illegal in Solomon Islands and must not be allowed into the country. But if they do then they must be subject to the immigration laws of the country.

(2) Members of the VC shall be exempted from departure tax.

No comments.

(3) The VC may import into the Solomon Islands without license or other restriction or registration and free of customs, duties and taxes or any other charge that may be sought to be levied, equipment (including vehicles and weapons) and other supplies required for public purpose, together with personal effects of and items for the support of members of the VC.

What is the definition of public purpose in this section? To what extent should we allow personnel effects. What personnel effects qualify?

(4) Any material belonging to an individual member of the VC that is imported

What is the mechanism in place to monitor the requirement of this provision?

under this section and later sold in Solomon Islands to a person other than those entitled to tax-free privileges shall be subject to customs and other duties at the time of its sale.

- (5) Any material imported under this section may be re-exported without license or other restriction or registration and free of customs, duties and taxes or any other charge that may be sought to be levied.

Section 16

Members of the VC shall be exempt from direct taxes, including income tax and death duties, and all other fees and charges

What is the mechanism of policing this provision? Customs officers must be allowed to inspect all exports.

This privilege is also protected under section 6. We would also like to know how members of the VC are treated by their respective countries' taxation departments. The general rule of taxation is that the taxation jurisdiction where the income is earned has the primary right to tax the income, unless the taxing jurisdiction has a double taxation agreement with the taxing authority where the particular member of the VC comes from. Do we have double taxation treaty with all VC countries?

Looking at the issue from the argument that one of the key objectives of RAMSI is to revive the Solomon Islands economy, and reestablish the credibility of government finances to pursue meaningful public investment in important national projects, one is fully justified to question the genuineness of the Mission to assist Solomon Islands, when more than 80% of the aid to Solomon Islands through the RAMSI arrangement is not used in the country. This includes taxes and legal dues forgone under the requirement of this section.

Unlike aid money taxes are collected under the authority of relevant revenue laws and fully used in the country. It is suggested here that this policy must reviewed. It does not make any logical sense under the circumstances described here for the VC to be exempted from taxes when the situation no longer warrants them to

<p><u>Section 17</u></p> <p>(1) Members of the VC, the assisting country, and any other countries whose personnel are members of the visiting contingent, shall have immunity from legal proceedings in Solomon Islands courts and tribunals in relation to actions of the visiting contingent or its members that are taken in the course of, or are incidental to, official duties.</p>	<p>continue to benefit from this policy. We can even come up with a compromise position by subjecting the VC to a special rate of tax, which is lower than the going rate.</p> <p>The privileges provided under this section are also protected under section 6. The exemptions and privileges granted under subsection (1) breeds carelessness. The case in point is the recent raid on the office of the Prime Minister by the participating force, the humiliation of chiefs of Tobaita when they were lead outside of the meeting house at gun point, the attacking of village people in North Malaita by the Tongan Contingents.</p> <p>This exemption has outlived its purpose and indeed has never been necessary. It only encourages members of the participating force to be careless. This section must be totally repealed. The excuse that the VC cannot function without it is totally nonsense. If the VC is here to restore law and order than they must comply with our laws. It does not make any logical sense for them to break our laws in order to make us comply with our laws.</p> <p>The excuse that this is a standard clause recognized internationally in situations that warrants an interventionist approach to solving the local problem of a country no longer applies in the case of Solomon Islands. Peace has returned in Solomon Islands. There is no longer a need for an interventionist approach to solving the problem of Solomon Islands.</p> <p>What is now required in the case of Solomon islands is to sustain the good work that the VC under the RAMSI arrangement have achieved by addressing the underlying issues that caused the tension and to aggressively pursue a meaningful reconciliation program that recognizes the importance of restitution, forgiveness, and pardon. We do no need an interventionist approach to achieve this goal.</p>
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<p>(2) Criminal and disciplinary jurisdiction shall not be exercised over a member of the visiting contingent arising out of an action taking place in Solomon Islands if such jurisdiction is asserted over that member in respect of that action by a country referred to in section 3(1)(b)</p> <p>(3) Where criminal and disciplinary jurisdiction has been exercised over a member of the visiting contingent arising out of an action taking place in Solomon Islands, jurisdiction will be relinquished to a country referred to in section 3(1)(b) if that country asserts jurisdiction over that member in respect of that action.</p> <p>(4) In this section, "legal proceedings" include criminal, civil, disciplinary and administrative proceedings, and proceedings seeking to enforce customary law.</p> <p>(5) For this section, the Minister responsible for justice shall be deemed</p>	<p>This sub-section must also be repealed. Members of the VC must be required to face the brunt of Solomon Islands law when they commit any offence. This provision has also outlived its purpose and must be removed. It would be outright wrong to insist that the country is still in emergency situation and therefore the VC must have all the protection they need to carry out their work. The recent cases of irresponsible interruption of chiefs meeting and assault of village people in Malaita by the VC are perfect examples of the abuse of protections provided under this Act. In other words with the return of peace and normalcy it would be simply irresponsible to continue allow the VC to enjoy these protections.</p> <p>Sub- section (3) must also be repealed. All members of the VC must face the brunt of Solomon Islands laws. They cannot be allowed to be careless about how they conduct themselves in the discharge of their official duties. There is no way any aggrieved party in Solomon Islands would know whether the person committing the alleged offence is taken to court in his home country. This protection has also outlived its purpose and therefore must be repealed. The country is no longer in the situation current in 2003 which would have warranted such a protection.</p> <p>This sub-section can remain, and be read in the context of the amended section 17, which will require all members of the VC to be subject to the laws of Solomon Islands.</p> <p>This subsection must be repealed.</p>
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<p>to have directed the Director of Public Prosecutions that he is to initiate no actions referred to in subsections (1) and (2), unless the assisting country has expressly consented to the exercise of such jurisdiction.</p>	
<p>(6) The assisting country may waive immunity granted by this section.</p>	<p>This subsection must be repealed as a consequential amendment to the proposed amendment of this section.</p>
<p><u>Section 18</u></p>	
<p>The visiting contingent may take charge of and repatriate the body of a member of the visiting contingent who dies in Solomon Islands.</p>	<p>No comments.</p>
<p><u>Section 19</u></p>	
<p>While respecting the laws of Solomon Islands, the visiting contingent shall have sole responsibility for the internal command, control, discipline and administration of the personnel of the visiting contingent.</p>	<p>Does not make sense. How can one respect the laws of Solomon Islands and at the same time not subject to it? Any discipline must be based on respect for the laws and sovereignty of Solomon Islands. Anything less than that would be unacceptable.</p>
<p>PART III CONTROL OF WEAPONS</p>	
<p><u>Section 20</u></p>	
<p>(1) The Governor General may publish a notice that –</p> <ul style="list-style-type: none"> (a) declares an area in the territory of Solomon Islands to be controlled weapon area; (b) states that members of the visiting contingent are permitted to carry weapons in the area; (c) specifies other persons who are permitted to carry weapons in the area; and (d) prohibits all other persons from 	<p>This section must now be repealed. The purpose of this section can be achieved through other arrangements.</p> <p>The other point is that there is no reason why the SIPP or some of its unit cannot now be rearmed. As it stands the SIPP is sitting duck. So are the government and the people it is mandated to protect. The case in point is the April Honiara riot. The participating force was totally incompetent in handling the riot, which cost the country millions of dollars.</p>

carrying weapons in the area.

- (2) A person who carries a weapon in a controlled weapons area while prohibited from doing so by a notice under subsection (1) shall be guilty of an offence and liable to a fine of \$25,000 or imprisonment for 10 years, or both

Section 21

- (1) The Governor General may publish a notice that –
- (a) declares an area in the Territory of Solomon Islands to be a weapons surrender area;
 - (b) states that members of the visiting contingent are permitted to possess weapons in the area;
 - (c) specifies other persons who are permitted to possess weapons in the area; and
 - (d) prohibits all other persons from possessing weapons in the area.
- (2) A person who-
- (a) is prohibited from possessing a weapon by a declaration under subsection (1); and
 - (b) is in, comes into, possession of a weapon; and
 - (c) fails to give the weapon, as soon as practicable, to a member of the visiting contingent shall be guilty of an offence and liable to a fine of \$25,000 or imprisonment for 10 years, or both.

This restriction can be facilitated in other ways. For example the laws relating to the control and licensing of firearms in Solomon Islands. This provision follows from the desire to make Solomon Islands weapons free, which is clearly absurd. This section has outlived its purpose. It was part of the disarmament strategy. It must now be repealed.

The guns surrender policy is taken a bit overboard resulting in even those who possessed guns legally were required to be disarmed. The issue that Solomon Islands as a country must grapple with is that it must be a gun free society. If we agree that this is the direction to go than we must decide on the best approach to reflect it in the laws that control and regulate the issuance and use of firearms in Solomon islands.

The restrictions could be viewed in many different angles, especially the rationale behind its imposition. The first argument is that the ethnic tension and the use of arms to advance the course of the warring parties only happen on Guadalcanal, affecting the militants of the two ethnic groups. Many ordinary Malaitans and Guadalcanalese would not agree with what took place but are caught in a situation where the ethnic war was fought in the so - called long - term interest of the two island groups.

That being the case, the other provinces would view this restrictions as totally unnecessary and unfair to them, especially many who legally acquired firearms for legitimate reasons, e.g farmers who need the firearms to protect their property from wild pigs, or cattle farmers who need it to slaughter the animals.

It is the view here that as long as these laws remain in force, the restrictions imposed will be seen as outsiders trying to undermine the security need of Solomon Islanders.

It is therefore suggested that this section must

**PART IV
MISCELLANEOUS**

Section 22

- (1) The Governor General may make regulations providing for any matter which is necessary or convenient to give effect to this Act.
- (2) Without limiting subsection (1) or section 6, the regulations may do the following –
- (a) provide for the implementation of the assistance agreement, or of any other agreement or arrangement between the Government and the government of the assisting country that deals with the visiting contingent;
 - (b) authorize specified members of the visiting contingent in addition to those authorized by subsection 7(1) to exercise any powers that may be exercised by police officers appointed under the Police Act;
 - (c) provide that members of the visiting contingent may exercise powers, or perform functions, that can be exercised under a specified law or by suitably qualified or authorized persons; and
 - (d) provide that a specified law does not apply to members of the visiting contingent.
- (3) In subsection (2), a reference to a law includes a reference to a provision of a law.

be repealed and any restrictions to the issuance and use of firearms in Solomon Islands must be regulated in the governing laws of the country, not one that is imposed on Solomon Islanders by foreigners.

A very important issue to be considered and decided upon as well is the involvement of the Head of State in the regulation of the intervention, which is not normal. The Head of State of Solomon Islands has always been a ceremonial office and the respect it commands is premised on that fact. To accord it regulatory powers in the intervention is demeaning that office.

Whilst it may be appreciated that the situation during the years that led to Parliament being forced into legislating the arrival and presence of RAMSI in Solomon Islands was such that the elected government could not be trusted. That very thinking led to foreign governments taking control of the affairs of the country, thereby undermining our sovereignty.

It is argued here that the situation is no longer the same as it was in 2003 or the years that preceded it. In fact it would be grossly erroneous to say that the Executive Government was so eye deep in corruption that it no longer cares about the security needs of its people. That would be clearly insulting.

The point that this discussion is leading to is, it is now time to review this policy. If there is a need to maintain the arrangement espoused under the Facilitating Act, then it is almost mandatory that His Excellency must now be relieved of this responsibility and the powers must now be transferred to the appropriate authority in the Executive Government.

It is however strongly recommended here that the whole structure of the intervention and how it is managed and delivered in the country must now be overhauled. The emergency type situation, which warrants the decree type

<p><u>Section 23</u></p> <p>(1) The parliament shall be given the opportunity to review the international assistance notice every 1 year in accordance with this section.</p> <p>(2) For this section, the review dates of the international assistance notice are as follows-</p> <p>(a) the day 1 year after the day on which the notice was published; and</p> <p>(b) the day each 1 year after that day</p> <p>(3) The international assistance notice, as currently amended, shall be laid before Parliament within the period of 3 months that ends on a review date, unless it is revoked earlier.</p> <p>(4) If Parliament passes a resolution within 3 months after the review date, to the effect that the international assistance notice is annulled, the notice ceases to have effect from 21 days after the date of resolution, but without affecting the validity of anything previously done under this Act because of the notice.</p>	<p>operation hitherto, should now be considered out of touch with the reality of the situation on the ground.</p> <p>It is therefore suggested that the arrangement espoused under this section must be discontinued and accordingly, this section must now be repealed.</p> <p>The Parliament of the Sovereign State of Solomon Islands cannot and must not be subjected to the wish of foreign countries as it is in this case where Parliament is dictated as to the time it must sit if it opts to exercise its powers to review the Facilitation Act. This section must be amended to allow Parliament to review the Facilitation Act any time.</p>
<p><u>Section 24</u></p> <p>(1) Subject to the Constitution, this Act and any regulation or other subsidiary legislation made under this Act shall have effect notwithstanding any other law of Solomon Islands.</p> <p>(2) An Act enacted after the</p>	<p>This is totally absurd. The VC must comply with the laws that already exist in the country.</p>

commencement of this Act is not to be interpreted as –

- (a) amending or repealing, or otherwise altering the effects or operation of, this Act or subsidiary legislation made under this Act; or
- (b) authorizing the making of subsidiary legislation amending or repealing, or otherwise altering the effect or operation of, a provision of this Act or of the subsidiary legislation made under it.

(3) Subsection (2) does not affect the interpretation of an Act so far as that expressly provides for that Act, or subsidiary legislation made under that Act, to have effect despite this Act or despite subsidiary legislation made under this Act.

Section 25

Every document purporting to be a regulation, order, rule, licence, permit, certificate, direction, authority or person under this Act or any subsidiary legislation authorised under this Act or any subsidiary legislation authorized under this Act, and purporting to be signed by or on behalf of the Governor-General or that other authority or person, shall be received in evidence, and shall, until the contrary is proved, be deemed to have been made, granted or issued by the Governor-General or that authority or person.

APPENDIX 2

The Regional Assistance Mission to Solomon Islands [RAMSI]: Analyzing CNURA Government's Position and in the context of the Broader military agenda of Australia in the Pacific and the Coalition Partners in the World.

CNURA Government's Position

The future of RAMSI under the new CNURA Government's policy is summed up as follows:

"When RAMSI completes the work it was requested to do, Forum leaders will need to meet to consider whether the Mission should eventually withdraw or set up permanent military and police presence as police backup support service and continue to act as an avenue through which economic development assistance can be channeled." [CNURA Policy statements p.7]

The option to allow RAMSI to set up permanent military and police presence as police back up in the above policy statement demonstrates the CNURA Government's total ignorance or simply lack of understanding and appreciation of the role of RAMSI, the nature of its work and the potential threat to the unity and stability of the country if an interventionist organization with unfettered powers to do whatever it likes with impunity, is allowed to have a permanent military and police presence in Solomon Islands.

It is the most irresponsible statement to make, and only goes to demonstrate how narrow minded the group is about matters of security, national unity and stability. The correct option would be if the presence of some kind of intervention under the RAMSI arrangement is still required in the country the legal framework that governs its operations must be reviewed with the view to cancelling it. As a matter of fact there is very little that RAMSI has yet to do under its present mandate to justify its continual presence.

In summary the policy statement of the new government demonstrates the following irrational and shallow thinking by the leadership of CNURA Government:-

- (a) It carries a serious admission that there is a need to improve the delivery of aid assistance to Solomon Islands, which the group believed can be better done through the RAMSI arrangement. What the group needs to appreciate is that the so-called service delivery by RAMSI is done with a totally different motive. RAMSI is an all powerful interventionist force that is allowed by law to undermine the authority of the government and the legal system of this country in the pretext of helpim fren.

It is just logical therefore that they must win the hearts of Solomon Islanders through service delivery which is outside their mandate. Whether this line of thinking was made rationally or not, it highlighted a very shallow understanding of the role of a RAMSI-like arrangement under the Biketawa Declaration. The policy supports the interventionist agenda of Australia to protect its national interest and therefore a very irresponsible statement.

- (b) The policy carries a total misunderstanding of the role of RAMSI and the incompatibility of the intended new role with its present nature and structure. The Government must understand that RAMSI is not a traditional aid agency of any country. It is a Regional initiative set up to restore the basic institutions of governance in a member country that were destroyed by civil unrest including forced removal of a legitimate government. Although effectively authorized under the *Biketawa Declarations* a RAMSI like arrangement may not work in the Fiji situation because it would mean taking on the RFMF².

² This point is raised only to demonstrate that a RAMSI arrangement is hopeless when it comes to restoring democracy, an institution that Australia and the western world, especially USA and Great Britain advanced as the reason for their interventions in selective spots around the world. In fact, it is becoming clearer that restoring democracy is just a cover up of their real agendas, which is to protect their narrow national interests [*see Australian White Papers on Defense and Foreign Affairs*]. The Defense Minister in the Howard Government made it clear that the intervention in Iraq is about the protection of oil supply. Prime Minister Howard later tried to retract this statement but made very little impact.

(c) To suggest a permanent presence of a RAMSI-like arrangement in Solomon Islands to provide a back up support for the Solomon Islands Police Force demonstrates how low the group is prepared to go in handing over the control of Solomon Islands. Again, it only demonstrates the group's shallow understanding of regional security issues and a lack of appreciation of Australia's military agenda in the Pacific, which has the potential of undermining regional security.

The group apparently allowed themselves to be misled by the propaganda of Australia that the majority of Solomon Islanders wanted RAMSI to continue its presence in Solomon Islands under the presence arrangement. What the group needs to appreciate is that not all Solomon Islanders shared the same view³.

The propaganda about the popularity of RAMSI was advanced in the result of a very biased survey that was conducted with 5000 Solomon Islanders who have very little knowledge about RAMSI and Australia's agenda in the intervention. In other words the interviewees were requested to answer questions on very limited background knowledge of the subject matter. Therefore there is all the indication to suggest that the survey was designed to achieve the desired biased result⁴.

A more responsible position could only be obtained through a nationwide survey after a comprehensive awareness program, which should cover a detail analysis of the legal framework⁵ that governs the operations and presence of RAMSI in Solomon Islands [*see APPENDIX 1 for the Analysis of FIAA 2003*] and an appreciation of the effects of military and administrative interventions in other parts of the world, which is now causing hardship and total break down in law and order in these countries. Examples are Iraq, Afghanistan, and East Timor.

³ A Survey carried on behalf of World Socialist Website in Honiara in 2006 showed that Solomon Islanders are very concerned about the Australian bullying tactics demonstrated through the RAMSI arrangement and would like to see an exit strategy for RAMSI. <http://www.wsws.org/articles/2006/may2006/solo-m18.shtml>.

⁴ It would be interesting to note that a question asking Solomon Islanders whether they like RAMSI to run their government was answered to the negative by 89% of those interviewed. This result was not publicized.

⁵ The Legal Framework of RAMSI includes the Facilitation of International Assistance Act 2003; the International Treaty on the engagement of regional countries, and the Framework Agreement. The most important one of course is the Facilitation Act.

RAMSI and the Broader Military Agenda of Australian in the Pacific and the Intervention Agenda of the Coalition Partners in the World.

In order for us to make an informed decision about the future of RAMSI it would be helpful to understand the broader military agenda of Australia and its allies in the world. Australia made it no secret that they have a duty to protect their national interest in the region and the world. This position is made very clear in the Australian White Papers, on Defense and Foreign Affairs⁶, which I would like to comment on them in the following discussions. For ease of reference, these strategic objectives are summarized as follows:-

- 1 *“Australia’s strategic policy aims to prevent or defeat any armed attack on Australia. This is the bedrock of their security and fundamental responsibility of the Australian Government. Australia has a strategic interests and objectives at the global and regional level”.*
- 2 *“Australia’s second strategic objective is to help foster the stability, integrity and cohesion of its immediate neighborhood”.*
- 3 *“Australia’s third strategic objective is to work with others in the South East Asia to preserve stability and cooperation”.*
- 4 *Australia’s fourth strategic objective is to contribute in appropriate ways to maintaining strategic stability in the Asia Pacific region as a whole and to help contribute to building a stronger sense of strategic interests. Australia would want to avoid any hegemony in the Asia Pacific region of a security environment dominated by any powers whose strategic interests might be unfavorable to Australia”.*
- 5 *“Australia’s fifth strategic objective is to contribute to the efforts of the international community, especially the United Nations, to uphold global security, especially in nurturing the UN principle that armed aggression by one state against another is not to be tolerated. Australia works very*

⁶ Alexander Downer, White Paper on Defense, Foreign Affairs and Trade: Advancing the National Interest. Canberra, 12 February 2003”: a commentary.

closely with and supports the objectives of United States in the achievement of this strategic objective.

Coming out forcefully from these strategic objectives are the following positions. Firstly, Australia wants to make it absolutely clear that the security of the Pacific region is its primary sole responsibility and they are prepared to protect it against other powers they consider foreign to the region. These include the two Chinas, Japan and India which Australia is so concerned about their bilateral and multilateral involvement with small Pacific Island countries.

This is a very dangerous behavior because we are dealing with a country that is paranoid about its safety and will do anything to make itself comfortable. This explains the determination of Australia in the pursuit of this agenda even if it means trampling upon the domestic laws of the host country⁷.

Secondly, Australia has an economic interest to protect in the region. It is reported⁸ that Australian business interests control half of Fiji's economy, they dominate Papua New Guinea, East Timor and Solomon Islands. Australia has 13,000 of its citizens residing in the Pacific Island countries, Papua New Guinea accounting for 7000, and therefore it has an obligation to protect them.

Thirdly, in the interest of protecting what Australia calls its patch against extreme organizations such as, Moro Islamic Liberation Front [MILF]; Abu Sayfah Group [ASG], Jemaah Islamiya [JI] and other extremist groups they will take any form of instability in the regional countries seriously.

The rationale behind such a move by Australia is based on the fears that weak and failing states provide an ideal avenue for extreme organizations to use as a spring board to infiltrate Australia. As long as there is this fear, the small island states concerned will be considered as strategic venue for Australian intervention. The recent developments in Solomon Islands and Papua New Guinea are a case in

⁷ This was demonstrated in the illegal arrest and deportation of Julian Moti at the insistence of the Australian Government. It would also be reasonable to say that the FIAA (2003) was specifically designed to give the VC freedom to do their job without being bothered by the laws of Solomon Islands.

⁸ Sandra Bloodworth (2004) Imperialist of the South Pacific –Australia in International Socialist Review January/February http://thirdworldtraveler.com/Islands/Imperialist_South_Pacific.html

point. The initiative in Solomon Islands is called the Regional Assistance to Solomon Islands [RAMSI]. In Papua New Guinea it is called Enhanced Cooperation Program [ECP].

Whilst depicted as regional initiatives to help troubled neighbors, RAMSI and the ECP are strategic operations within the broader military and security agenda of Australia in the Pacific to protect Australian strategic interests.

That being the case, Solomon Islands must be careful not to take the RAMSI intervention on face value and conclude that it is the best thing that has ever happened to the country. In fact that would be a most irresponsible thing to say. Studies have now shown that RAMSI is not all a success story as the Australian Government would like the world to believe⁹. Because it is designed to protect Australia's narrow national and strategic interest it failed to address the real needs of Solomon Islands and its people.

The reason for this is quite apparent. Australia's strategic interest is primarily security and safety of its citizens which is measured in terms of military success, and support for and strengthening of institutions in failed states that will deter people from resorting to violence and lawlessness like the courts, prisons and police. It is therefore a highly structural and institutional focused intervention designed to serve the best interest of Australia. This has very little impact on the lives of ordinary citizens of Solomon Islands.

The point of this argument is to contend that any moves to continue with the present arrangements as intimated in the CNURA policy on RAMSI would be ill conceived and amount to Solomon Islands Government colluding with a foreign force to perpetually undermine our sovereignty. There will never be and has never been any commitment by RAMSI to address the underlying issues of the

⁹ Tim O'Connor, Sharni Chan J Goodman (2006) RAMSI Aiding War on Terror in Australian Aid: Promoting Insecurity. According to a Think Tank set up by Center for Independent Studies on Australia's Solomon Islands Invention, RAMSI failed miserably because it ignored education, health and agriculture issues. The Think Tank further argued that "almost five years on, the mission has failed because it concentrated on issues like banking deregulation, rather than health and education". "RAMSI has concentrated its effort on peripheral problems and ignored the real constraints on growth".

ethnic crisis and therefore to allow them to continue in the present form and legal framework would be irresponsible on our part.

Ill conceived Intervention

In fact the whole rationale behind a military style intervention and the scale of that intervention in Solomon Islands was ill conceived from the very beginning, driven by sensitive political agendas. The designers of the intervention were focused on the situation of the country as it presented itself in 2003, which failed to consider the developments since the colonial era and immediately after independence, which have a lot to do with influencing the behavior of our people.

The bona fide demands of the people of Guadalcanal have been over discussed in many forums and therefore there is no need to go through them again. The point in referring to these issues again at this juncture is to press the argument that the ethnic crisis has its root in the government's neglect of the real needs of our people, as reflected in the series of demands placed before successive Solomon Islands Government by Solomon Islanders over a period of thirty years, beginning with the Western Province in 1978 and climaxed in the submission of the same demands by the people of Guadalcanal in 1988.

It is just logical to conclude that a sensible and meaningful strategy to guarantee a lasting solution to our problem is to address the issues head on. This is not what is actively happening in our peace process let alone the RAMSI intervention. Every day these issues are left unattended will only further complicate our peace process.

Whilst military, institutional, and structural solutions have a place in the process of getting the country back on tract, the real problems that continue to feed the people's dissatisfaction must be given priority. We have identified these weaknesses to include:-

- Inadequate public investment in Health, Education, Infrastructure development and other essential services in the country;

- The over centralization of the political and economic structure of the country. There is therefore a need to pursue a comprehensive political and economic decentralization program to move major economic development and political power base to other centers in the country as a strategy to create economic opportunities within the reach of our people thereby placing a check on the problem of urban drift - the main cause of social problems on Guadalcanal;
- The legacy of Colonial Administration's policies in areas that are considered culturally sensitive. This is more marked in the colonial land policies which are not sensitive to our different land tenure systems and of course the legacy of land dealings in the country through the operation of draconian colonial land laws which deprived tribes of their tribal lands;
- The Marginalization of Solomon Islanders by the formal sector;
- Outstanding compensation claims arising from destructions caused by Solomon Islanders in responding to Government's failure to address the root causes of the country's problems and other compensation claims.
- The general unfairness in the system.

These are beyond the ability of the government let alone the country to address and no amount of military intervention will do it. As a matter of fact, this is where the intervention should really be focusing if indeed, its intentions were to help Solomon Islands come out of its problems and to cope with the demands for better and effective government services by an increasing population.

Indeed, this is where the concern about the effectiveness of RAMSI, how to review it, and the argument about the program advancing Australian national and strategic interests become issues of concern. What was needed in 2003 was a controlled intervention not an all out take over of the government system as advanced by the Australian Strategic Policy Institute in 2003¹⁰, which set the basis for the re-colonization of Solomon Islands by Australia.

¹⁰ APSI Policy Report entitled "OUR FAILING NEIGHBOUR": Australia and the Future of Solomon Islands, 2003

I agree that there is a need to review the operation of RAMSI in Solomon Islands. As a matter of fact the Terms of Reference for the review needs to be reviewed in light of the fact that there is a clear intention of the review committee to sideline the call by the GCCG to review and amend the Facilitation of International Assistance Act 2003 [FIAA].

The Review Agenda

The review of RAMSI must be addressed on two fronts. Firstly, to review the legal framework with the view to removing the excess powers accorded to them by the Facilitation Act and effectively subject the operations of RAMSI under the laws of Solomon Islands. The reason for this is quite obvious. The situation in 2003 which warrants an aggressive military style intervention is no longer there. The Visiting Contingent is now stuck with powers it does not need given the changing circumstances. The tendency to misuse this power is very tempting and there have been instances where the powers have actually been abused¹¹. This review should be done with the people of Solomon Islands.

Solomon Islanders are convinced that all the concerns about disrespect of our sovereignty are facilitated through the legal framework that governs the existence and operation of RAMSI in Solomon Islands. In this regard I defer from the widely accepted position that RAMSI is here to restore our sovereignty. That may be the case in 2003, but is no longer true now. As long as RAMSI is allowed to continue operate within the authority of the present legal framework, it will perpetually undermine our sovereignty.

By blatantly refusing to recommend any review to the legal framework of RAMSI, the Forum Review Taskforce and ultimately the forum countries displayed total lack of sensitivity and gross carelessness in addressing the genuine concerns of the democratically elected government of Solomon Islands.

¹¹ RAMSI officers raided the prime minister's office without following the correct procedures. RAMSI soldiers used excessive force on two occasions in North Malaita where chiefs were held wrongly held at gun point for a number of hours. On another occasion RAMSI soldiers bashed up a number students for reacting to their undisciplined behavior. Reports were made about RAMSI soldiers removing important war relics from Solomon Islands without proper permission. We heard of RAMSI soldiers breaking up marriages of Solomon Islanders, and prostitution in GBR.

That being the case, the review agenda of RAMSI was to be pursued in line with the resolution passed by Parliament in its recent meeting. The following processes were to guide the review:

- (1) A joint workshop of all members of Parliament will be organized in October to fully discuss the content of the resolution made by Parliament, which sets the direction and substance of the review.
- (2) The workshop will also allow the government to fully brief members of Parliament on the justification of the approach taken by government in the review.
- (3) The workshop will allow members of parliament with the assistance of the Attorney General's Chambers to make a comprehensive detail analysis of all aspects of the legal framework and arrangement to appreciate amongst other things, its legality, how it undermines our constitutionally established systems and institutions, and whether it is still necessary after five years, given that the environment has changed tremendously since the arrival of RAMSI 5 years ago;
- (4) The government would then use the outcome of the workshop to further refine the review agenda;
- (5) The review agenda should then be fully explained to the people of Solomon Islands through an extensive, nation-wide awareness program through appropriate avenues;
- (6) The Minister of Foreign Affairs would then engage in a comprehensive regional bilateral consultation with his counterparts, basically informing them of what the people and government of Solomon Islands have decided on the areas that needed review.
- (7) It must be understood however, that where the area of concern requires the amendment of law to rectify questions of breaches of Solomon Islands constitution and any other laws, that responsibility is the sole prerogative of Solomon Islands Parliament to rectify, because no amount of consultation will change the legal and constitutional obligation of the National Parliament to exercise that responsibility.

- (8) Any amendments would be referred to parliament after all stakeholders have been fully informed.

The second aspect of the review was concerned about shifting the emphasis and focus of RAMSI assistance from good governance to development in the rural area. I shared this view but not under the present arrangement. As emphasized earlier, RAMSI is not a development agency of any organization, rather it is an interventionist organization set up under the Biketawa Declaration with a specific mandate to restore normalcy, return law and order and strengthen weak institutions of government. It should only be relevant at the restoration stage.

That role is being actively pursued under the present arrangement with the assistance of RAMSI advisors posted in line Ministries. Given the concerns raised about the excessive powers granted by the FIAA 2003 to the Visiting Contingent, it is suggested that the present arrangement be revoked with the amendments to the Facilitation Act and the engagement of TAs in Ministries be addressed under the Public Service Regulations on bilateral arrangements.

The shifting of budgetary support to rural development is to be addressed through the existing aid agencies of our development partners and not through the RAMSI arrangements for reasons highlighted in this paper. These agencies include Ausaid, NZAid, UNDP, EU, and their affiliate bodies.

Solomon Islands Responsibility as a Member Country of the Region

Despite the nationalistic stand taken in this paper on our relationship with Australia, it has to be appreciated that Solomon Islands has no real problem with the military agenda of Australia in the Pacific. In fact as member of the region, Solomon Islands has an obligation to support its regional neighbors in advancing issues of common interest. In the case of Australia's military agenda in the Pacific, the broader issue is security and safety of the region against the infiltration of extreme organizations. This is right within the common interest of the region and Solomon Islands is obliged to support Australia's initiative on behalf of the region.

Solomon Islands problem with the whole issue is Australia's Colonial attitudes towards the small island states in protecting its strategic interests. This attitude is driven by paranoia. The fact that the whole agenda is driven by Australia's strategic interest is a major contributing factor in the over powering attitude of Australia. Australia has a duty to ensure the small island countries that it has a genuine concern for the safety and security of the region at heart. Judging from their attitude thus far, it is becoming a real concern that Australia's bully attitude is slowly emerges it as a real threat to the peace and stability of the region.

As far as RAMSI is concerned, again the problem is not RAMSI per se, but the way the intervention was undertaken to protect and advance Australia's national interests, which reflects on the legal framework, that governs its presence and operation in the country. As long as we are respected as a country with a sovereign right to exist, Solomon Islands has a duty to cooperate in the effort to make the Pacific a better place for all.

This is not an unreasonable position to take. We have a duty as a country to ensure that our people are safe and that we do not become a puppet to foreign regimes that are here only to protect their national interests. Unfortunately CNURA is a puppet of Australia. This leads us to the responsibility of the Solomon Islands Government to protect our sovereignty.

The Solomon Islands Government's Constitutional Responsibility to Protect Our Sovereignty.

Sovereignty is the exclusive right to exercise supreme political (e.g. legislative, judicial, and/or executive) authority over a geographic region, group of people, or oneself". This is a responsibility that the present CNURA leadership is taking very lightly, unfortunately to please foreign powers. In fact the very first action of the CNURA government was to allow our laws to be trampled upon by the Australian Government in the illegal arrest and deportation of the former Attorney General of Solomon Islands.

The government's collective responsibility to protect our sovereignty is a constitutional mandate that comes with the duty to protect and uphold our laws

and the legal processes that guide the running of the government, the administration of justice and the delivery of service to our people. In deed the exclusive right that we enjoy as a government under the constitution to be the defender and protector of our sovereignty will only remain our exclusive right when that right is exercised and protected.

It is clear in the latest actions of the government that it has no intention to defend our sovereignty but all the intentions to allow that right to be manipulated by foreign regimes to protect their national interest on our soil. This is most irresponsible on the part of the government and amount to a conspiracy to collude with a foreign government to undermine our exclusive right to exercise political authority over Solomon Islands.

Australia has always argued that the RAMSI arrangement is here to help Solomon Islands Government regain its right to exercise supreme political authority over Solomon Islands. We do appreciate that and we must be thankful for that kind gesture, but that assistance should not give them the right to forcefully dictate how that authority is to be exercised and how much right does Solomon Islands Government have. Under the present RAMSI arrangement Australia cannot deny the fact that it has an upper hand over the right to decide how much right does Solomon Islands Government have to exercise authority over its people and the government systems.

Worse still is the crude fact that Australia is the authority behind RAMSI and camouflages itself under the pretext of helpim fren to exercise legitimate authority over the Government system of this country.

This is unacceptable and the longer we continue to allow RAMSI to operate within the present legal framework we will continue to be subservient to the wish and demand of the occupying force. Australia will continue to exercise legitimate authority over Solomon Islands. The question that is confronting us as a country is how long do we intend to allow Australia to control us?

It is apparent under the present CNURA Government that they are prepared to allow Australia to continue to exercise that authority indefinitely. Is that in the

best interest of this country and its people? This is a question that all red blooded Solomon Islanders must come to terms with sooner than later. With the government making its position clear that it will not interfere with the authority of Australia to control this country, ordinary Solomon Islanders have very little hope in this government to return the control of our country to the people.

It is not surprising that the present CNURA Government is banking on aid donors, especially Australia to finance its rural advancement policy. This is only fair. If Australia has the effective control over the running of this country than it has an obligation to finance the Government's rural advancement development policy.

Australia has always argued that it is committed to a SBD800million development package for RAMSI in return for this right to control the government system. We argue that since this assistance is administered under the aid policy of Australia, which is to protect their national interest, only less than 20% of this aid actually assists Solomon Islands. This trend must be reversed if we are to be seen as exerting some control over the development of this country. GCCG is very concerned about this development and this is reflected in our very nationalistic stand. It is our conviction that if we do nothing about setting in motion a strategy to return the control of this country to Solomon Islands Government and its people, we will systematically lose all our rights to exercise any control.

We might as well allow Australia to fully annex Solomon Islands as the eighth state of Australia. The opposition group will stand against any moves by the present government to continue to allow Australia under the RAMSI arrangement to have unbridled control over this country.

APPENDIX 3

MEMORANDUM OF ADVICE TO GOVERNMENT

ANNUAL PARLIAMENTARY REVIEW OF "THE FACILITATION OF INTERNATIONAL ASSISTANCE NOTICE 2003

For the purposes of its "review", I am obliged, on behalf of the Government, to point out a fundamental discrepancy in the text of the Facilitation of International Assistance Notice 2003 ("Notice"). Disclosed on the face of that instrument is the fact that the Notice was "made" on July 23, 2003, "dated" July 23, 2003 and published in the Gazette on July 23, 2003. The Agreement which is described in paragraph 3 of that Notice and specified for the purposes of section 3(2) of the Facilitation of International Assistance Act ("FIAA") was neither concluded on or before July 23, 2003 to be regarded in law. In fact, that Agreement was not made until July 24, 2003 when the Visiting Contingent had already arrived in Solomon Islands, notwithstanding that none of the original signatory parties had actually executed it. Hansard reports of Parliament's proceedings prior to the enactment of FIAA on July 17, 2003 also confirmed the non-existence and unavailability of any exposure draft of that Agreement for perusal of many members of parliament who repeatedly requested access to its proposed terms.

The exigencies of that time might well afford an explanation for this discrepancy. Any meaningful "review" of the Notice, however, cannot neglect to rectify an amendable omission and address the following catalogue of legal concerns stemming from the operational framework of FIAA.

- 1 Granted that the "Regional Assistance Mission to Solomon Islands" (more popularly known as RAMSI) is not an entity created by FIAA or the Agreement or for that matter established pursuant to any treaty of the Pacific Islands Forum or any other international organization:
 - a) What is the precise nature of its legal personality arising from either its de jure or de facto existence under the laws of Solomon Islands, regional and international law?

- b) What is the legal effect of any agreements which it might have concluded with any persons in that name without endowment of legal capacity?
 - c) What, if any, are the legal consequences flowing from the breach of any Solomon Islands laws by the continued retention of that name and style without amendment thereof or our applicable laws?
 - d) Should RAMSI be required to validate its de facto existence and operations in compliance with the applicable laws?
- 2 FIAA makes no reference to the Pacific Islands Forum or any regional or international organization. The Agreement, although prefaced with references to its “regional” genesis, is not a compact between Solomon Islands and the Pacific Islands Forum but essentially a multilateral legal instrument entered into between the Governments of each signatory nation state. The Pacific Islands Forum is not party to the Agreement and has no direct role or responsibility thereunder in superintending compliance or performance of the obligations contracted by each or any of its member states.
- 3 Granted that FIAA was enacted by Parliament in exercise of its ordinary plenary legislative power to “make laws for the peace, order and good government of Solomon Islands” under Section 59(1) of the Constitution and not pursuant to its constituent power under Section 61:
- a) On what basis can the continuing validity of Section 24 of FIAA (which applies by virtue of the notice) be maintained when the axiomatic principle of parliamentary omnicompetence to make and unmake laws which are not inconsistent with the Constitution dictates that *leges posteriores priores contrarias abrogant*: later Acts repeal earlier inconsistent Acts?
 - b) To what extent is Section 24 an impermissible intrusion on Parliament’s constitutional capacity to make and unmake whatever laws it likes (subject to constitutional limitations) and, if it decides so to do, amend or repeal FIAA?

- c) What jurisdiction, if any, exists for the continued retention of the provisions of Section 24 against established constitutional principle?

4 Section 2 of FIAA vaguely defines “public purpose as:

“mean[ing] the purposes of ensuring the security and safety of persons and property, maintaining supplies and services essential to the life of the community preventing and suppressing violence, intimidation and crime, maintaining law and order, supporting the administration of justice, supporting and developing Solomon Islands institutions and responding to natural catastrophic events”.

Given the current preoccupation of parliamentary discourse with the need for “transparency”, in law making, is it not opportune and desirable for greater legal clarity to be achieved by defining precisely what is and is not a “public purpose” in and thus dispel any doubts and illusions concerning the boundaries of permissible cooperative intervention”?

5 To the extent that the expanded definition of “visiting contingent” in Section 4(1)(b) of FIAA also encompasses “other individuals notified by the assisting country”, on what basis can Parliament justify:

- a) The exemption of certain multinational service and support corporations from the equal application of our national registration and revenue laws to them?
- b) The entitlement of those multinational service and support corporations to the privileges and immunities which FIAA grants only to individual members of the visiting contingent?
- c) The entitlement of those multinational service and support corporations to any exemptions granted to “Australian Project personnel” as defined in the existing Memorandum of Understanding on Development Cooperation between the Government of Australia

and the Government of Solomon Islands both within and beyond the four indentified sectors of development assistance activity, viz:

- i. Human Resource Development;
 - ii. Health and Population;
 - iii. Forestry and Agriculture;
 - iv. Institutional Strengthening?
 - d) The continued enjoyment of FIAA-created privileges and immunities by non-disciplined individual members of the visiting contingent despite recent concerns expressed by the Central Bank of Solomon Islands regarding their inflationary impact?
- 6 Responding to public sensitivity about the presence of arms in Solomon Islands, how would any future legislative initiative to declare either the entire nation or any part of it “arms-free” affect the visiting contingent’s right to possess, carry and use arms under Section 9 of FIAA?
- 7 On what basis and by whom should compensation be payable to firearms licensees for the confiscation or forced surrender of their weapons?
- 8 Acknowledging that the Agreement was not concluded before the notice was made and in the absence of any subsequent regulations which could have been made under Section 22(2)(a) of FIAA to give effect thereto, consistent with established practice as regards the implementation of treaties, is Parliamentary involvement not required to give legislative imprimatur to Government’s responsibilities and obligations under the Agreement?
- 9 Recognizing that:
- (a) The Agreement:
 - i. Expressly provides for its expiry “on the complete withdrawal of the Visiting Contingent from the Area of Operations” (Article 25, paragraph 3)

- ii. Compels the visiting Contingent to withdraw from the Area of Operations prior to the expiration of 3 months from the date of receipt” of the request so to do by the Government of Solomon Islands “at any time in writing” (Article 3, paragraph 3); and
- (b) FIAA:
- i. Empowers Parliament to “annul” the notice by resolution passed within 3 months after the review date (Section 23(4);
 - ii. Permits the notice to be “revoked earlier” presumably by His Excellency the Governor General acting in accordance with the advice of Cabinet under Section 31(1) of the Constitution (Section 23(3);
 - iii. Is capable of being repealed or notwithstanding the effect of amended purported legislative Section 24;

What considerations should guide the Government’s decision to activate the process leading to the visiting contingent’s partial, complete or eventual withdrawal from Solomon Islands, if so desired?

- 10 Recalling what some of the present and past members of parliament said during the proceedings of the House from July 9 – 17, 2003 when the FIAA regime was proposed for parliamentary approval, it might be instructive to ascertain answers to many of the questions which were then asked by Honorable members and reassess the validity of their concerns with the benefit of hindsight, knowledge and familiarity with the practical operation of the FIAA regime for the past four years.

This catalogue of legal concerns and anomalies is neither comprehensive nor exhaustive and does not encroach on matters which others are better qualified from their expertise, experience and exposure to address.

If Parliament’s intention is to incubate a permanent state of exception in Solomon Islands by retaining the presence of the visiting contingent here indefinitely, it

might simply achieve that by delegating its plenary legislative power to “make laws for the peace, order and good government of Solomon Islands” to the head of the visiting contingent. Assuming that would not be acceptable, it is necessary to enter into dialogue with all affected parties to reconcile identified problems before legislating future amendments to the existing FIAA regime.

I am pleased to advise the Government accordingly.

Julian R Moti QC
Attorney General

August 27, 2007

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APPENDIX 4

CRITICAL ANALYSIS OF THE AGREEMENT BETWEEN SOLOMON ISLANDS, AUSTRALIA, NEW ZEALAND, FIJI, PAPUA NEWGUINEA SAMOA AND TONGA CONCERNING THE OPERATIONS AND STATUS OF THE POLICE AND ARMED FORCES AND OTHER PERSONNEL DEPLOYED TO SOLOMON ISLANDS TO ASSIST IN THE RESTORATION OF LAW AND ORDER AND SECURITY

Articles	Comments and Suggested Amendments and Reorganization
Article 1	No comments
Article 2	No comments
Article 3. Duration of Assistance.	
1 Such period as mutually agreed between SIG and Assisting countries	Duration of assistance should be guided and dictated by fulfillment of planned activities which should be guided by a given time frame.
2 Assisting country may withdraw after consulting SIG	
3 The SIG may at any time request withdrawal of VC from areas of operation. The VC have 3 months to withdraw	
Article 4: Command and Control of the Visiting Contingent.	See comments and suggested amendments under section 19 of FIAA
Article 5: Status of Participating Police Force:	See also comments under sections 7, 8, 17, 19 of FIAAA
Article 6: Status of Participating Armed Forces:	No comments
Article 7: Uniform and Carriages of weapons	No comments
Article 8: Detention and Disarmament:	They are exercising the powers of police officers. As observed and discussed under section 8 of the FIAA VC must now be required to take oath of allegiance and subject to the authority of the Solomon Islands Commissioner of Police.
Article 9: Seizure and Destruction of weapons:	See comments under section 20 and 21 of the FIAA
Article 10: Jurisdiction	See comments under section 17 of the FIAAA
Article 11: Discipline	No comments
Article 12: Obligations under International Law:	No comments
Article 13: Claims	If the death of an employee of Solomon Islands Government or damage of property of the state is a result of carelessness by VC then Solomon Islands must

Article 14: Entry and Departure	a right of claim against the VC. Sub-clause 3 of this article must be amended to reflect this policy.
Article 15: Freedom of Movement	See comments and suggested amendments to section 15 of FIAAA
Article 16: Transport and Financial Arrangement:	See comments under section 11, 15,
Article 17: Accommodation and Facilities:	See comments under section 11, 12 of the FIAAA
Article 18: Communication and Postal Service:	No comments
Article 19: Health and safety	No comments
Article 20: Additional Matters	No comments
Article 21: Supplemental Arrangements:	No comments
Article 22: Consultations:	No comments
Article 23: Variation and Suspension:	No comments
Article 24: Entry into Force:	The only concern here is the need to establish the legality of any actions of the VC on 23 rd of July because there was no legal framework on that date. The Agreement was signed on the 24 th of July.

APPENDIX 5

RAMSI'S RESPONSE TO THE SERIES OF LEGAL QUESTIONS RAISED BY THE ATTORNEY GENERAL (Carried in a letter dated 26th September 2007)

1 The term "RAMSI" does not appear in the FIA Act or the RAMSI Treaty

The Memorandum (paragraph number 1) suggests that there are legal implications to the fact that the term 'RAMSI' is not provided for in the RAMSI treaty or the FIA Act. However, the fact that the term RAMSI is not contained in the RAMSI Treaty or the FIA Act does not affect the way RAMSI or FIA Act operates:

- The term RAMSI is a name used to describe the international mission to the Solomon Islands
- The FIA Act does not require that the name RAMSI be set out in a legislative instrument,
- What is important is that the people who make up RAMSI are authorized in law to be in the Solomon Islands to do the work that they do. The RAMSI Treaty, the FIA Act and the FIA Notice provide that authorization,
- Legislation is not required to permit the use of the term 'RAMSI' to describe the visiting contingent, and
- The use of the name 'RAMSI' is well accepted and commonly used in the Solomon Islands by both the Government and the people of the Solomon Islands.

2 The role of the Pacific Islands Forum

The Memorandum (paragraph number 2) states that FIA Act does not refer to the PIF and that the PIF is not a party to the RAMSI Treaty. The purpose of this paragraph is unclear:

- The Pacific Islands Forum is a regional organization and not a state,
- As such, it is hardly surprising that the PIF is not a party to the RAMSI Treaty, being an international agreement between states,
- The fact that the PIF is not referred to in the FIA Act has no effect on the validity of the FIA Act.

As you would be aware, the PIF plays an important role in relation to RAMSI. RAMSI was endorsed by Pacific Forum Foreign Ministers on 30 June 2003 and the PIF continues to provide a high profile forum for monitoring and reviewing RAMSI's progress.

3 The Operation of Section 24

The Memorandum (paragraph 3) raises a number of questions about section 24 of the FIA Act which appear to be based on misunderstanding of the section:

- The purpose of section 24 is not to constrain Parliament's legislative powers,
- Rather, its purpose is to prevent the FIA Act being amended or replaced by an act or regulation where it was not the express purpose or intention of such act or regulation to do so.

The FIA Act does not constrain Parliament's legislative powers- Parliament retains its power to amend or repeal the FIA Act. Section 24 also makes it clear that the FIA Act is subject to the Constitution.

4 The definition of public purpose

The Memorandum (paragraph 4) suggests that the definition of public purpose in section 2 of the FIA Act should be defined more precisely so as to 'dispel any doubts and illusions concerning the boundaries of permissible cooperative intervention.'

As with all provisions of the FIA Act, it should be remembered that the current definition of public purposes was agreed to by the Solomon Islands Parliament when it unanimously passed the FIA Act in 2003. The current definition is consistent with Article 2 of the Agreement which describes the purposes for which assisting countries may deploy a visiting contingent to the Solomon Islands.

RAMSI's mandate – which was the subject of close consultation between the Solomon Islands Government and RAMSI – falls clearly within the definition of public purpose. Any proposal to change this mandate should be made in consultation with RAMSI contributing countries and PIF. It should also be noted that there are many mechanisms in place to ensure that RAMSI is transparent and accountable and that its role is defined in close consultation with the Solomon Islands Government. These mechanisms include the medium term strategy, the annual performance assessment, the PIF review and the enhanced consultative mechanism.

5 The scope of privileges and immunities

The Memorandum (paragraph 5) asks several questions about privileges and immunities under the FIA Act. These questions appear to be based on misunderstanding about their operation. For example, it is incorrect to suggest, as is done in questions (a) and (b) that “multinational service and support corporations” which assist RAMSI are exempt from national registration and revenue laws and benefit from privileges and immunities under the FIA Act. Similarly, there is no basis for the assertion in question (d) that the availability of immunities impacts on inflation. In fact, Solomon Islands Government statistics reveal a downward trend in inflation since RAMSI's arrival, from 10.3% in 2003 to an expected 7% this year.

While the provisions of immunities and privileges is ultimately a policy decision for the Solomon Islands Government, it should be recalled that the issue of immunities and privileges was considered by the PIF Taskforce Review. The report

noted that the immunities afforded to RAMSI deployees are not unusual and reflect standard international and regional practice.

The questions raised in the memorandum of Advice about immunities and privileges appear to overlook the important fact that the Solomon Islands is under an international law obligation to provide privileges and immunities to members of the visiting contingent, consistent with the commitment contained in the RAMSI Treaty. The current provisions of the FIA Act ensure that Solomon Islands meets its international law obligations.

It is worth noting that RAMSI is a partnership between the Solomon Islands Government and the contributing countries. One of the Solomon Islands Government's contributions to this partnership is the provision of privileges and immunities which are required to facilitate the work of RAMSI.

6 The presence of arms in Solomon Islands

It is difficult to see the intent of this question given that the Solomon Islands has already been declared a weapons –free area, with the exception of (i) members of the visiting contingent, (ii) members of the SIPF where authorized by the Commissioner; and (iii) persons with current and valid firearms licences issue under section 6 of the Firearms and Ammunitions Act. This was effected by the former Solomon Islands Governor General issuing a weapons-free notice in 2003, made pursuant to the Governor General's powers under the FIA Act. The notice permits the visiting contingent to carry and use weapons for specific purposes.

It should be noted that the Solomon Islands is under an international law obligation to permit the visiting contingent to possess, carry and use firearms (article 7 of the RAMSI Treaty)

7 Payment of Compensation to firearms licensees.

This question raises an issue which is already the subject of consideration by the Solomon Islands Government. It is a matter for the Solomon Islands Government to decide whether it should pay compensation to gunowners who were required to hand in their weapons as a result of the Solomon Islands Government's policy – implemented through legislation – to declare the country a weapons – free area and require the surrender of weapons.

8 The RAMSI Treaty was concluded after the Governor-General published the Notice.

The observation that the RAMSI Treaty was not concluded until after the Governor-General published the International Assistance Notice is correct. However, this does not detract from the legal validity of the Notice or Treaty. The FIA Act does not require that there be an international agreement in place before an international assistance notice can be made. The notice may (is not required to) specify an international agreement or arrangement between the Solomon Islands Government and the Governments of the assisting countries that covers the operations and activities in Solomon Islands of the visiting contingent.

The purpose of the question whether “Parliament involvement (is) not required to give legislative imprimatur to Government's responsibilities and obligations under the Agreement?” is unclear, as the majority of obligations under the Treaty are in fact implemented by the FIA Act.

9 The process for RAMSI's withdrawal.

This question raises a policy question which has been the subject of consideration in the PIF Taskforce review of RAMSI. When, and under what conditions, the visiting contingent withdrawal from Solomon Islands is a policy decision to be made by the Solomon Islands Government and contributing countries.

10 Concluding Remarks.

Finally, I draw your attention to the stamen, “If Parliament’s intention is to incubate a permanent state of exception in Solomon Islands by retaining the presence of the visiting contingent here indefinitely, it might simply achieve that by delegating its plenary legislative power to “make laws for the peace, order and good government of Solomon Islands” to the head of the visiting contingent”.

It is difficult to understand the intent of this statement, beyond its obvious misrepresentation of RAMSI’s actual powers in Solomon Islands. If nothing else, it displays a basic misunderstanding of the RAMSI – SIG partnership, and the real limits to RAMSI’s role in this country.

These comments have been provided to you to explain our concerns with the proposed review of the FIA Act. We clearly recognize the right of the Solomon Islands Parliament to review its own legislation, and well appreciate the interest to do so in relation to the FIA Act, being an Act of considerable consequence. However, we are concerned that the Attorney General’s Memorandum of Advice – which purports to identify reasons for a review – contains misrepresentations about the Act and the nature of the SIG-RAMSI partnership.

As I have indicated previously, I would welcome the opportunity to meet with you to discuss these comments.

Yours Sincerely

Tim George
Special Coordinator
Regional Assistance Mission to Solomon Islands.