



FIJI HUMAN RIGHTS COMMISSION

GPO Private Mail Bag
SUVA, FIJI ISLANDS

Special Investigations Report

Australian intervention in Fiji in October- November 2006- an issue of international law

Over a 12-month period in 2007, the Fiji Human Rights Commission investigated significant events of October-December 2006. The evidence was collated from independent eyewitness accounts and media reports emanating from the region. The chronology below is a compilation of the evidence. The serious issues raised by this special investigation requires a firm international legal response given the breach of international law represented by these events.

1. Chronology of Material Events October-December 2006

October 30

Fiji's Police Commissioner (former Australian Federal Police (AFP) Officer) Andrew Hughes, confiscates a consignment of ammunition meant for the RFMF.

October 31

Australia's Air Chief Marshall, Angus Houston, telephones RFMF Commander, Commodore Bainimarama, in Sinai threatening him and warning him not to do anything that would make him 'pit his soldiers against Fijian troops'.

Commodore Bainimarama said this call represented a threat involving a clear intention to send Australian defence forces to Fiji. He said, 'in military terms when you threaten someone it involves capability and intention so there was intention to move troops to Fiji'.

November 2

Australian opposition spokesman (now Prime Minister), Kevin Rudd, in an interview requests that relevant provisions of the Biketawa Declaration be 'activated' to deal with the 'possibility of a military coup in Fiji'. Rudd calls upon Foreign Affairs Minister Alexander Downer to 'activate these provisions of the Biketawa Declaration and convene an emergency meeting of Pacific Island Foreign Ministers'. Rudd said, 'the time has come to use this mechanism. Let's get on with it'.

Guided missile frigate *Newcastle* deployed to Fiji that same evening.

In a Department of Defence Media Release, Chief of the Australian Defence Force Air Chief Marshall Angus Houston states that ‘the current situation in Fiji is deeply regrettable. Any threat to the legitimate and democratically elected Government of Fiji is unacceptable. The Fiji Military Forces should cease any activities that present a threat to Fiji’s democratic status and act within the terms of the country’s constitution’.

Later that evening, an Australian Defence Task Force, of around 800 personnel comprising HMAS *Kanimbla* (amphibious support) and *Success*, together with a Special Air Services contingent and a Black Hawk helicopter detachment, purportedly from the ‘Black’ Squadron based in Toowoomba, were deployed to Fiji waters. The Task Force was supported by a RAAF maritime patrol aircraft based in Pago Pago, Samoa. Other reports suggest that base was Noumea.

For the Fiji operation, in conjunction with the Maritime Task Group deployment, the RAAF also maintained a number of C-130 Hercules and Boeing 707 transport aircraft on standby in Sydney.

The Operational History of the deployment, apparently termed “Operation Flashpoint” states that the three Australian warships were sent to Fiji as part of the ADF response to threats of a coup d’etat by Fijian military forces against the Prime Minister Laisenia Qarase.

In Suva, up to 1000 RFMF troops in full battle dress parade through the streets

In an Australian television interview Police Commissioner Andrew Hughes said he had taken care of ‘any bid to oust me as police chief’.

[**Note:** the *Kanimbla* was commissioned by the Royal Australian Navy in August 1994 for use as an amphibious warfare transport ship. It has 2 x LCM8 landing craft. It has the capacity for 400 embarked forces, 955 square metres of useable tank deck space, complement of 23 naval officers, 2 army officers, 197 sailors, 18 soldiers. It carries armament of 1x 20 Phalanx Mk 15 close in weapon system, 6x 12.7 mm machine guns. The Black Hawk carries a crew of four and up to 10 soldiers and is the principal transport helicopter of the Australian army].

November 3

Australian Foreign Affairs Minister, Alexander Downer told the press, ‘We think there is a very real chance there could be a coup in Fiji and it’s important that all of us do everything we can to stop that occurring’.

A group of at least eight (8) Australian Special Air Service (SAS) forces secretly, and in breach of border protocol, arrive at Nadi Airport on Air Pacific flight FJ910 from Sydney. They are taken directly from the plane to a vehicle and driven out with their cargo without going through normal customs formalities and procedures.

The SAS forces were later described by Australian Foreign Affairs Minister, Alexander Downer, as ‘additional coordination and administrative staff’. However, he refused to specify whether they were police or military. The Australian Department of Defence called these special elite forces ‘Defence Supplementation Staff (DSS)’.

The SAS forces’ cargo consisted of sealed strong silver boxes weighing more than 400 kilograms. There was no customs clearance of these boxes and therefore no report on its contents until later when the media published the airway bill. Canberra insisted that the boxes were entitled to evade inspection because they were classified as a ‘diplomatic consignment’. Downer said they contained ‘communication equipment’.

The RFMF accused Canberra of smuggling elite SAS forces into Fiji and said the boxes contained weapons and ammunition.

When questioned by the RFMF, the Australian Defence Adviser at the Australian Embassy in Suva denied the existence of the SAS forces. The RFMF Commander announced that if no one would claim responsibility for the special forces they would be treated as mercenaries.

The Chief of the Australian Defence Force then telephoned the Commander RFMF and claimed responsibility for the troops. He admitted they were members of the Australian SAS.

The elite special forces had initially been placed with the Police Tactical Response Team but after this exchange between the Chief of the Australian Defence Force and the Commander RFMF, they withdrew to the Australian Embassy premises.

Australian media reports said the deployment of warships to Fiji was backed by the United States and New Zealand.

Approximately 3000 RFMF reservists parade at the Queen Elizabeth Barracks led by Captain Esala Teleni, who told the troops it was for ‘the purposes of re-evaluating our operational effectiveness, unity and cohesiveness of the force’

Captain Teleni told his troops that the military was the last bastion of law and order under Fiji’s Constitution, not the police.

Australia's Defence Minister, Brendan Nelson told the press in Australia that if the warships on their way to Fiji 'has any impact at all on Commodore Bainimarama then, hopefully, it will be to discourage him and to reinforce the view put to him by (Australian Defence Force Chief) Air Chief Marshall Angus Houston that he should not proceed with his stated intentions of overthrowing, through a coup, the democratically elected government'.

Australian Prime Minister John Howard tells the Australian press that Fiji's government had not asked Canberra for military assistance.

November 5

RFMF's Land Force Commander Pita Driti announces that Fiji's Police Commissioner Hughes had illegally brought Australian and New Zealand police into Fiji to bolster police forces. He asks Hughes to explain why the officers were brought in without proper security checks, along with a shipment believed to be weapons.

NZ Prime Minister Helen Clark says the Fiji military was 'poking its nose in where there's absolutely no cause to. There was a decision taken at the end of last week for four NZ police officers to go up to the NZ High Commission in Suva to provide it with additional security and support. Of course the NZ police didn't go to the Fiji military, why would they? Absolutely ridiculous'.

Col Pita Driti tells the press that Australian forces had arrived from Sydney. He says the problem resembled Papua New Guinea's mercenary 'Sandline' affair. He also says that NZ police did not have the mandate to exercise authority in Fiji, and blamed Police Commissioner Hughes for the breach of border control. Col Driti says that the arrival of Australian and NZ police and military officers was part of a move to intervene in Fiji.

Col Driti also tells the media that Australians should not think that they could invade Fiji. 'We're a small army but we are not scared of them. We will not accept any foreign intervention'.

Permanent Secretary in the Prime Minister's Office, Joji Kotobalavu hints to the media that 'Fiji authorities' gave permission to Australia and New Zealand to bring in 'additional security personnel' but denies knowledge of a specific arms shipment. Kotobalavu provides no further details on the source of the authorization.

November 6

Australian Department of Defence admits sending an 'unspecified number of staff' to the Australian High Commission in Suva.

NZ Prime Minister Helen Clark says the RFMF was 'trying to control the presence of NZ police sent to guard the High Commission in Suva' which was 'hardly a takeover of Fiji'.

November 7

Australian press reveal that some of the group sent to Fiji were SAS forces based out of Swinburne in Western Australia. The equipment brought in was to enable them to contact the warships *Newcastle* and *Kanimbla* lying off-shore.

An airway bill relating to the covertly-introduced equipment is published in the press. Reportedly it included US \$1.5 million worth of communications equipment weighing 472 kgs and originating from Garden Island in Sydney.

Downer says that the equipment was to communicate with the Australian warships sent to Fiji.

November 8

Fiji police question and release two enlisted (RFMF) men in civilian clothing parked in a rental car outside the Australian High Commission in Suva. They were reportedly keeping the Australian High Commission under surveillance.

November 9

RFMF's Col. Pita Driti describes the entry of Australian forces into Fiji as a 'gross breach of sovereignty', denouncing Canberra's actions in the Pacific as 'sheer ignorance or hegemonic shoving of big brother policies down our throats'.

November 16

RFMF Spokesman, Major Neumi Leweni says the Biketawa Declaration was being exploited by countries like Australia and New Zealand to facilitate their foreign policy and front for neo-colonialism. He said 'this policy is now unveiling right here on our doorstep and we should take heed. We should learn from the MSG (Melanesian Spearhead Group) countries that have experienced foreign intervention and whether it has helped them. Fiji has a strong military that has proven itself in many theatres of war. It will not stand by and see any foreign force interfere with its affairs'.

November 28

Australian High Commissioner, Jennifer Rawson, United Kingdom High Commissioner, Roger Sykes and United States Ambassador, Larry Dinger visit high ranking RFMF officers at Queen Elizabeth Barracks to request the officers to withdraw their support for Commodore Bainimarama.

This invitation to mutiny is rebuffed. Major Leweni said it was 'inappropriate for a civilian diplomat to visit a military camp and seek to speak directly to officers'.

By November 28 the three Australian warships had been within or at the fringes of Fiji waters for about 7-14 days. The RFMF said they were suspicious but could not confirm the presence of the warships until 28 November.

November 29

New Zealand Foreign Affairs Minister, Winston Peters, facilitates a meeting between Commodore Bainiamara and Prime Minister Qarase in Auckland. One of outcomes of that meeting is that the **'Government of Fiji, the RFMF and Fiji's bilateral partners agreed there would be no foreign military or police intervention into Fiji'**. However, the phrase, **'Fiji's bilateral partners'** is subsequently deleted from the document. It is not clear when these words were removed as both versions of the document are dated 29 November 2006. The Fiji Government published the amended agreement as an advertisement in Fiji's newspapers after the meeting.

That same evening RFMF soldiers patrol the streets of Suva and fire flares and shots into the harbour around Suva peninsula. The RFMF said the patrol was in anticipation of any foreign intervention and it was taking all precautionary measures. It would not say whether they would be firing live rounds.

Canberra was reported to be taking 'aggressive steps to protect its interests in Fiji and the region'. Elite Australian troops had their leave cancelled and a Sydney-based commando task group was placed on standby.

Downer tells the press that he hoped the crisis would be resolved by the 'Fijian Government and the military, rather than through a clash between militaries'.

Prime Minister Howard reportedly plans to host a meeting of 16 Pacific Foreign Ministers on December 1 in order to invoke the Biketawa Declaration.

Heavily armed troops continue to move through the streets of Suva after military officers said they feared foreign powers were set to invade Fiji.

Police Commissioner Andrew Hughes leaves for Australia saying his family was threatened.

Voluntary evacuation of families of Australian High Commission staff commences.

RFMF troops in full battle gear secure strategic sites including Vodaphone and Fiji Telecom headquarters, Fiji Electricity Authority and government offices. Col Driti said 'We are just taking precautions tonight because a foreign intervention could be imminent'.

RFMF three-hour exercises entailed securing strategic areas within the greater Suva area and firing illumination rounds into the sea near Nukulau, Makuluva and entrance to Suva Harbour. During the exercises, checkpoints were erected on all roads leading into downtown Suva.

Col Driti says that if Australian forces are called into Fiji, the RFMF would stop them: 'put it this way, we wouldn't be waving a white flag at them'.

Major Leweni says the RFMF would also conduct exercises near Nausori Airport to prevent foreign incursion.

Australian PM John Howard tells media that the presence of Australian military off the coast of Fiji is 'appropriate'.

However, just as the RFMF exercises began, the Australian army confirms that a Black Hawk helicopter had crashed. It carried SAS forces. The pilot dies and an SAS trooper is missing. Seven others are injured. One escapes without injury.

November 30

The Australian warships are already in Fiji waters. A civilian aircraft sent from Nausori Airport to locate the ships finds them at 35 miles west-south-west of Vatulele Island at a range of 75 NM directly south (180 degrees magnetic) off Nadi International Airport and bearing 223 degrees magnetic from Nausori International Airport at approximately 95 NM.

The eyewitness crew on the aircraft recorded that the bow of the assault ship, later identified as the *Kanimbla*, contained two large motorized landing craft. At the stern was a large helicopter landing deck, which had 3 helicopters. The Black Hawks were painted in tropical camouflage colours. One of the Black Hawks was fitted with two stub wings on either side and was apparently armed with rocket launchers/ missiles. The eyewitness saw 1 UH -60 Black Hawk and 1 MRH 60 Black Hawk (combat talon-type gunship) Helicopters and 1 Sea King Helicopter on the *Kanimbla*. The crashed Black Hawk was not visible.

The civilian aircraft noted that the two Black Hawks were quickly hangared out of sight as he came in for a third pass over the ships.

While the civilian aircraft was conducting reconnaissance and surveillance of the warships, two red flags were raised at short intervals warning it to back off. The pilot recognized the threat that his aircraft would be shot at and prepared to leave the vicinity. Prior to leaving the site, however, he recorded that the supply and assault ships, across whose bows he had flown, were suddenly vacating the area heading south. The frigate remained.

Soon after, Prime Minister Qarase tells the media that the helicopter crash 'could not have come at a worst time'.

[**Note:** In July 2007, an Australian Defence Inquiry conducted into the accident revealed that the helicopter crash had occurred during preparations for an ‘incursion’ into Fiji. The preparations were for ‘roping exercises on a stationary ship’. The pilots were preparing for landing on a wide variety of buildings, most of them with prevailing winds which would be cross wind or tail wind’. One of the factors taken into account in the exercises that ended in the fatal helicopter accident was reported as ‘the determining factor of disposition of elements, friendly or otherwise, on the ground’].

December 1

The Fiji Navy offers assistance to the Australians following the helicopter crash. This was declined. RFMF said the refusal was because the Australian warships were within Fiji waters. Major Leweni said that ‘presence of foreign troops in Fiji would be seen as an invasion. We knew they were out there and we believed they were close and we were right’.

Prime Minister Qarase said he was considering asking for foreign intervention. Australia’s acting Prime Minister Mark Vaile said Australia would, if requested, consider intervention in Fiji and Australian warships were still near Fiji ready to act in the event of a coup.

Commodore Bainimarama tells the press that ‘if foreign troops land on our soil I will hold him (Qarase) responsible’.

December 5

Australian PM John Howard says he refused three requests from Prime Minister Qarase for ‘military intervention to end a coup’.

Note: Mr Qarase has repeatedly said that he did not request military intervention.

The President of Fiji as Head of State and Commander of the armed forces was unaware of any request made for military intervention. Defence of the realm is the responsibility of the President of Fiji as Head of State.

2. Relevant International Law: Application

The **United Nations Charter** is the ultimate international human rights reference point for an assessment of the law applying to the events unfolding in Fiji between October and December 2006.

The UN Charter was drafted after the end of World War II in recognition of the establishment of the United Nations. The Charter prohibits the use of force between nation states. The instruments that provided for trials post World War II, for example the Nuremberg and Tokyo trials, defined crimes against peace with reference to wars of aggression or wars in violation of international agreements.

Article 2 .1- 4 of the UN Charter expresses an agreement between States that:

1. The Organization is based on the principle of the sovereign equality of all its Members
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

The UN Charter is only one of relevant international instruments on obligations between states. On 17 December 1984 the UN General Assembly passed a resolution on **Implementation of the Declaration on Strengthening of International Security** (A/RES/39/155).

The Declaration recalls:

...the duty of States not to intervene in the internal or external affairs of any State, in accordance with the purposes and principles of the Charter of the United Nations.

Article 2 of the Declaration states that all States are urged to abide strictly, in their international relations, by their commitment to the Charter of the United Nations, and to this end:

- (a) To refrain from the use or threat of use of force, intervention, interference, aggression, foreign occupation and colonial domination or measures of political and economic coercion which violate the sovereignty, territorial integrity, independence and security of other States as well as the permanent sovereignty of peoples over their natural resources

Article 4 of the Declaration:

Invites all States, in particular the major military Powers and States members of military alliances, to refrain, especially in critical situations and in crisis areas, from actions, including military activities and manoeuvres conceived within the context of big-Power confrontation and used as a means of pressure on, threat to and destabilization of other States and regions.

The UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States (Resolution 2625 (XXV)) is another relevant instrument defining the obligations of States to each other.

The relevant provisions are as follows:

Convinced that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to creation of situations which threaten international peace and security.

Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

No State or group of States has the right to intervene directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife of another State.

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

The **UN Declaration on the Non-Use of Force** 1988 is also pertinent in light of a decision of the International Court of Justice (ICJ) in the Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Judgment delivered June 27 1986). In this case the respondent was the United States. The Court ruled in favour of Nicaragua. While this complaint to the ICJ contained issues of a very serious nature, the developing jurisprudence of the ICJ is relevant to establishing the parameters and rationale of foreign intervention in a wide range of situations.

In Fiji, given the chronology of events in October-December 2006 which is provided in the first part of this Special Investigations Report, there needs to be an independent assessment of whether the Australian government complied with its international obligations towards Fiji pursuant to the United Nations Charter.

Furthermore, there needs to be an assessment of whether any of the provisions of the Biketawa Declaration would have been available at all to Australia as Opposition Spokesman Kevin Rudd claimed on November 2. Whether they were available prior to a meeting of the Pacific Foreign Ministers scheduled for early December is also a pertinent question. The Biketawa Declaration may have been mis-applied by Australia to intervene unilaterally in a sovereign Pacific State.

In any event, the substantive provisions of the Biketawa Declaration should be read consistently with its Preamble that Forum Leaders would respect the principle of non-interference in the domestic affairs of another member State. This perspective accords with the UN Charter.

Whether western powers' intervention and involvement in Fiji's affairs in 2006 complied with international law is a relevant question. It is also pertinent to ask whether Australia's new Foreign Affairs Minister Stephen Smith's recent comment, that Fiji's 'bad behaviour' will not be 'rewarded', should be taken seriously. This type of comment from Australia's Foreign Affairs Minister will certainly raise eyebrows given this Special Investigations Report.

The question that now needs to be considered is this: what was Australian Task Force 636 doing in Fiji territory in November-December 2006? The explanation post-Black Hawk-crash that the warships were preparing to evacuate Australian nationals is inconsistent with statements made pre-crash and eye-witness accounts. The statements of the Defence Force Command, as well as Alexander Downer, Brendon Nelson and others were ambiguous and downright contradictory.

Furthermore no satisfactory explanation was provided for the presence of Australian SAS forces in Fiji from November 3. There is no record of when and how they left Fiji.

The *Kanimbla* reached Townsville on December 17 as notified by Defence Alert Bulletin No CPA 372/06 which the banned media from making contact with any personnel disembarking.

Any inquiry into Australian presence within Fiji's territory in November-December 2006 should be considered in terms of the following facts:

1. SAS forces arrive in Fiji. Australia initially denies their presence. It admits that they are SAS forces only after receiving a warning from Commander RFMF that the troops will be treated as mercenaries.
2. Australian Defence Force says it sent warships etc only to evacuate Australian nationals in the event of a coup. But two of the ships depart Fiji waters on November 30, five days before the takeover, presumably leaving Australian nationals in Fiji to fend for themselves on December 5.

3. Australians claim the warships were not in Fiji waters. However they were located within Fiji waters by civilian aircraft.

This FHRC Special Investigation Report raises some very serious concerns about the presence of the Australian SAS forces, warships and Black Hawks in Fiji in 2006. Clearly there needs to be some meaningful discussion in forthcoming Pacific Island Forum meetings about the obligations of sovereign States to each other and the rights and duties of members of this sub-regional body under international law pursuant to the UN Charter and relevant Declarations noted in this Report.

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