

PACIFIC ISLANDS FORUM 2009

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I. INTRODUCTION

The 40th Pacific Islands Forum was held on 5 and 6 August 2009 in Cairns, Queensland, Australia. The Forum meeting was attended by representatives of all of the Forum states except Fiji, by the two associate members, and by three Pacific Observers countries and three international institutions. The 41st Pacific Islands Forum will be held in Vanuatu in 2010.

The items identified in the Final Communiqué of the Forum¹ and its annexes are not greatly different from those of other recent Forum meetings. Arguably the most critical matter for the Forum was the situation in Fiji. The other topics included climate change, the Pacific Plan, regional trade negotiations, sports, energy issues, regional security, and aspects of human rights. In its closing paragraph, the Forum gave strong support for the Australia, Canada and New Zealand candidatures for the UN Security Council covering the years 2011-2016, and for the Australian bid to host the 2018/2022 Soccer World Cup.

II. PACIFIC PLAN

The Pacific Plan was mentioned and recommendations for making progress were listed in Annex C of the Forum Communiqué. The resolution was that “steady progress” has been made and that “key challenges remained”.²

III. ENERGY

The bulk procurement of petroleum initiative was advanced, especially by the governments of the Cook Islands, Nauru, Niue and Tuvalu who had signed an MOU on the matter.

IV. FIJI

The Pacific Islands Forum Fiji Joint Working Group met for the 35th time in Suva in January 2009. The Working Group there prepared for the special leaders meeting which was held in Port Moresby on 27 January 2009.

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1 Final Communiqué of 40th Pacific Islands Forum (Cairns, August 2009) <www.forumsec.org.fj> [40th Forum Communiqué].

2 Ibid, at [9].

At the Port Moresby meeting, the leaders condemned Fiji for its failure to honour its undertaking that there would be an election by March 2009. They stated that two years of rule by military government in the circumstance was not acceptable according to the standards enshrined in the Biketawa Declaration.³ They reaffirmed that the existence of social and other issues that needed to be addressed in Fiji should not be a cause for the delaying of parliamentary elections.

The leaders agreed to the imposition of targeted measures under paragraph 2(iv) of the Biketawa Declaration unless:⁴

- (i) the Fiji Interim Government nominates an election date by 1 May 2009;
- (ii) that election is held by the end of December 2009.

The targeted measures would comprise suspension of Fiji from participation in Forum events and the non-eligibility of the Fiji Interim Government to benefit from Forum regional cooperation initiatives.

On 4 March 2009 the Commonwealth Ministerial Action Group meeting in London expressed its full support for the outcome of the Forum Leaders Meeting of 27 January 2009. The London meeting indicated that if there were not sufficient progress consistent with the principles in the Forum Leaders Communiqué, Fiji would be fully suspended from the Commonwealth. On 9 April 2009 the Fiji Court of Appeal ruled against the Interim Government.⁵ Following that ruling the Interim Government formally proclaimed⁶ that the Constitution of Fiji had been set aside.

By 1 May 2009 there had been no compliance by Fiji with the requirements of the Forum Leaders meeting of 27 January 2009. Fiji was therefore formally suspended⁷ from “full participation in the Pacific Islands Forum” with effect from 2 May 2009. The two targeted measures were therefore implemented immediately. This result followed quite clearly the procedure set out in clause 2 of the Biketawa Declaration:

the need in time of crises ... for action to be taken ... the Forum must constructively address difficult and sensitive issues ... to this end the Secretary General ... should ... initiate the following process.

Clause 2 then set out three action steps and guidelines which could lead to the convening of “a special meeting of Forum Leaders to consider other options including if necessary targeted measures”.

On 18 May 2009 the European Commission cancelled its 24 million Euro allocation to Fiji for Sugar Reform Measures. On 13 July 2009, the Melanesian Spearhead Group reaction resolved to ask the Forum to lift

3 Biketawa Declaration (Biketawa, Kiribati, 2000) <www.forumsec.org>.

4 Forum leaders Special Retreat Communiqué on Fiji (Port Moresby, January 2009) <www.forumsec.org.fj>.

5 *Qarase v Bainimarama* [2009] FJCA 10; ABU0077.2008S (9 April 2009) <www.paclii.org>.

6 The proclamation was made on 10 April 2009.

7 There is no provision to exclude a current member of the Forum. See the Agreement Establishing the Pacific Islands Forum Secretariat (Tarawa, 30 October 2000), arts XII and XIII <www.austlii.edu.au>.

the ban on Fiji. Of the several reasons given one was that Fiji could not be legally excluded from participating in regional agreements such as the Pacific Island Countries Trade Agreement (PICTA), the Pacific Agreement on Closer Economic Relations (PACER Plus) and the Interim Economic Partnership Agreement (EPA).⁸

At the Cairns meeting the leaders confirmed their “unanimous and resolute support”⁹ of the decisions taken in respect of Fiji.

V. TRADE

The Forum agreed that negotiations on PACER Plus should begin immediately. It was noted that while Fiji could not participate in the negotiations, Fiji would be kept informed of the developments, and arrangements would be made for the views of Fiji to be made known to the negotiators.

Work continues on the implementation of PICTA and its enlargement to cover trade in services by the end of 2009.

The initial studies on the establishment of a Pacific Single Market continue.

The Office of the Chief Trade Advisor will be established as a special unit of the Forum Secretariat with a permanent office at Vanuatu. The funding for the office is provided by the governments of Australia and New Zealand.

VI. RAMSI

Matters have greatly improved in respect of the relationship between the Solomon Islands government and the Regional Assistance Mission (RAMSI). The year has given clear evidence of positive developments in this previously fraught relationship.

VII. STRUCTURAL REORGANISATION OF REGIONAL AGENCIES

The major re-structuring initiatives for some regional agencies were addressed in paragraphs 39 to 41 of the Communiqué and extensively in Annex D. It appears that substantial rearrangements affecting the Pacific Islands Applied Geological Sciences Commission (SOPAC) have been made and the new institutional arrangements including the transfer of SOPAC environmental functions to the South Pacific Regional Environmental Programme (SPREP) and the geo-science functions to the Secretariat of the Pacific Community (SPC) will be effective from 1 January 2010.

8 The Economic Partnership Agreement between the Pacific ACP countries and the European Union.

9 40th Forum Communiqué, above n 1, at [44].

VIII. HUMAN RIGHTS

In addition to discussions of rights issues relating to disabled people, sexual and gender based violence, the Forum launched the book *Ratification of International Human Rights Treaties: added value for the Pacific region*.¹⁰

IX. PASAI

The Pacific Association of Supreme Audit Institutions (PASAI) represents 25 audit institutions in the Pacific. It was developed with the support of the Asian Development Bank and AusAid in the context of the Pacific Plan. The auditors-general of Kiribati, Nauru and Tuvalu have signed a memorandum of understanding on a sub-regional audit support programme under PASAI.

X. INTERNATIONAL ENGAGEMENTS

The post-Forum dialogue (PFD) arrangements have long been a significant part of the Forum meeting system. It has provided a convenient venue for a range of states and institutions to interact with the Forum Secretariat and the Forum country members on an individual or small group basis. Material advantages to the countries of the Pacific have often flowed from the post-Forum dialogue meetings. Against this background, it is interesting to note in paragraph 43 of the Final Communiqué, a proposal to seek from the post-Forum dialogue partners “an annual financial contribution to defray the expenses incurred by the Secretariat in managing the PFD mechanism on a cost recovery basis”.

A total of 95 million Euros will be available from the European Commission for Pacific ACP states for 2008–2013. Negotiations continue for the conclusion of a comprehensive Economic Partnership Agreement (EPA) between the Pacific ACP countries and the European Union.

The Asian Development Bank is a major source of funding and development support for Forum countries. Against the background of the Pacific Plan, the Asian Development Bank was invited to and agreed to revise its Pacific strategy to make it consistent with the Pacific Plan. In March 2009 a Memorandum of Understanding was signed between the Asian Development Bank and the Forum Secretariat to support the Pacific Plan and to foster cooperation for sustainable growth and greater economic integration in the Pacific.

Every three years, there is a Pacific Alliance of Leaders Meeting (PALM) hosted by the Japanese government. The 5th such meeting, PALM 5, was held in Hokkaido in May 2009. All Forum members were present, including Fiji.

10 Published by the Forum Secretariat and the United Nations. In the human rights context, see the following recent publications: *Human Rights in the Pacific Droits de l'homme dans le Pacifique*, Editor Petra Butler, RJP special issue VIII (2009); and Sue Farran *Human Rights in the South Pacific Challenges and Changes* (Routledge-Cavendish, London, 2009).

Major matters of discussion were the environment and climate change, the improvement of transport and telecommunications structures, and fisheries. The Action Plan, drawn up with a view to PALM 6, was set out in Annex 2 to the PALM 5 Final Declaration.¹¹ It was noted that Japan's assistance to the programme for the three years since PALM 4 had been consistent with the Pacific Plan and had provided 45 billion yen.

The government of the Republic of China on 10 July 2009 announced the award of USD406,000 for Council of Regional Organisations in the Pacific (CROP) projects (eg the University of the South Pacific (USP), SOPAC, SPREP, SPC, Forum Secretariat and the Pacific Islands Forum Fisheries Agency (FFA)) for 2008/2009.

The Third France-Oceania Summit was held in Noumea on 31 July, immediately preceding the Forum meeting in Cairns. All the Forum states were present except Fiji. French economic support for the small island states was provided in two ways: 2 million Euros through the French Pacific Fund and indirectly by way of the 369 million Euros from the European Development Fund for 2008-2013 (to which fund France contributes approximately 20%). In addition to its general concerns with democracy, human rights, climate change and sustainable use of resources, the Summit addressed the EPA negotiations, ways to facilitate movement of people between countries of the Pacific, climate change and fisheries; specific reference was made to the proposed trans-Pacific submarine project and to the improvement of internet services to remote areas. The declaration of 2009 as the Year of Climate Change in the Pacific was welcomed and advance notice was given of climate change meetings in September in New York, the Pacific Climate Change Roundtable meeting in October and the December 2009 UN conference in Copenhagen. The work being done to establish a South Pacific Regional Fisheries Management Organisation was supported, as was the desire to conclude those negotiations by the end of 2009.

XI. CONCLUSION

2009 was an interesting, though perhaps not exciting year for the Forum. From a legal point of view: there was no mention of the 2005 Agreement establishing the Pacific Islands Forum signed by many and ratified by few;¹² several of the members were in the throes of constitutional review;¹³ maritime disasters highlighted the need for greater progress in maritime standards setting.¹⁴

11 PALM 5 Leaders' Final Declaration (Hokkaido, May 2009) <www.forumsec.org.fj>.

12 Agreement Establishing the Pacific Islands Forum (opened for signature 27 October 2005, not yet in force).

13 Fiji, Solomon Islands, and Tonga.

14 See for example, the Tonga ferry accident in August 2009.

The major issue for the Forum legally and internationally was the continuing difficult situation in Fiji. Despite occasional press reports of lack of unity among Pacific leaders on the Fiji issue, the Forum has acted consistently and with resolve. The Forum Communiqué of 7 August 2009 was typically general, and in many ways an interesting contrast with the greater specificity on a number of significant matters¹⁵ provided in the Declarations that followed the PALM 5 and France-Oceania Summit meetings.

15 See for example, fisheries and telecommunications.