THE RECOGNITION OF THE REVOLUTIONARY REGIME OF FIJI BY PAPUA NEW GUINEA

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I. INTRODUCTION

Following two successive coups on 14 May and 26 September 1987, Colonel Rabuka, the leader of the coups, set up a revolutionary government in Fiji.[1] This regime proclaimed that the revolution was to ensure that Fiji must always be ruled by the indigenous Fijians.[2] The new revolutionary regime embarked upon a new foreign policy initiative aimed at reviving the international image and relations of Fiji.[3] It sought diplomatic recognition from members of the international community. The response of the world community to recognise the regime has been noticeably frostly. Governments, especially regional, have been extremely discrete so as not to make a haste decision without a full appraisal of the political developments in post-coup Fiji. Nevertheless, Papua New Guinea rendered its full and formal diplomatic recognition to the revolutionary regime of Rabuka in November 1987.[4]

This paper highlights and comments upon the factors that led the Government of Papua New Guinea to recognise the Rabuka regime. It argues that whilst the revolutionary access to power is not unlawful, the proposed guarantee of governmental power for a particular race in a multi-racial Fiji is untenable both under international law and the UN Charter. It is this guarantee that distinguishes the Fiji revolution from any other revolution waged solely to capture the governmental power. The regime has been committed to enact a new constitution for the Republic of Fiji having the potential effect of creating racial discrimination in Fiji in definance

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1. On 14 May 1987, Rabuka stormed Parliament, took the newly elected government hostage and suspended the Constitution. Whilst the political reconciliation under initiative of the Governor-General was in progress, Rabuka launched his second coup on 26 Sept. 1987, annulled the Constitution and assumed full control of the government,; see (1987) No.39 *The Review*, Int'l. Com. Jurists, p.3.

2. Rabuka claimed that his military actions were intended to ensure the 'birthright' of the native Fijians He reasoned that prior to the British rule, the territory was administered by traditional chiefs but 'at independence the sovereignty of the country was never returned to the chief (and) now they want it back'. See *Post Courier*, PNG, 1 and 2 Oct. 1987, p.8; *Pacific Islands Monthly*, June 1987, p.16; The draft of the new Constitution considered by the interim cabinet of Fiji in June 1988 reveals that elections will be on communal rolls, with 28 native Fijian and 22 Indian Fijian members among others, for details, see the *Fiji Times*, 19 July 1988, p.3.

3. The new measures were embodied in a document titled: 'Foreign Policy Initiatives for the Republic of Fiji' released and circulated by Minister for Foreign Affairs in Suva, See also *Pacific Islands Monthly*, Dec. 1987, pp.16-17, *Far Eastern Econ. Rev.* 3 Dec. 1987, pp.50-51.

4. The Government of Papua New Guinea announced its recognition 'of the new reality in and affecting Fiji; that a government headed by Colonel Sitiveni Rabuka is in power in Fiji; that Fiji has acquired the status of a Republic; that Papua New Guinea desires to maintain close ties with Fiji; and that Papua New Guinea continues to seek to cooperate with Fiji to promote the interests of people of the South Pacific, including the South Pacific Forum'. See the approved NEC submission of 3 Nov.1987 and the Press Release of 5 Nov. 1987 of the PNG Government; also *Pacific Islands Monthly*, Jan. 1988, pp.16-17.

of international law prohibiting racism and promoting human rights for all without any distinction whatsoever. This dimension of the Fiji revolution was not, it is submitted, objectively appreciated by the Government of Papua New Guinea in recognising the revolutionary regime of Fiji.

II. CRITERIA FOR THE RECOGNITION OF A REVOLUTIONARY REGIME

Contemporary state practice has developed two basic legal criteria which generally govern the recognition of revolutionary regime in a state: that there must be a revolutionary change of government; and that the revolutionary government must establish its authority effectively over the country, or a substantial part thereof.[5]

A. *Revolutionary Change of Government and Recognition:*

Revolution, a constant feature of international life, is not prohibited by international law or by the UN Charter.[6] There is no rule of international law which forbids the seizure of governmental power through revolutionary means. There also exists no rule of international law which prevents the incumbent government from crushing any revolution, if it can, in its territory. International law merely accepts the ultimate outcome of a revolution. The question of recognition arises only when there is a revolutionary change of government. A change of government is deemed to be revolutionary (a) if there is an abrupt change of political authority of a state; (b) if the change has been effected beyond the permissible constitutional means; and (c) if the entire pre-existing order in force has been destroyed and replaced by a new order.[7]

It is customary for an emergent entity on the international arena to seek recognition understandably to enhance its international personality and competence. Quite consistently with this practice, the revolutionary regime of Fiji sought recognition from the existing subjects of international law. The regime notified the world community of a new factual state of affair in Fiji: the formation of a new governmental authority through revolution. The regime anticipated that the notified fact situation might be recognised by other subjects of international law which would in turn augment the degree of its international personality and competence. There is in fact nothing in international law to suggest that an entity which lacks recognition cannot claim to be recognised. An unconstitutional regime can not be prevented from acting in the international arena on behalf of a state whose interests it claims to represent. Constitutional legitimacy of a regime is not a condition of recognition, for such a condition would tantamount to one of perpetual non-recognition of any revolutionary regime. This is obviously not a rule of international law.[8] Hence a revolutionary regime may seek, and a third state may render, recognition under international law.

Effecting the first military coup on 14 May 1987, Rabuka seized the governmental power of Fiji, removed the democratically elected government of Bavandra, suspended the 1970 Independence Constitution of Fiji and declared himself as the

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5. See A.C. Bundu, 'Recognition of Revolutionary Authorities: Law and Practice of States' (1978) 27 *Int'l. Comp. L.Q.* 18.

6. R. Higgins, 'International Law, Rhodesia and the UN' (1967) 23 *World Today*, 94-96.

7. H. Kelsen, *General Theory of Law and State* (translated by A.W. Wedbeg, New York: Russel & Russel, 1961), 117-19.

8. D.P. O'Connell, *International Law* (London: Stevens, vol.I, 2nd ed. 1970), 137.

head of a military government. He attempted in vain to gain the approval of the Governor-General of Fiji. The 1970 Constitution, inoperative though for the time being, remained the valid and supreme law of Fiji (s.2). Under this Constitution, the 'executive' authority of Fiji' is vested in the Queen and is exercised domestically on Her behalf by the Governor-General, continued to be the Head of State with the 'executive authority of Fiji'(s.72). This power remained with the Governor-General who not only declined to recognise the Rabuka's military government but also succeeded in quashing the coup and its aftermath by appointing an interim council of Ministers. These events tend to corroborate that Rabuka, though effected an abrupt political change in Fiji, failed to substitute the order in force by his new order effectively. As such, Rabuka's access to power through the first coup lacked an important, if not the decisive, attribute of a valid revolutionary access to power. Therefore, the question of recognition of his military government did not arise in the first instance.

The second coup of Rabuka on 26 September 1987 was somewhat different from his first coup. Executing the second coup, Rabuka abrogated the 1970 Constitution, declared himself as the Head of State, proclaimed Fiji a republic and installed a new Council of Ministers. He succeeded in overthrowing the pre-existing order by assuming full powers of the Governor-General and in establishing a totally new order of his own effectively. He outlawed all strikes, mass demonstrations and pacified all opposition against the revolutionary regime. All in all, he was in effective control of the governmental authority of Fiji. The re-assumption of power through the second revolution apparently came well within the purview of a revolutionary access to power. Consequently, the question of recognition of this new revolutionary regime of Fiji arose after the second takeover.

B. Effectiveness of a Revolutionary Regime and Recognition:

The competence of a government is contingent upon the establishment of a legal order over a given population within a defined territory. This simple requirement often involves a number of complex problems. The international standing of a constitutional government is hardly controversial, as it can convincingly satisfy most of the ingredients of a government. A revolutionary regime may lack the full capacity to fulfil conditions of a government. This is why the existing governments prefer to observe the nature and ability of a revolutionary regime to comply with certain criteria before granting formal recognition. Of these, the effective control of the country and its government is conceived to be the most influential determinant which the majority members of the world community increasingly seek in recognising a revolutionary regime.

There is a wide measure of consensus deducible from state practice among international lawyers on the effective control of territory and internal stability as a legal requirement of a government.[9] A reasonable amount of effectiveness and stability of a government is essential for the fulfilment of its international obligations Effectiveness provides cohesion, continuing validity and a prospect of survival. Ineffectiveness and instability are likely to affect adversely peaceful and friendly relations among states. Whilst this condition is frequently invoked, difficulties arise as to the degree of effectiveness required. Lauterpacht is of the opinion that what is required is a 'reasonable prospect of permanency, over the whole or practically the whole territory of the state.[10] He however concedes that there is no objective test of

9. Legally any effective *de facto* government represents the state, see the *Tinoco claims case* (the UK v. Costa Rica), (1924) 18 *Am. J.I.L.* 147.

10. H. Lauterpacht, *Recognition in International Law* (Cambridge, 1947), 98.

effectiveness which is relative to the situation and circumstances and cannot be determined with 'mathematical precision'.[11]

Effectiveness in the form of control of the territory and government machinaries does not necessarily ensure internal stability. Stability also depends on and varies with the allegiance of population. The popular approval of a government has a direct impact on the internal stability of that government. The habitual obedience of the bulk of the population inevitably fosters the degree of internal stability. Popular support expressed through free and genuine elections provides presumption of internal stability and permanence.[12] It must be admitted that a government may emerge and sustain its effective control and command the allegiance of peoples by oppressive means and recognition has been extended to these regimes too. Nonetheless, a regime which is maintained by oppression can not claim that its stability means it enjoys the spontaneous loyalty of its majority peoples. The evident abseence of popular support may be a potential threat to internal stability. Such a regime may be, and usually is, effective as long as it lasts. The obedience that it enjoys is imposed, passive and resentful.[13] The presence of popular support or the absence of popular opposition may be viewed as important evidence of stability and is relevant to the general requirements of an effective government.

Admittedly, international law does not require any particular form of government for the purpose of recognition.[14] Yet there is a growing tendency in the international community favouring forms of government based on popular support. The key factor for internal stability of a government is 'the will of the nation, substantially declared'[15] or what Wilson called 'the consent of the governed'.[16] Popular acquiescence as a test of effectiveness of a government has substantially been followed in the American and the British practice.[17] Fawcett advocates the right of all peoples to have effective representation, direct or indirect, in their government. The right of people may in effect compromise the governmental capacity.[18] In a similar view, Brownlie asks: In whose interest and for what legal purpose is the existence of effective government being pleaded?[19] The Charter of the Organisation

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11. H. Lauterpacht, 'Sovereignty Over Submarine Areas' (1950) 27 *Br. Y.I.L.* 429.

12. Lauterpacht, *op.cit* note 10, pp.115, 140.

13. Lauterpacht, *op.cit* note 10, p.137.

14. K. Marek, *Identity and Continuity of States in Public International Law* (Geneva: Librairie E. Droz, 1954), 56; D.J. Devine, 'The Requirements of Statehood Re-Examined' (1971) 34 *Modern L. Rev.* 40 *et seq.*

15. C.G. Fenwick, 'Recognition of De Facto Governments: Old Guide Lines and New Obligations' (1969) 63 *Am. J.I.L.* 98.

16. The concept was first enunciated on 11 March 1913 by the President in relation to the recognition of Huerta regime in Mexico, see Hackworth, 1 *Dig. I.L.* 181; the Tobar doctrine may also be cited to the same effect, *Id.* 186.

17. Lauterpacht, *op.cit* note 10. pp.115-40; Whiteman, 2 *Dig. I.L.* 77-78; Moore, 1 *Dig. I.L.* 140.

18. J. Fawcett, *The Law of Nations* (London: Penguin Press, 1968), 38-39; also (1971) 34 *Modern L. Rev.* 417.

19. I. Brownlie, *Principles of Public International Law* (London: Clarendon Press, 3rd ed. 1979), 75; Lauterparcht has conceived in 1947 that in future, a rule of international law may be formulated whereby the recognition of a state/government which violates human rights would be considered illegal, *op.cit.* note 10, chapter 21.

of American States requires that the governments of its members must be 'on the basis of the effective exercise of representative democracy'.[20] The 1964 Inter-American Conference resolved that the promise by the *de facto* governments to hold elections within a reasonable period is one of the tests of effectiveness.[21] The UN studies have greatly emphasised the importance of popular support in the development and maintenance of a stable government.[22] The popular approval of a government as a requirement of effectiveness and internal stability is no longer elastic but definite. Normative rules have developed requiring that 'the will of the people shall be the basis of the authority of government.'[23]

The revolutionary regime of Rabuka gained absolute control of the territory and the governmental authority of Fiji after the second coup. Troops consolidated their continued grip over power. The regime detained key political opponents, isolated the Governor-General in the Governor's House, controlled the local media and the freedom of foreign correspondents. Political activities of the coalition parties of the deposed Prime Minister were restricted, functions of the senior members of the judiciary were suspended and the public service purged. The coup leader was in a dominating position from the very beginning.

All army officers and the security forces apparently pledged allegiance to him.[24] In this way, an examination of the situation prevalent in Fiji following the second coup reveals that the revolutionary regime of Rabuke was in effective control of the country and its government.

This effectiveness of the regime may not be taken for granted as ensuring internal stability with a reasonable expectancy of permanence. The launching of the second coup at a time when plans to restore constitutional legitimacy and parliamentary democracy was progressing smoothly under the leadership of the Governor-General and various actions of the regime generated both regional and international repercussions. Most of the South Pacific States condemned the coup and the overthrow of the constitutional government of Fiji.[25] The Commonwealth Heads of Government meeting in Canada on 18 October 1987 expelled Fiji from the Commonwealth.[26] At home, moderate politicians were pushed out of the political process keeping the door wide open for extremists to emerged. The prospects of conciliation between constituent races were bleak and the chances of violent

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20. Art.5(d), see C.G. Fenwick, *Organisation of American States* (1963), 549.

21. Res. XXVI of the Second Special Conference on Informal Procedures on the Recognition of De Facto Governments, see C.L. Cochran, 'The Development of An Inter-American Policy For the Recognition of De Facto Governments' (1968) 62 *Am. J.I.L.* 464.

22. See Q. Wright, 'The Strengthening of International Law' (1959-III) 98 *Recueil des Cours*, 189.

23. Art.21(3) of the Universal Declaration of Human Rights.

24. See *Pacific Islands Monthly*, Nov. 1987, pp.7, 10; Dec. 1987, p.16; *Post Courier*, PNG, 1-2 Oct. 1987, p.8; *Far Eastern Econ. Rev.* 29 Oct. 1987, p.45.

25. See *Pacific Islands Monthly*, Nov. 1987, p.13; *Post Courier*, PNG, 2 Oct. 1987, p.8; C. Bell, 'The Unquiet Pacific' in *Conflict Studies 205*, the Centre for Security and Conflict Studies, the Institute for the Study of Conflict, London, pp.4-6; *Far Eastern Econ. Rev.*, 8 Oct. 1987, pp.12-13.

26. See *Pacific Islands Monthly*, Nov. 1987, p.12.

confrontation between them were ample. In view of these possibilities it was doubted that the regime might be 'obliged to keep Fiji a police state, complete with road-blocks, curfews and news black-outs, if only to prevent the country descending into ethnic violence'.[27] Beneath the surface of well-policed calm and effectiveness, Fiji was sharply divided, the communities were split down stark ethnic lines. Continued economic downturn had but added to the overall political impasse. Confronted with these problems, Rabuka had to step down as the Head of State and to dissolve his Council of Ministers on 6 December 1987.[28] He then decreed Ratu Sir Penaia as the first President of the Republic who appointed Ratu Sir Kamisese as the Prime Minister to head a civilian cabinet.[29] Many members of both the revolutionary regime and the subsequent civilian cabinet are members of the Alliance Party which lost office in the April 1987 election[30] - a factor that tends to negate, than to affirm, that the regime enjoyed the confidence and support of the majority peoples of Fiji.

Did the revolutionary regime of Rabuka satisfy the degree of effectiveness necessary for recognition? A precise answer to this question is difficult to formulate. State practice is so inconsistent that it gives no clear-cut answers. It may not be possible to assert conclusively when the terms of effectiveness are met. It is indeed fluid and relative in character and varies from case to case in practice and therefore cannot be construed rigidly. The international community still lacks a legal order based on objective tests to govern the act of recognition of a revolutionary regime. Within the scope of this flexible legal position, cognizance has been accorded to revolutionary regimes which emerged, sustained effectiveness, and commanded the loyalty of peoples even by coercive means. Despite the element of subjectivity inherent in the criterion of effectiveness which seems to challenge the wisdom of conceiving it as the decisive factor, it is frequently invoked and reinvoked by states in recognising a revolutionary regime. Quite consistently with this trend, the Government of Papua New Guinea also adhered to this criterion and found that the revolutionary regime of Rabuka was effective and stable enough to be recognised. In its assessment, the recognising entity attained a reasonable degree of effectiveness and prospects of permanancy and was competent to engage in the present and future responsibility of the Republic of Fiji.

However, given the overtly declared aim of the regime it appears erroneous to pretend that the criterion of effectiveness can solely be relied on in recognising the regime. In the discussion to follow it will be observed that the policies associated with the regime is also a criterion that needs to be reckoned with. The universal non-recognition of the former Smith regime of Rhodesia and the international community's posture on the incumbent South African regime have introduced a new element in the jural evaluation of recognition to a revolutionary regime which pursues policies inconsistent with, and/or repugnant to, international law and obligations.

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27. *Id.* 13.

28. *Post Courier*, PNG, 7 Dec. 1987, p.7; *Far Eastern Econ. Rev.* 24 Dec. 1987, pp.34-35.

29. Ratu Sir Penaia resigned as the Governor-General of Fiji after the proclamation of the Republic. Kamisese lost the office of the Prime Minister in the April 1987 election, see *Pacific Islands Monthly*, May 1987, p.10.

30. For a list of the Alliance Party members who were included in the Rabuka's Council of Ministers, see *Pacific Islands Monthly*, Nov. 1987, p.15. Of the 21 Ministers in the Kamisese Civilian Cabinent, ten were in the Rabuka's military government and four are army Colonel including Rabuka, see *Pacific Islands Monthly*, Jan. 1988, p.12.

III. EXTRA-LEGAL FACTORS

Certain domestic and regional extra-legal factors also seemingly influenced, in one way or another, the decision of the Government of Papua New Guinea to recognise the revolutionary regime of Fiji. The peace and stability in the South Pacific has continuously been deteriorating in response to a series of events. The French activities in the Pacific posed a threat to the regional security. The competition between the US, the USSR and Japan to gain access to and monopoly over the Pacific fishing resources raised suspicion about the Super-Powers', particularly the USSR, influence in the region. The 1951 Anzus Treaty between Australia, New Zealand and the US faced a rift in 1984 following the adoption by the new labour Government of New Zealand of a policy of nuclear free New Zealand banning all US nuclear ships from entering its territory. The first ever regional policy commitment on a strategic issue - the South Pacific Nuclear Free Treaty requires the region to be treated as a 'nuclear free zone'. The US, the UK and France declined to sign and ratify this treaty. This rift between the South Pacific Forum and its traditional allies was apprehended to destabilise the defence position of the South Pacific.[31]

Being a member of the South Pacific Forum, Fiji has been playing an active role in the regional affairs. Fiji has been a strong opponent to French policies in the Pacific, supported the inclusion of New Caledonia in the UN Decolonisation List of Non Self-Governing Territories. With a stable economy and efficient administration, Fiji has been progressing rapidly into the world of modernisation. The 1987 general election in Fiji brought about a change in the government and its policies. The radical multi-racial, anti-nuclear and non-aligned policies of the new government came into contrast vividly with that of the former government of the Alliance Party. The western allies of Fiji, especially the US which views Fiji as its potential new base in the Pacific, were reluctant to appreciate, but were rather frustrated by, the new policies of the Bavadra government. Whilst these events were happening successively with no likelihood of easing, the military coups in Fiji had but added to the growing regional instability.

Following the establishment of Fiji as a republic and its revolutionary government, Rabuka found that recognition was not forthcoming from Fiji's traditional allies - the US, New Zealand, Australia and other South Pacific States. In a bid to secure recognition to his revolutionary regime and republic Rabuka announced a shift in his policy from traditional friends to South East Asia, in particular to Japan and Indonesia.[32] France also came forward with considerable economic aid to arrest Fiji's fast collapsing economy.[33] The Government of Papua New Guinea probably surmised that Fiji was leaning towards some powers whose presence and influence in the region would not be desirable. The Fiji crisis could profitably be utilised by France to justify its colonial presence in New Caledonia. The isolation of Fiji by the regional states would mean the loss of a leading partner in the region and its forum which could even lead to the demise of the South Pacific Forum. The isolation of Fiji would not only accelerate deterioration in the regional peace, security and stability but also have a destabilising impact on the constitutional governments of other Pacific

31. For a full examination of how these factors are destabilising the South Pacific, see C. McLachlan, 'The Fiji Consitutional Crisis of May 1987: A Legal Assessment' (June 1987) *NZ.L.J.* 180; *Pacific Islands Monthly*, June, 1987, pp.16-17; Sept. 1987, pp.34-35.

32. For an account of this new change in foreign policy of Fiji, see *Pacific Islands Monthly*, Dec. 1987, pp.5-6, 16-17; *Far Eastern Econ. Rev.* 3 Dec. 1987, p.50; *Post Courier*, PNG, 8 Dec. 1987, p.6.

33. France offered an aid package of about $A12 million and willingness to help with capital works, see *Pacific Islands Monthly*, Feb. 1987, p.13.

States. The Government of Papua New Guinea was also concerned with the domestic popular support for the cause of the coup - the protection of rights, interests and values of the indigenous Fijians. Many Papua New Guineans hailed Rabuka as a hero of Melanesian cause.

All in all, the Government of Papua New Guinea felt the need for regional stability, cohesiveness and unity. The legal criterion of effectiveness together with the extra-legal factors referred to may be deemed to be the influential determinants, *inter alia,* in the decision of the Government of Papua New Guinea to render formal full recognition to the revolutionary regime of Fiji.

IV. THE POLICY OF THE REVOLUTIONARY REGIME AND INTERNATIONAL LAW

The military coup in Fiji was not contemplated merely to acquire the governmental authority of the country through revolutionary means. It was engineered and executed to accomplish a particular purpose. The leader of the coup asserted that his military actions were intended to ensure the birthright of the native Fijians, that elections should be held purely on communal basis, and that the majority seats in Parliament must be reserved for the natives so that they can always form their own government 'in the land that belongs to them'.[34] The revolutionary regime was overtly committed to introduce a political system for the Republic of Fiji that will provide a constitutional guarantee of the governmental power for the natives perpetually to the exclusion of the ambient population of multi-racial Fiji. It is this particular purpose of the revolutionary regime of Fiji that distinguishes it from revolutionary regimes that capture only the governmental power. The probable international legal implications of compliance with this condition will be discriminatory and cannot be subsumed as permissible under international law and the UN Charter committed to the elimination of racism and the protection of equal rights for all without any distinction whatsoever.

A. *Racism and Racial Discrimination:*

Modern states seldom consist of a single race linked by common factors. A state 'presupposes the existence of socio-economic-political structures capable of allowing the co-existing pursuit of whatever ideological differences are combined under that umbrella'.[35] The formation of a state composed of only one race is perhaps neither possible nor desirable in view of the existing complexion and realities of international life. This explains why the UN Charter contemplates a plural society composed of various racial, linguistic and religions groups sharing a larger common identity with their state. It advocates racial integration and multi-racial existence. This multi-racial connotation of 'statehood' necessitated the UN Charter regime to denounce all forms and manifestations of racial discrimination. The building of a world society free from all racial segregation is one of the pre-conditions for the enjoyment of human rights and dignity. This basic shared concern of all communities has prompted the UN to outlaw racism wherever it exists and in whatever guise. Member-states have assumed specific obligation to take joint and separate actions to fulfil the UN purposes which include the protection and promotion of human rights for all by eliminating any practice of racial discrimination which transgresses human rights and frustrates one of the UN purposes.[36]

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34. See above note 2.

35. M.C. Bassiouni, 'Self-Determination and the Palestinians' (1971) 65 *Am. Soc. I.L. Procd.* 32.

36. Art.56 to be read together with Art.55 of the UN Charter.

The prohibition of racism has thoroughly been internationalised by the UN through a constant flow of authoritative international instruments. The 1960 Decolonisation Declaration proclaims the urgency of an unconditional end to all practice of racial segregation and discrimination.[37] The 1963 Declaration on the Elimination of All Forms of Racial Discrimination affirms the necessity of speedily eliminating racial discrimination throughout the world.[38] It specifically prescribes that no discrimination by reason of race, colour or ethnic origin shall be admitted in the enjoyment of any person in a State of his political rights, and his right to take part in the government of his country directly or indirectly (Art.6). The 1965 International Convention on the Elimination of All Forms of Racial Discrimination is an important international law standard, demanding the end of racism in its entirely.[39] This convention inequivocally guarantees, among others, the equal political rights of all citizens in a state, without any distinction whatsoever, particularly the right to participate in the government of their country (Art.5C). It imposes upon all states, especially upon the parties, definite obligations to adopt all necessary measures to prevent and combat practices of racism, to foster understanding between races and to assist in building an international community free from all racial segregation and discrimination (preamble, Arts.2(e),3 and 7).

Given the worldwide antipathy towards racism, it may be inferred that the most elementary expectation of the international community - the concern of a minimum condition for a dignified human existence - has been embodied in the Convention. Deeply rooted in this shared expectation, the absolute prohibition of racism has become a part of solemn international obligations.[40] In a multi-racial state, if the UN Charter objective of human rights and fundamental freedoms for all is to be achieved, all forms of racism must be abolished. The UN has reiterated this precondition on many occasions, exemplified by its resolutions condemning the former white racial Smith regime of Rhodesia[41] and the present White Afrikaaner racist regime of South Africa.[42]
The UN regarded the revolutionary Smith regime of Rhodesia in 1965 as illegal and succeeded in its campaign for the universal non-recognition of Rhodesia.[43] A close

37. Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res.1514(XV) of 1960, preambular paragraph 9.

38. GA Res.1904(XVIII) of 20 Nov. 1963, for the text see (1964) 58 *Am. JIL.* 1081.

39. GA. Res.2106(XX) of 21 Dec. 1965, for the text see (1966) 60 *Am. JIL.*, 650.

40. For an account of the legal effects of this Convention, see N. Lerner, *The UN Convention on the Elimination of All Forms of Racial Discrimination* (The Netherlands: Martinus Nijhoff, 2nd ed. 1980); M. Reisman, 'Responses to Crimes of Discrimination and Genocide: An Appraisal of the Convention on the Elimination of Racial Discrimination' (1971) 1 *Denver JIL Pol.* 29 et seq; Nagendra Singh, President of the ICJ, observes: 'basic to human rights is the concept of non-discrimination', *Enforcement of Human Rights in Peace & War and the Future of Humanity* (Martinus Nijhoff, 1986), 1.

41. For various relevant UN resolutions on Rhodesia, see (1966) 60 *Am. JIL.* 912-26; J.L. Cefkin, 'The Rhodesian Question at the UN' (1968) 22 *Int'l Org.*, 649; C.C. Okolie, 'Southern Rhodesia in International Law After the UDI' (1976) 1 *Glendale L. Rev.* 309 et seq.

42. Various UN resolutions on South Africa may be found in H.S. Cruz, *Racial Discrimination* (New York: UN, 1871), 148-95, 202-13.

43. J.W. Halderman, 'Some Legal Aspects of Sanctions in The Rhodesian Case' (1968) 17 *Int'l. Comp. L.Q.* 700; M. McDongal and W.M. Reisman 'Rhodesia and the UN: The Lawfulness of International Concern' (1968) 62 *AmJIL.* 1.

examination of the UN posture on the Rhodesian situation reveals that it was declared illegal not because it was proscribed in international law but because of the unlawful aims that motivated the revolution. The regime was 'based upon a systematic denial in its territory of certain civil and political rights, including in particular the right of every citizen to participate in the government of his country, directly or through representatives elected by regular, equal and secret suffrage'.[44] The revolution was perpetrated by a racial minority to deprive the equal rights and self-determination of the majority peoples of Rhodesia. The revolutionary Smith regime promulgated various discriminatory domestic laws. Its constitution established a constant white minority racial rules in Rhodesia. The bulk of the population were denied their right to take part in the legislature and government which were kept reserved exclusively for the white minority race. Thus the regime effectively practised policies of racism at the expense of human rights. These actions of the regime in effect repudiated numerous basic norms of international law. Under various international instruments, notably, the UN Charter, the Universal Declaration of Human Rights, the Decolonisation Declaration, the Declaration and Convention on the Elimination of Racism and the Covenants on Human Rights, the UN succeeded in preparing a strong case against the Smith regime and in making the overall situation a legitimate concern for the world community.

The apartheid policy of the South African regime, to give an ongoing example, has been adjudged by the UN to be one species of racial discrimination. The majority black peoples are not represented in the executive. Political competencies relating to the government have been restricted to the white race which has deprived the majority black peoples of their equal civil and political rights including their right to participate in the government.[45] The actions and policies of the regime have been stamped as forms of racial discrimination and as such the regime has been receiving the full brunt of anti-apartheid attack.[46]

The assurance that the governmental power of Fiji must always be held by the indigenous Fijians amounts to the constitutional acceptance of the political supremacy of a particular race in a multi-racial state. It would create 'gradation' among the citizens of the same state resulting in their having unequal rights and duties. The introduction of a superior-inferior racial system will have a disastrous impact on the multi-racial equilibrium of Fiji built over a century. Compliance with the condition will deprive the remaining racial groups permanently of their equal rights - the right of every citizen to take part in the government of his country - a fundamental human right conferred upon them all without distinction as to race, colour or ethnicity.[47] The concentration of governmental power in a particular race carries with it the possibility of establishing a race-oriented administration with its potential for political domination and economic exploitation of deprived racial groups. These groups will feel at every point of their daily life that they are being discriminated against because of their race and that their cherished culture, rights, interests, values and way of life

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44. J.E.S. Fawcett, 'Security Council Resolutions on Rhodesia' (1965-66) 41 *Br. Y.I.L.* 112.

45. Sections 1 and 3(1) of the 1946 Electoral Consolidation Act 46 and sections 34(d), 46(c) and 68(2) of the Republic of South African Constitution Act 32 of 1961.

46. H.J. Richard, 'Self-Determination, International Law and the South African Bantustan Policy' (1978) 17 *Col.J. Trans. L.* 185. Since 1952, the UN has been conducting a strong campaign against the apartheid policy of the regime.

47. Quite apart from its recognition in the 1963 Declaration and the 1965 Convention on the Elimination of All Forms of Racial Discrimination, Art.21(1) of the 1948 Universal Declaration of Human Rights categorically confers these political rights upon every citizen of a state equally.

are threatened. The complete dispossession of governmental power will virtually reduce them to the status of second-class citizens in the Republic of Fiji. All these features tend to approximate the boundaries of racism.

Being a member of the UN and a party to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination,[48] Fiji is under an obligation to pursue a policy of eliminating racism, to engage in enacting no laws or constitution having effects of creating racism. Fiji is under a positive duty to provide equal political rights for everyone, without distinction as to race or any other attributes, including the right to participate in the government directly or through elected representatives. The proposed constitution purports to create a situation in Fiji which is likely to impair the UN objective of building a world society based on the dignity and equality of all human beings, free from all racial discrimination. This dimention of the proposed Constitution may be parallel and comparable with the Rhodesian Constitution and situation. It is indeed difficult to understand how the proposed Constitution of Fiji can be said to conform with international law and the UN Charter if measured in terms of the documents that the international community invoked in assessing the lawfulness of the Rhodesian Smith regime. If the proposed guarantee is permissible, the international community's stand on Rhodesia and South African is open to question. The proposed features of the Fiji Constitution will defy many authoritative international documents protecting human rights for all and prohibiting racism in its entirely. This defiance may in turn furnish some degree of strength and sanction that may be relied on to identify the regime as 'racist' which adopts racism as its official policy through legislation and discriminates against different racial groups (other than the native Fijians) under its rule and keeps them in subordination.

B. The Fijians's Right to Self-Determination:

The population of Fiji exhibits two different components: the indigenous who have been inhabiting the territory since time immemorial and the settlers who were brought from adjacent region, mostly from India, as cheap labourers in sugar-cane industries and transplanted in Fiji by its colonial administration. The settlers and their decendants have been residing in Fiji for many years and generations prior to independence. The right of these peoples to live together with the native Fijians and to consider themselves as members of the Fijian community could not be ignored at the time of independence. As a result, all groups of peoples, regardless of their race, ethnicity and place of origin, present in the territory at the time of independence acquired the nationality of Fiji by the due process of law.[49] The settlers were thus integrated with the natives as partners to build a texture of Fijian nationality with ever fibre. Notwithstanding their subgroups' identity, both groups are inclusively and comprehensively identified as the citizens of Fiji. The 1970 Independence Constitution of Fiji assured the equality of all nationals in the enjoyment of all political and constitutional rights.[50]

The proposed guarantee of the executive authority exclusively for the native implies that other racial groups would be permanently deprived of their equal political right. They will be denied their right to internal self-determination in the form of having a

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48. The Convention has been ratified and came into force on and from 11 January 1973, see Report of the Committee on the Elimination of Racial Discrimination, supl.no.18 (A/40/18), UN, New York, 1985, Annex I, p.133.

49. How the settlers have gained the Fijian nationality is discussed in R. Premdas, 'Constitutional Challenge: The Rise of Fijian Nationalism' (1980) 9 No.2 *Pacific Perspective*, 30-32.

50. J. Nation, 'Fiji: Post-Independence Politics' in R. May and H. Nelson ed., *Melanesian Beyond Deversity* (vol.II, Canberra: Research School of Pacific Studies, ANU, 1982), 606.

government of their own choice and of having the right not to be oppressed or discriminated against by the government or by any other influential group.[51] It would effectively prevent the bulk of the population, perhaps the majority, from enjoying their equal rights in the domestic sphere. The charge of violation of the principle of equal rights and self-determination of peoples may be invoked against the Fijian revolutionary regime in that it denies a preemptory right of the peoples of Fiji recognised in, and protected by, international law and the UN Chapter.

C. The Regional Order:

In a multi-racial state like Fiji, various racial groups co-exist by harmonising and accommodating each others' interest, rights and values. The proposed constitutional guarantee is likely to be fraught with a potential danger to the political stability and unity of Fiji. The situation may foment counter-coups as a means of redressing the persistent deprivation of equal rights. Any disgruntled military person and his followers, as Rabuka and his followers felt prior to the coups, may effect a coup, set up a pliable regime and repeal the proposed guarantee clause from the Constitution. The reasons and forces behind such an attempt would be parallel, if not legal, to that which made the Rabuka's coups possible. Repeated constitutional crises in whatever form, should Fiji ever encounter, will not only inhibit the development of its national identity but also will lead to the collapse of its political fabric and unity beyond repair.

Under the proposed guarantee, all racial groups other than the native will be placed arbitrarily in a subservient position. This may bring about a considerable negative change in their shared expectations, which may well be turned into rising fraustration. Their constitutional inferior status may lead them to thinks that their present and future rights, interests, and values are not secured in the existing Republic of Fiji. They may unite themselves to achieve their common goal of present and future security. This group consciousness of common desiny based on more tangible factors of their common language, culture, economic interests and political rights may start growing. It may gradually grow into a formidable and passionate aspiration of 'a people' desirous of realising their right to self-determination. This group awareness may ultimately induce them to assert a separate new identity and to constitute its own political unity and territorial association in order to protect their preferred rights, interests and values. They may solicit such an extreme action as a last resort having no other palatable alternatives to materialise their right to internal self-determination.

This is however not to say with certainty that all racial groups other than the native will demand territorial separation as a means of remedying their grievances. There is no gain to anyone in suggesting the disintegration of Fiji. No one would undermine the advantage of a strong and united Fiji. But the greater political unity and territorial integrity of a multi-racial state, however desirable it may be, warrants specific constitutional measures to foster it. Fiji is likely to be confronted with difficulties in maintaining peace and unity among its constituent races due to their questionable loyalty. The Fijian nationalism or patriotism of all racial groups cannot be expected to grow in a hollow vacuum of non-participation in national governmental affairs. The common nationality feeling of peoples flourishes only through active participation in, and sharing of, national powers and responsibility. The proposed constitutional guarantee will hardly leave any scope for the remainder of the races to augment Fijian nationalism. Rather, it will undermine any attempt for real racial blending to develop a common Fijian nationality. It would follow a policy which will aggravate, not reconcile, the racial differences in Fiji, thereby making the fusion exceedingly

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51. A full exposition of the right of all Fijians to 'internal' self-determination is presented in my article entitled: 'The Proposed Constitutional Guarantee of Governmental Power in Fiji. An International Legal Appraisal' (1988-89) 19(1) *California Western I.L.J.* 120-26.

difficult. In consequence, there could well be a large-scale deflection of loyalty and allegiance from Fijian nationalism. This is what precisely happened at the disintegration of the Federation of Pakistan in 1971. The ruling elites failed to promote Pakistani nationalism in the then East Pakistan. The unilateral imposition of unrepresentative regime in Pakistan and the consistent denial of equal rights and internal self-determination of the Bengalees caused an extraordinary crisis in Pakistani nationalism in East Pakistan which eventually contributed significantly to the secession of East Pakistan as the Republic of Bangladesh.[52] Should Fijian nationalism experience similar crisis brought to fruition by the persistent denial of internal self-determination, the possibility of a separatist claim by the aggrieved racial groups may not be ruled out altogether.

Once this issue of a new delimitation of the existing boundaries of Fiji emanates, its implementation will be far from being simple and orderly. Bitter and destructive use of force seems to be the usual pattern in every secessionist attempts. The incumbent regime is likely to employ force to quell this demand. The aggrieved peoples whose right is being forcibly challenged may also apply counter-force as a practical strategy to dramatise their plight. Should the pursued policy of the regime result in such an eventually, it will obviously inflict a radical impact on the *status quo* of the South Pacific regional peace and stability. The overall situation may carry with it disruptive elements that are likely to jeopardise the preservation of a minimum regional order and stability.

International law and the UN Charter do not necessarily deal with the legality or illegality of domestic activities in a State.[53] An act which is unconstitutional may not *ifso facto* be unlawful in international law. Conversely, a valid domestic act may infringe international law and the UN Charter provisions. Various internal acts of the South African regime, though legitimate under its national law and constitution, are contrary to international law and the UN Charter provisions. This is because 'state sovereignty represents no more than the competence, however wide, which states enjoy within the limits of international law'; and every state is under a duty to bring its national laws and constitution into harmony with international law.[54] Viewed from these perspectives, the constitutionality of the revolutionary regime of Fiji may be immaterial in international law, but the proposed policy of the regime appears to be inconsistent with, or repugnant to, international law and obligations arising therefrom. The proposed guarantee is likely to breach two cardinal objectives of the UN: the maximisation of human rights for all equally and the minimisation of threat to international peace and security. As such, the overall situation may well be viewed as a matter of legitimate international concern. Presumably due to the presence of such an apprehension, the international community's posture on the recognition of the post-revolutionary regime of Fiji appears to be discernibly frigid. The nature and contents of the forthcoming Republican Constitution of Fiji may be an influential factor in the decisions of many members of the world community either to recognise or to oppose the post-revolutionary developments in Fiji.

V. CONCLUSION

The recognition of the revolutionary regime of Fiji by the Government of Papua New Guinea may not appear to be inconsistent with the practice of recognition of

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52. See M.R. Islam, *The Bangladesh Liberation Movement: International Legal Implications* (Dhaka: Univ. Press Ltd., 1987), 288-90.

53. G. Schwarzenberger, *A Manual of International Law* (vol.I, London: Stevens, 4th ed., 1960), 49, 69.

54. J.G. Starke, *An Introduction to International Law* (London: Butterworths, 7th ed., 1972), 81.

revolutionary regime in general. However, in so doing the recogniser has failed to take into account the far reaching consequences of the proposed act of the regime on international law, the UN Charter and obligations associated therewith. Being a member of the UN and a party to the International Convention on the Elimination of All Forms of Racial Discrimination,[55] Papua New Guinea owes a definite obligation to the world community to exert all possible pressure on the Fijian post-revolutionary regime to revise the proposed act having the potential effect of creating racial discrimination. The recognition of the regime together with its proclaimed policy at a time when concerted international actions have been intensified for the complete eradication of racism appears to have compromised the shared expectations of the international community.

The maintenance of regional peace and stability was one of the major factors that persuaded Papua New Guinea to extend formal recognition. In this era of growing concern for human rights and dignity, regional order ought to be viewed as a reflection of this concern. Real and enduring regional order may not be preserved short of respect for human rights for all. The systematic suppression of human rights in a state produces depreavatory effects not only on its own deprived peoples, but also on peoples outside the border who share the same expectations.[56] This explains why internal violation of human rights sometimes engenders international repercussion. The persistent denial of equal rights and internal self-determination of the non-native Fijians may be regarded as a factor conducive to the continuing instability in the South Pacific.

There is in fact a widespread acknowledgement of indigenous rights, interests, values, and culture at the international level - a trend to be seen as the furtherance of their fundamental human rights.[57] Indigenous rights in Fiji can effectively be protected,if required, through positive and constructive legislation. It need not necessarily be discriminatory and prejudicial. Not only will the proposed race-oriented government of Fiji be impossible to operate in any democratic process but also may be counter-productive, thereby counting up costs to regional order. Even if it is conceded that the rights of the native Fijians deserve special protection, the desired end simply does not justify the proposed prohibited means. Had this aspect of the Fiji situation been taken into consideration, the decision of the Papua New Guinea Government might have been in any form short of outright express recognition, a stand that would have been compatible with other regional counterparts.

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55. Acceded on 27 Jan. 1982 and came into force on 26 Feb. 1982, see above note 48.

56. In its advisory opinion in *the Namibia case*, the ICJ held that the condition of human rights within a state and the quality of international public order are interrelated, [1971] ICJ Rep.72; Human rights cannot be consistently denied in a country without international consequences, see the UN Secretary General's statement on 18 Jan. 1977 in (1971) 8, no.2 *UN Monthly Chronicle*, 34.

57. For an analysis of this growing concern of the world community for indigenous rights, values, interests and culture, see G. Bennett, *Aboriginal Rights in International Law*, Occasional Paper no.37 of the Royal Anthropological Institute of Great Britain and Ireland, 1978.