



STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

Review Report on the Agreement between the Republic of Fiji and Solomon Islands Concerning their Maritime Boundary



PARLIAMENT OF THE REPUBLIC OF FIJI
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Chairperson's Foreword

I am pleased to present the Review Report on the Agreement between the Republic of Fiji and Solomon Islands concerning their Maritime Boundary ('Agreement').

The United Nations Convention on the Law of the Sea ('UNCLOS') provides the legal principles for coastal states to define their maritime boundaries and to enjoy the rights and obligations set forth in UNCLOS to utilise and sustainably manage the resources within their Exclusive Economic Zone ('EEZ'). Fiji was the first State to ratify UNCLOS on 10 December 1982.

Fiji is progressing in securing and finalising the delimitation of its maritime boundaries through negotiations with neighbouring Pacific island countries.

According to UNCLOS, all coastal states are entitled to a 12 nautical mile territorial sea (Article 3 of UNCLOS), 24 nautical mile contiguous zone (Article 33 of UNCLOS), and a 200 nautical mile EEZ (Article 57 of UNCLOS) including the extended continental shelf claims not exceeding 350 nautical miles (Article 76 of UNCLOS) from the baseline from which the territorial sea is measured.

As a party to UNCLOS, Fiji has an obligation to define its maritime boundaries, most especially its EEZ which, while it is measured to 200 nautical miles, often overlaps with the EEZ boundaries of other coastal neighbouring States which surround Fiji. In accordance with Article 74 of UNCLOS, if there is an overlap of the EEZ boundaries between coastal neighbouring States, these States need to negotiate and finalise an agreement for the delimitation of those EEZ boundaries.

Forum Leaders in 2018, acknowledged the urgency and importance of securing the region's maritime boundaries as a key issue for the development and security of the region, and well-being of the Blue Pacific. The leaders committed to progressing the resolution of outstanding maritime boundary claims.

Fiji's commitments to UNCLOS at the Oceans Conference in 2017 to finalise its maritime boundaries issues by 2025, will be a milestone achievement. This portrays Fiji's commitment to SDG 14 – Life below Water.

Fiji shares its EEZ boundaries with the following neighbouring countries - Vanuatu, Tonga, Tuvalu, Solomon Islands, Wallis and Futuna and New Caledonia.

This Agreement with the Solomon Islands is pivotal in the resolution of maritime boundaries regionally. In total, there are 48 shared maritime boundaries in the Pacific with 35 boundaries

being resolved through agreements such as this one. Fiji's conclusion and execution of this Agreement will bring that number up to 36.

Compounding this issue is the region's biggest security threat – climate change – being a key driver, in particular the findings of the recent Intergovernmental Panel on Climate Change (IPCC) report on 1.5 degrees, which provided clear evidence on the urgency of responding to the threat of climate change. In the context of maritime boundaries, it means securing our place in the face of climate change and sea-level rise.

The endorsement and execution of this Agreement will contribute to improving governance, security, law enforcement, and management of the marine resources within Fiji's EEZ.

The Committee was informed by the Fiji Maritime Affairs Coordination Committee that:

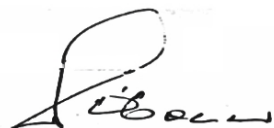
1. There is no dispute between the two parties on their maritime boundaries; and
2. The Solomon Islands Government has assigned its High Commissioner to Fiji to sign the Agreement.

As such, the Committee recommends to Parliament that Fiji sign the Agreement.

The Committee commends the Republic of Fiji and the Solomon Islands Government for the active efforts to conclude one of the 13 remaining shared boundaries in our region and we acknowledge the immense contributions by stakeholders that assisted in the preparation of this report.

I take this opportunity to thank members of my Committee and the Secretariat for compiling this bipartisan report.

On behalf of the Standing Committee on Foreign Affairs and Defence, I submit this report to the Parliament.



Hon. Alexander O'Connor
Chairperson

Acronyms

EEZ	Exclusive Economic Zone
IPCC	Intergovernmental Panel on Climate Change
IUU	Illegal, Unreported and Unregulated Fishing
MACC	Maritime Affairs Coordinating Committee
MDA	Maritime Domain Awareness
MODNSP	Ministry of Defence, National Security and Policing
MOFA	Ministry of Foreign Affairs
MS Teams	Microsoft Office 365 Teams Application
OSG	Office of the Solicitor-General
PIFS	Pacific Islands Forum Secretariat
PIDF	Pacific Islands Development Forum
SDGs	Sustainable Development Goals
SO	Standing Orders
SPC GEM	Pacific Community (SPC) Geoscience, Energy and Maritime Division
UNCLOS	United Nations Convention on the Law of the Sea
USP	The University of the South Pacific

Recommendation

The Committee recommends that:

1. Parliament endorse the Agreement for signing by the Parties.

1.0 Introduction

1.1 Background and Terms of Reference

The Committee had its first virtual online meeting on Tuesday 8th September 2020 and reviewed the Agreement between the Republic of Fiji and Solomon Islands Concerning their Maritime Boundary. From the 15th September to 5th October 2020, stakeholders made virtual online submissions on the MS Office Teams application in Suva.

The Report is divided into three parts:

- I. **Part One** - focuses on the Committee recommendations
- II. **Part Two** - covers the Findings of the report to Parliament
- III. **Part Three** - covers the Conclusion

1.2 Committee Remit and Composition

Pursuant to Standing Order 109(2)(e) that the Standing Committee on Foreign Affairs and Defence is mandated to look into matters related to Fiji's relations with other countries, development aid, foreign direct investment, oversight of the military and relations with multi-lateral organisations.

The members of the Standing Committee on Foreign Affairs and Defence are as follows:

- 1.2.1 Hon. Alexander O'Connor – Chairperson
- 1.2.2 Hon. Dr. Salik Govind - Deputy Chairperson
- 1.2.3 Hon. Selai Adimaitoga – Member
- 1.2.4 Hon. Anare Jale - Member
- 1.2.5 Hon. Pio Tikoduadua – Member

1.3 Procedure and Program

The Standing Committee on Foreign Affairs and Defence commenced its deliberation on the 8th September to 20th October 2020 in the Parliament using the online MS Office Teams, also received a written and oral submissions from stakeholders with the following attendees:

- Pacific Islands Forum Secretariat (PIFS)
- Pacific Islands Development Forum (PIDF)
- The University of the South Pacific (USP)
- Maritime Affairs Coordination Committee (MACC)
- Pacific Community (SPC) Geoscience, Energy and Maritime Division
- Ministry of Foreign Affairs (MOFA)
- Ministry of Defence, National Security and Policing (MODNSP)
- Office of the Solicitor-General

2.0 Committee Deliberation and Analysis

2.1 Committee Findings

The Committee gathered the following findings from the agencies listed below:

2.1.1 Non-Government Organisations (NGOs)

2.1.1.1 Positives

- 2.1.1.1.1 Members can exercise their rights to exert maritime claims as Parties to the UN Convention on the Law of the Sea (UNCLOS).
- 2.1.1.1.2 The recent endorsement by Leaders of the Blue Pacific narrative provides urgent impetus to the need to complete this work.
- 2.1.1.1.3 Securing Fiji in the face of climate change and sea-level rise.
- 2.1.1.1.4 Reaffirmation of Fiji's commitment to conclude negotiations on all outstanding maritime boundaries claims and zones.
- 2.1.1.1.5 The Pacific Islands Forum Secretariat supports this agreement because it demonstrates the global commitments of our member states towards UNCLOS, SDG14 and the UN Oceans Conference.
- 2.1.1.1.6 Conservation and security – a defined maritime boundary allows for efficient monitoring and surveillance.

2.1.1.2 Negatives

- 2.1.1.2.1 There being no direct implications highlighted by any of the NGOs.

2.1.1.3 Proposals for Amendments/Considerations

- 2.1.1.3.1 PIFS noted that “sovereignty rights” under Article 5 appears to be inconsistent with what UNCLOS states. Article 56 of the Convention regarding the Exclusive Economic Zone, makes specific reference to “sovereign rights”, not “sovereignty rights”. “Sovereignty rights” is not found in UNCLOS. Using “sovereignty rights” has the potential to add confusion as to whether the intention is for “sovereignty” (without the word rights) or “sovereign rights”. Under UNCLOS, these are two distinctive rights.
- 2.1.1.3.2 PIFS also noted in its second observation that relates to Article 6 “Adjustments to Maritime Boundary”. While we note that Article 6 is a standard clause in most MB Treaties, it could be read as and supporting the argument that maritime boundary is “ambulatory”. This interpretation does not support regional views and appears contrary to Leaders’ commitment in their Annual Meetings as well as under the Framework for a Pacific Oceanscape to secure maritime boundaries, unchallenged and unchanged despite sea-level rise and climate change, although the UN Convention on the Law of the Sea (UNCLOS) is silent on these issues.

- 2.1.1.3.3 Our third and final observation relates to and further supports our second point by proposing that a “finality clause” be incorporated in the Agreement to clearly articulate that once the maritime boundary is delineated in accordance with the Convention, that it is final and permanent, and therefore cannot be challenged or reduced as a result of sea-level rise and climate change.
- 2.1.1.3.4 PIFS has reviewed and taken into consideration the final Agreement and Written Analysis of the Agreement provided by the Committee and is of the view that such agreement should be endorsed provided that:
 - 2.1.1.3.4.1 Adequate due diligence has been carried out with other relevant stakeholders;
 - 2.1.1.3.4.2 Article 2 of the Agreement (Purpose) should be amended by inserting (UNCLOS) after the word ‘international law.’ Although the agreement is referring to UNCLOS it must be precise in the narrative of the agreement, particularly on the various Articles.¹
 - 2.1.1.3.4.3 Article 6 “Adjustments to Maritime Boundary”. While Article 6 is a standard clause in most MB Treaties, it could be read as and supporting the argument that maritime boundary is “ambulatory”. Indeed, our legal Consortium colleagues concluded that once it enters into force this provision would require Fiji and Solomon Islands to revise the treaty line set out in Article 3 if there is a sufficiently significant physical change to the coastline that affects the relevant basepoints (on Fatutaka in the Solomon Islands or Rotuma in Fiji).
 - 2.1.1.3.4.4 Issues raised herewith have been addressed by the Maritime Affairs Coordination Committee.

2.1.2 Higher Education Institutions (HEIs)

2.1.2.1 Positives

- 2.1.2.1.1 USP support the recommendation for Parliament to endorse the agreement due to rich tuna fishing grounds and hydrothermal deposits.²

2.1.2.2 Negatives

- 2.1.2.2.1 There being no direct implications highlighted by the HEIs.

2.1.2.3 Proposals for Amendments/Considerations

- 2.1.2.3.1 Paragraph 1.4 of your Written Analysis may need to be adjusted a bit – Fiji’s EEZ boundary is already defined under the Marine Spaces Act 1977.
- 2.1.2.3.2 Coordinates specified under Article 3 of the Agreement is consistent with section 6 of the Marine Spaces Act 1977 and coordinates in Second Schedule, Para 3.
- 2.1.2.3.3 Fiji appears to gain a bit of area – new coordinates.

¹ Pacific Islands Development Forum Virtual Submission on the 15th September, 2020

² The University of the South Pacific Virtual Submission on the 15th September, 2020

- 2.1.2.3.4 Marine Spaces Act 1977 needs to be amended to be consistent with new coordinates specified in Article 3 of the Agreement.
- 2.1.2.3.5 Last line of Article 9 of the Agreement may need to be amended-it should read coordinates in Article 3 (not Article 1).
- 2.1.2.3.6 Written Analysis 4.0-Impact of Execution of Agreement – is minimal and only will affect coordinates specified in the Marine Spaces Act 1977.

2.1.3 Government Ministries and Statutory Bodies

2.1.3.1 Positives

- 2.1.3.1.1 The successful conclusion of the Fiji and Solomon Islands Maritime Boundary will bring the remaining boundary negotiations down to three (3) – Tonga, Vanuatu, and the North Fiji Basin High Sea pocket. This is a positive indication that Fiji is on track to meet its commitments under UNCLOS to finalise all its outstanding maritime boundaries.
- 2.1.3.1.2 Confirmation of the above Treaty ensures the clear demarcation of our maritime boundary.
- 2.1.3.1.3 Ensures the protection of our Maritime Domain Awareness (MDA) through the detection of illegal activities that impact on maritime safety, security, economy and environment.
- 2.1.3.1.4 Enhances our Search and Rescue Region by working collaboratively with the Solomon Islands.
- 2.1.3.1.5 Facilitates the extradition of those that commit an offence i.e trafficking of Drugs, Illegal, Unregulated and Unreported Fishing (IUU), arms smuggling and prostitution in the high seas within their respective territories.
- 2.1.3.1.6 Enhances our joint patrol of our EEZ.

2.1.3.2 Negatives

- 2.1.3.2.1 There being no direct implications highlighted by any of the Government Ministries.

2.1.3.3 Proposals for Amendments/Considerations

- 2.1.3.3.1 Fast-track the Maritime Security Strategy (MSS) that encompasses challenges, threats, opportunities and mitigation under the portfolio of the Ministry of Defence, National Security and Policing.

Challenges

Climate change over time poses a challenge to maritime boundary agreement between Fiji and other countries in the Pacific Region.

The challenge is to mobilize resources to establish an effective maritime surveillance and monitoring mechanisms for the individual EEZs.

2.2 Oral and Written Evidence Received

The Committee received oral and written submissions from stakeholders and the public as listed in *Appendix A*.

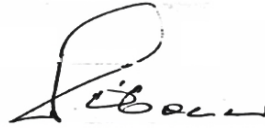
3.0 Gender Analysis

The Agreement is a milestone in Fiji's broader global commitments to UNCLOS, our commitments to SDG 14 – Life below Water and our commitment at the Oceans Conference 2017 to complete our outstanding maritime boundary negotiations by 2025. This commitment aligns with regional aspirations towards a Blue Pacific Continent and the overall Agenda 2030 on sustainable development.

4.0 Conclusion

The Standing Committee on Foreign Affairs and Defence has fulfilled its mandate approved by Parliament which is to review the Agreement between the Republic of Fiji and Solomon Islands Concerning their Maritime Boundary.

5.0 Members' Signature



Hon. Alexander O'Connor
Chairperson




Hon. Dr. Salik Govind
Deputy Chairperson

Hon. Pio Tikoduadua
Member



Hon. Selai Adimaitoga
Member



Hon Anare Jale
Member

6.0 Appendices

All other written and transcribed evidences gathered during the public submissions and public consultations will be made accessible on the Parliament website on: <http://www.parliament.gov.fj/committees/standing-committee-on-foreign-affairs-and-defence/>

No	Date	Agency/Organisation	Written Evidence	Oral Evidence (Online MS Teams submission)
1.	15 th September, 2020	Pacific Islands Forum Secretariat (PIFS)	✓	✓
2.		Pacific Islands Development Forum (PIDF)	✓	✓
3.		The University of the South Pacific (USP)	✓	✓
4.	21 st September 2020	Maritime Affairs Coordination Committee (MACC)	✓	✓
5.		Secretariat of the Pacific Community (SPC)	✓	✓
6.	22 nd September 2020	Ministry of Foreign Affairs	✓	✓
7.		Ministry of Defence, National Security and Policing	✓	✓
8.	05 th October 2020	Office of the Solicitor-General	✓	✓