SOPAC

3rd Meeting of the SOPAC Council Committee of the Whole (SCW) on the Regional Institutional Framework

Banyan Room, Holiday Inn, Suva, Fiji
Wednesday, 16th July 2008

AGENDA ITEM	TITLE
5	UPDATE SINCE SCW02
5.1	Assessment of Legal Issues
5.1.1	The Legal Framework supporting Regional Organisations in the Pacific and the Legal Basis for Reform

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Report on the Legal Framework supporting Regional Organisations in the Pacific and the Legal Basis for Reform

Attached for the Committee's information is a study on the legal basis for Reform commissioned by the RIF Project team dated April 2007.

Suva
Friday, 11 July 2008

Attachment 4

REPORT on the LEGAL FRAMEWORK supporting REGIONAL ORGANISATIONS in the PACIFIC and the Legal Basis for REFORM

April 2007

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TABLE OF CONTENTS

1. THE LEGAL STATUS OF THE PACIFIC'S MULTILATERAL AND REGIONAL ORGANISATIONS

This report focuses exclusively upon the implementation of the second Pillar of the RIF Report and seeks to identify first; how the amalgamation of existing technical organisations can be legally achieved and secondly, how that amalgamation should proceed.

Modern international law regulates relations between :

i) states;

ii) states and public international organisations;

iii) states, international bodies and individuals who commit international crimes.

The law of treaties consists of the contents of formal multilateral treaties and of certain international conventions generally of universal application (such as the various Vienna, Hague and Geneva Conventions) as well as customary international law, which are the rules and principles that have been accepted by states in their dealings with other states.

A treaty is an agreement between two or more states or between states and intergovernmental organisations, the terms of which the parties intend to be legally binding. A treaty is the international law equivalent of a contract. The rules which govern how a treaty is to be interpreted, or how its obligations are to be satisfied, can be found in the Vienna Convention on the Law of Treaties 1969 i.e. the 'VCLT' and the principles and norms of customary international law.

Whilst it is only treaties between two states, (both parties to the VCLT), that can be registered under the Convention, the Articles of the Convention reflect accepted norms and principles which can nevertheless be used as guiding principles to determine treaty parties which is how the Convention will be used in this particular context.

GUIDING PRINCIPLES

Of particular note are the relevance of the following principles :

a) All states have the legal capacity to negotiate and conclude treaties;

b) States exercise their capacity through natural persons who must be given 'full powers' (often reflected in a formal document which authorises that individual) to represent the state in the negotiation that leads to the formation of a treaty. Such an authorised person may express consent on behalf of the state that is to be bound by the terms of the treaty;

c) Consenting to be bound by a treaty is a critical step in activating the operation of a treaty. It is in the way that legal obligations are imposed upon a state. This step can be satisfied in a number of ways including by the signature of an authorised person, by ratification (requiring the domestic procedure to be satisfied plus the formal notification of the treaty depositary to that effect) and by acceptance or approval (adopting the method set out in the treaty);

d) A treaty is fully effective only after it has entered into force;

e) Once a treaty enters into force it binds the parties pursuant to the principle of *pacta sunt servanda*;

f) A treaty does not create obligations on a third state without the consent of that state;

g) A treaty applies to all territories for which the contracting states are internationally responsible.

h) A later treaty can override inconsistent provisions in an earlier treaty;

i) States and international organisations are also able to adopt resolutions, guidelines or decisions that are not strictly legally binding, being of less than treaty status. Such actions may be given operative effect with the consent and acquiescence of all the member parties or states;

j) A multilateral treaty may be amended, provided each member state participates in the discussion and decision concerning the proposed amendment. The negotiation and conclusion of the proposed amendment only binds those member states who agree to be bound. Thus consent to an amendment, in general, must be approved by all members of the treaty unless a different intention is contained in the treaty itself.

THE STATUS OF REGIONAL ORGANISATIONS

Whilst there are formalities which have not been satisfied in relation to certain of the Pacific regional organisations, it is clear that, as a result of decisions taken by Pacific Countries and Territories, the various constituent instruments from which FFA, SOPAC, SPREP and SPBEA have arisen, were intended to have full legal effect. The resulting regional organisations are thus cloaked with the legal authority and status which continue to have legitimacy to this day. **A summary of the constituent documents for the regional organisations is attached as Appendix A.**

Of the five organisations under consideration i.e. FFA, SOPAC, SPREP, SPBEA and SPC, few of the constituent instruments for these bodies are yet to be formalised due to the fact that certain parties to the agreements have

not yet filed or lodged their formal ratification or acceptance of the agreement. The practical implication of the incromplete nature of these formalities is that those particular agreements do not technically have full legal status and the bodies so formed will not have complete treaty status until these formalities have been satisfied. However, in practical terms, all the agreements have been signed by the state's (or territories) which have sought to join the particular agreement which has led to the formation and operation of the respective bodies established under the agreements. These regional bodies have also received formal recognition within their member states as well as the international community. Clearly this particular state of affairs may continue indefinitely provided that no party to an agreement raises any formal objection to this situation, and provided that no third party seeks to use this lack of legitimacy to challenge the activities of the organisation.

Amendment/ Modification of Agreements

Where treaties or agreements have come into force with full legal effect and status then, as a general rule, the provisions or articles of the agreements must be interpreted in good faith in accordance with their ordinary meaning and in the light of the respective agreements overall objects and purposes. Where a treaty or agreement is silent on any particular issue, the relevant articles of the VCLT may then be used in the interpretation or application of the agreement. Where the Convention is also silent on a particular subject matter then the, agreed principles of customary international law may then be referred to.

An examination of the constituting documents of the five organisations to be amalgamated, has indicated that three of the agreements specifically a process for amendment. For two organisations, this process demands unanimous agreement through concensus of all members. For the third organisation, agreement must be obtained from at least three quarters (75%) of the members present and voting at the Annual General Meeting.

In the absence of a specific amendment provision, international law requires that any amendment of a treaty :

- must be with the agreement of all existing parties to the treaty;
- must be binding on all parties;
- must not create obligations on third parties without their knowledge or consent.

Any proposal to amend or modify a multilateral treaty must be notified to all the contracting states (i.e. all states that have agreed to be bound by the treaty even if it has not entered into force). Each of those states has the right to participate in the decision as to whether the amendment should be made and to take part in the negotiation and determination of any decision to amend the treaty.

Modification

The modification of a treaty or agreement involves the agreement between some, but not all members of the main agreement, to modify the application of the treaty as it operates between willing states. This modification does not however affect the rights of the parties who have not agreed to the modification. These parties must nevertheless be informed of the proposed modification and be provided with an opportunity to debate its merits and if they wish participate in the determination of whether or not the modification should be made.

Process of Amendment

Where a provision exists in a treaty or agreement which allows for the amendment of such document, then the procedure set out must be followed precisely in order to ensure the amendment is of legal force.

The procedure of amending an existing treaty or agreement, in general, requires that at least two parties to the treaty must put forward the proposed amendment. All members must then participate in discussion of the proposed amendment at the organisation's annual or general meeting. If all parties agree to the amendment, a formal resolution is then passed. This amendment may be signed by authorised representatives of the parties. The amendments are then formally open to approval, acceptance or ratification by the parties to the agreement by formal notification. In general, unless the agreement states otherwise, an amendment will not come into effect or have legal status unless or until **all** the parties who are members of the agreement have approved, ratified or accepted the amendment by formally executing and depositing an instrument to that effect with the depositary to the agreement.

Where no specific amendment provisions exist in the body of an agreement, as a matter of international practice, all existing parties to the treaty or agreement (even if they were not the original members), must agree or approve of any amendment, for such amendment to be effective. The formal process of approval, ratification or acceptance must be undertaken. This process reflects the process of becoming a member of a treaty and allows for the range of different processes by which different nations may enter into international obligations. For some countries, this requires a decision of the Executive or Cabinet. For other countries, the *imprimatur* of a country's legislature is required. A recent development in modern treaties has been a departure from the requirement that treaties must be ratified by countries, to the increasing use of 'acceptance' by countries. This can allow the executive, rather than the legislative arm of government to signify their approval of a treaty, thus making this approval or confirmation process less cumbersome. **A table describing the domestic processes for ratification or acceptance of treaties is attached as Appendix B to this report.**

The operational status of certain regional institutions therefore effectively emanates from the willingness of the member parties to the agreement to

allow that body to operate and continue with its purposes and functions by administratively recognising what has not yet been legally formalised. , Members may be anticipating the eventual completion of formalities and their technical entry into force. This reflects the pragmatism which abounds in the treatment of multilateral agreements which, while of less than treaty status yet still allow their organisations to achieve their operational objectives.

The VCLT in Articles 46 – 53 prescribes specific grounds upon which treaties may be considered invalid including :

- the treaty was entered into in error;
- the treaty was entered into by fraud;
- the treaty was entered into through the corruption of a representative;
- the treaty conflicts with a peremptory norm of international law.

However, the power to declare a treaty invalid only applies if the treaty concerned has been recognised by the Convention i.e. registered with the United Nations under the Convention, after having had all its formalities satisfied.

In all other respects, a multilateral agreement is only as effective as its members decide it to be. Whilst registration of a treaty is the optimal objective, the practical reality is that the strength and purpose of an agreement between states rests in the hands of those same states together with the willingness of third parties who have dealings with the organisation formed under the agreement, to recognise the existence and authority of that organisation.

AGREEMENTS OF 'LESS THAN' TREATY STATUS

The growth of 'soft law' i.e. multilateral agreements of less than treaty status is yet another recent development of international law which aims at recognising the legitimacy of a range of informal yet practical and effective measures governing the relationship between states.

Declaration De Tahiti Nui

The use of intergovernmental agreements which are not of treaty status is now a common and pragmatic means of supplanting the cumbersome treaty amendment process. It is a practical solution to achieving what an organisation and its member states require so that it can operate without the risk of undue delay due to lengthy bureaucratic machinations.

As an illustration, the original governing and constituting document of the Pacific Community is, and remains the Canberra Agreement 1947.

However, the organisation constituted by the Canberra Agreement, the South Pacific Commission, has few similarities with its descendent organisation, today's Pacific Community. To regularise this transformation, resolutions during the Commission's long history, have been compiled and periodically agreed by the Conference of the Pacific Community and named the Declaration de Tahiti Nui. The Declaration records the governance and operational policies of the Pacific Community and its Secretariat, the SPC.

The Declaration also includes matters which are often formally dealt with in treaty articles as well as a range of operational matters often dealt with as subsidiary rules or protocols that are generally made under a treaty. The use of a declaration which can be revised or amended by resolution of the annual meeting of the parties is a development that reflects the need for common sense in the way multilateral bodies need to respond to change. A workable process has thus been identified and utilised ensures that the current needs and demands of member countries can be immediately addressed by an organisation that respects the role of governance in controlling policy whilst avoiding the cumbersome treaty amendment process.

The Tahiti Nui Declaration in effect sits alongside the Caberra Agreement; the latter providing the broad mandate for the organisation and the former containing the operational policies which facilitate the work of the organisation.

The validity of this approach to treaty relations again relies upon the agreement of all member states who are entitled to accept or reject such an approach.

The advantage of using the 'Tahiti Nui' approach are self evident and include :

- the avoidance of the formal treaty amendment process;

- the avoidance of undue delay whilst awaiting the ratification of amendments.

- the flexibility of being able to change policy or operational decisions by resolution of the Pacific Community's governing body;

- the adoption of and immediate implementation of decisions.

In summary :

a) The constituent instruments for FFA, SOPAC, SPREP, SPBEA and SPC have legal effect and are valid international instruments;

b) The constituent instruments can be amended either using the procedure contained in the instruments themselves, or in the

absence of which by using the accepted norms of customary international law;

c) The failure to complete fully the legal formalities of certain agreements does not cause such agreements to be invalid

d) The contracting states to all the agreements are legally entitled to amend all or any existing constituting instruments provided they adopt a transparent process which allows all contracting states to participate in the discussion, negotiation and conclusion of any such amendment;

e) The contracting states and territories for each particular agreement have the legal authority to make decisions as to any changes in the organisation's governance, or to the conduct of its operations. Such decisions may be recorded as changes in operational policies andas agreed alterations to the organisation's constituent instrument;

f) Operational change can be instituted by an organisation without the prior passage of legal amendments to constituent instruments with the agreement of its member states..

2. The Legal Basis for Reform

The legal approach to the amalgamation of the Pacific's regional organisations proceeds upon one fundamental premise – that the states and territories that are' parties to, or members of the treaties and agreements which have established regional bodies, are empowered to make changes to the arrangements which currently exist. All of the multilateral agreements at hand are founded upon mutual understandings between sovereign states as well as in some cases, territorial administrations or component states. Accordingly, if it is the wish of those countries and territories to change the status quo with regard to the operation of their regional institutions, then there are sufficient legal and administrative processes and measures available to satisfy these intentions.

Once a decision is taken by the Forum Leaders, who represent almost all the member states of the various agreements, that the arrangements will be changed so that the governance of FFA, SOPAC, SPREP and SPBEA can be transferred to the Pacific Community, administrative and legal measures can be taken immediately to progress the implementation of such a decision. This approach :

a) allows for the governing councils and administrations of all the regional organisations involved, to take immediate and proactive measures to achieve the amalgamation requested by Leaders, provided that

agreement to change is also obtained from those states and territories that are members of these organizations, but not Forum members;

b) provides that the basis for the Director General of the Secretariat of the Pacific Community to commence transitional discussions with the respective heads of the regional institutions;

c) allows for the legal documentation required to be drafted in due course and submitted for the consideration of the individual governing councils, for fulfillment over time;

The decision to amalgamate, if taken by the Forum Leaders, would be followed as soon as possible by an integrative decision by the Conference of the Pacific Community that accepts the amalgamation of the four regional institutions into its organization and approves the commencement of a process of amalgamation to be led by the Director-General of the SPC.

IMPLEMENTATION

The implementation plan recommended is based upon the following rationale:

1. That the Forum Leaders decision to amalgamate would be the trigger that activates the process of amalgamation of certain regional organizations within the Pacific Community.

2. That each individual regional organization has particular interests, concerns and responsibilities which can be fully accommodated both

   a) in the process of amalgamation, and

   b) post amalgamation,

   in order to ensure that all contractual, treaty and administrative obligations are satisfied. These matters will be the subject of discussion and agreement during the transition process.

3. That the transfer of operational authority can take place **prior to** the formalisation of any amendments to the constituting documents of the regional organizations, with the consent and agreement of all parties to the SPC agreement and all parties to the various governing councils of FFA, SPREP, SOPAC AND SPBEA.

4. That the failure of regional organizations to finalise the ‘entry into force’ of their constituting documents does not preclude the organisation from participating in the amalgamation process.

5. That a formal date of transfer of operational authority can be set. The new SPC organization can then operate as from that particular date regardless of whether or not the formal constitutional amendments have been made..

6. That the legal status of the amalgamated regional organizations will remain intact at the locations from which they currently operate, thus:

   - protecting the entitlements to the diplomatic immunities and privileges that their staff currently enjoy;

   - ensuring the continuation of their relations with their host countries so that little or no change is required in their Headquarters Agreements;

   - ensuring that the responsibilities, obligations and powers which they have vis-à-vis other treaties, conventions and or protocols continue without interruption;

7. That adequate time is given to the various governing bodies of regional organizations to make the transition from their current autonomous status to a special status within the SPC organization with particular emphasis upon their prescribed functions and responsibilities and how those will be enhanced through amalgamation.

8. That the Director-General of SPC leads the transition process once the amalgamation has been approved by both the Pacific Islands Forum and the Pacific Community.

Parallel Progress

The recommended process for amalgamation relies upon the parallel progression of the activities needed to be completed by both the Pacific Community and the four regional organizations subject to integration.

On the one hand, once the Conference of the Pacific Community has made the decision to accept the amalgamation of FFA, SOPAC, SPREP, and SPBEA then at a **formal** level draft amendments must be prepared for the Declaration of Tahiti Nui to reflect the changes in governance and administration caused by the expansion of SPC.

At an **informal** level the administrative and practical details of integration can be simultaneously advanced during ongoing negotiations and discussions which will occur during the transition phase. Such matters would include the status of staff and contract workers, the nature of outstanding contractual obligations, incorporation of the institutions' management structure, and any particular requirements or needs which arise from the location of the institutions.

Authority to Progress Amalgamation

Each governing body has the authority to make a decision which may change the nature of its organization Such changes may eventually be formalized in the amendment of its constituting instrument, but may be implemented at any

time following the governing body's resolution to that effect. The member states are clearly entitled to decide how, and according to what process will be adopted to implement the amalgamation of its organization and when this should administratively and operationally occur.

The Issue of Associated Treaties and Expanded Membership

Whilst the amalgamation of the four regional institutions into a body with a larger membership appears to pose difficulties, certain administrative arrangements can be identified and established which can quarantine and protect the particular interests of smaller subsets of countries currently involved with organization associated agreements.

The FFA, in particular, has various responsibilities under six multilateral agreements which seek to manage various aspects of oceanic fisheries in the Pacific Ocean. SPREP also has responsibilities under multilateral agreements other than its own constituent instrument. **A list of the other multilateral agreements regional organizations have obligations under is attached as Appendix C to this report.**

In the case of fisheries agreements between Forum countries, the Director of FFA is the Administrator for such agreements and has particular responsibilities under various agreements which have different combinations of membership, for example the Nauru Agreement has seven member states drawn from both Micronesia and Melanisia; the Niue Agreement has seventeen member states and the Palau agreement has eight member states.

In circumstances where FFA is being amalgamated into the Pacific Community, it is clear that FFA's treaty responsibilities must be capable of continuation and must continue to be exercised in the interests of the particular parties to the particular agreements.

There is a specific need in the preparation of FFA's amalgamation process to accommodate and make provision for the specific responsibilities which the organization has under different multilateral arrangements. It may well be that these responsibilities are carried out using particular specialist and subsidiary committees within the SPC organization is comprising the members of the various conventions or arrangements e.g. A Nauru Fisheries Agreement Committee could be established as a recognized sub committee of the Conference of the Pacific Community and would comprise only of those members of the Pacific Community who are parties to the Nauru Agreement and in committee are able to address their needs and requirements with FFA in relation specifically to the terms of that particular Agreement. The US Fisheries Treaties and the Tuna Treaty also require special administrative arrangements to ensure that no party to the Convention is prejudiced in any way by the amalgamation of FFA within the Pacific Community.

3. CONCLUSION

To conclude, the legal frameworks of the regional organizations under review vary from organisation-to-organisation from the very detailed to the very brief. The agreements are all however the result of multilateral agreements involving Forum Island Member States, and in certain cases, Island Territories and two non-Forum States, France and the United States of America.

The proposed amalgamation of FFA, SOPAC, SPREP and SPBEA into the Pacific Community will require :

a) Forum Leaders to agree that the change will take place.

b) Each of the respective governing bodies involved to formally resolve to transfer governance to SPC

c) Changes to the governance, structure and operations of the Pacific Community

d) The formalization of the incorporation of the regional organisations as amendments to the Declaration of Tahiti Nui be agreed in order to facilitate the integration of the incoming organizations.

During the transition to amalgamation, the Director General of the Secretariat of the Pacific Community would be charged with the management of planning and decision making related to the actual process and timing needed to align the regional institutions' administrative, financial, human resource and contractual arrangements;,the particular issues which require special attention and eventual resolution e.g. associated treaty obligations.

It is the author's firm view that none of the processes which require action to achieve amalgamation are beyond either the executive capacity of Forum Leaders and governing councils, or the administrative capacity of the organizations involved: and that there is no legal impediment to such change.

The international law of treaties, at its most fundamental, reflects the free will and choice of its constituent member states. If, it is the expressed will and intent of member states and territories to change the existing governance of its regional organisations then a range of means exist to satisfy this will and intention. Also reflecting the will of members, the process of change can commence as soon as the necessary decisions and agreements have been made. This is the stuff of modern international relations.

APPENDIX A

Forum Fisheries Agency (FFA)

Date of Establishment

The FFA was established as a result of the South Pacific Forum Fisheries Agency Convention 1979 where member countries of the Pacific Island Forum "PIF" agreed :

- to establish the South Pacific Forum Fisheries Agency;
- that the FFA would consist of the Forum Fisheries Committee and a Secretariat; and
- to locate FFA in Honiara, Solomon Islands.

FFA was initially established to assist countries in managing the fishery resources that fell within their respective 200 mile EEZ.

Membership

FFA consists of 17 member countries, the 16 Forum members and Tokelau. Membership of the FFA has been available to both states and territories.

Purpose and Mandate

FFA was originally authorised to collect and disseminate information, undertake research and provide technical assistance in respect of living maritime resources in the region and has undertaken practical measures to support member countries to plan, manage and negotiate access to EEZ's and has been instrumental in establishing a Vessel Monitoring programme and provides the regional focus for the various treaties and conventions on maritime matters.

Governance and Administrative Arrangements

All significant decisions are made by the Forum Fisheries Committee 'Committee' which is the body where all member countries are represented. The Secretariat under the leadership of the Director, is responsible for the day-to-day operations of FFA and carrying out the workplan and policy imperatives set by the Committee .

Provision for Amendment, Modification and Termination

Article XI of the FFA Agreement allows the Committee to adopt any amendments to the convention by unanimous decision of all parties to the convention. Any party is also able to withdraw as a party to the convention.

South Pacific Applied Geoscience Commission (SOPAC)

Date of Establishment

The South Pacific Applied Geoscience Commission 'SOPAC' was established by an agreement dated 1989 which superseded two agreements which created the forerunner to SOPAC, one which established the South Pacific Applied Geoscience Committee in 1972 as UN programme and one which changed the organisation in 1984 which remained part of the UN until 1990.

Membership

Membership of SOPAC includes the sixteen Forum countries and as well as American Samoa, French Polynesia and New Caledonia as associate Members.

Purpose and Mandate

Article 2 of the Agreement states that SOPAC's purpose is to provide technical advice and facilitate the prospecting and/or research into the coastal and onshore areas of member countries and assist in the development of such resources and such other activities in relation to such research as the Governing Council may determine. This role has been further refined as contributing to sustainable development, the reduction of poverty and the development of natural resources through applied environmental geosciences, appropriate technologies, knowledge management and the provision of technical and policy advice.

Governance and Arrangements

The policies and work plan of the Commission are approved by the Governing Council of the Commission which consists of one representative from each member country and which meets once a year which is known as the Annual Session of the Governing Council.

The Secretariat, headed by a Director, is required to carry out the work plan as well as act as an advisory service to member countries on the interpretation of technical data and developments and options. A Technical Advisory Group also exists to provide advice on all aspects of the work programme.

Provisions for Amendments/ Modifications/ Termination

Article 14 of the SOPAC agreement provides for amendment of the Agreement which may be submitted to the Governing Council and may only be adopted by concensus of all members through the usual process of acceptance and ratification.

Article 15 allows any member to withdraw from the agreement.

Article 16 authorises the Governing Council to dissolve the Commission or suspend the activities of the Commission by resolution and decide how to liquidate or otherwise distribute and deal with the assets of the Commission.

South Pacific Board for Educational Assessment (SPBEA)

Date of Establishment

SPBEA was established in November 1980 as a result of an agreement made on 11-12 July 1978 which has since been amended in 1986 and 2000.

Membership

The Board has eleven member countries.

The Board has conferred observer/ consultative status to USP, a representative from the Pacific Community and representatives from the Cook Islands, Niue, UNESCO and the UK.

Purpose and Mandate

The purpose of SPBEA is contained in Article V of the agreement and is to :

- assist the region in developing its educational and vocational assessment procedures in the region and nationally;

- support countries to improve the quality of education through good assessment protocols;

- develop a regional qualifications register and accreditation service.

The 2007 mission statement also includes a commitment to be a centre for assessment information and research in the Pacific region.

Governance and Administrative Arrangements

SPBEA has a governing body called the Board which establishes the general policies of SPBEA, sets the annual work plan, approves the annual budget and annual report and appoints a Director as the Chief Executive Officer of a Secretariat which supports the work of the Board.
The Board consists of one representative from each member of the organisation and appoints an Executive Committee to assist the Secretariat to implement Board decisions which comprises the Chairman, the Vice-Chairman, the Director and one representative of a member country.

Provisions for Amendment/ Modification/ Termination

Article XI of the Agreement provides for the withdrawal of a member country from the agreement.

Article IV of the Agreement allows the Board to terminate the membership of a member where they become inactive and the member government or organisation fails to fulfil its financial contribution for more than two (2) years.

No specific provision exists for amendment, suspension or termination.

Pacific Community (SPC)

Date of Establishment

The South Pacific Commission was established by the Canberra Agreement of 1947 which has since been amended a number of times.

The resolutions adopted by the 37th South Pacific Conference held at Canberra in 1997 represented the most significant amendments to the original agreement and (amongst other things) led to a significant reorganisation of SPC into the body now known as the 'Pacific Community' "**SPC**" . SPC is now administered in accordance in with 'Declaration de Tahiti Nui' which contains the operational policies of the Pacific Community and came into force in 1999.

Membership

SPC (as the Pacific Community is still known as), has 26 member governments and administrations, which include territories as well as the sovereign states.

Purpose and Mandate

SPC was established to be a consultative and advisory body which would support member countries and territories to enhance their social and economic development and thus result in positive outcomes for the whole region across all sectors of social and economic activity.

SPC was also mandated to undertake and facilitate research and cooperation in the technical, scientific and social fields and provide technical support and assistance region wide and promote interaction, and coordinate activities with non-member governments as well as non-governmental organisations.

Governance and Administrative Arrangements

The South Pacific Conference or 'Conference' at it is known is the governing body of SPC and consists of representatives from all member countries and territories and meets every two years.

The Conference has the authority to :

- establish the policies of SPC;
- approve the budget of SPC,
- address and discuss any matter which falls within the competence of SPC,
- appoint a Director-General;

- receive reports from the Secretariat.

During non-conference years a committee called the Committee of Representatives of Participating Governments and Administration **CRGA** approves annual work programmes and undertakes decisions on matters of governance of SPC during the interim years where the Conference is not meeting which includes financial matters. **CRGA** consists of such members as elected at the Conference but includes the Chair, Deputy Chair and Director-General as its core members.

The Director-General is appointed by the conference and is the Chief Executive Officer of the organisation and leads the Secretariat.

Provisions for Amendment/ Modification/ Termination

Article XIX of the Canberra Agreement provides for the withdrawal of a member from the Agreement.

No express provisions for amendment/ modification or termination of the Agreement are specified however the agreement has been amended in 1951, 1954, 1964, 1972, 1974, 1976, 1978, 1984 and 1998 and other agreements of non treaty status have also supported the work of SPC.

South Pacific Regional Environmental Programme (SPREP)

Date of Establishment

Formerly a regional conservation programme within SPC this body was formally afforded independent status in 1973.
The Agreement establishing the newly named SPREP under SPC auspices came unto force in 1984, and in 1993, an agreement establishing SPREP as an autonomous body located in Apia, was made.

Membership

SPREP is open for membership by all Pacific regional governments and territories and currently includes all Pacific Island countries and territories in addition to Australia, France, New Zealand and the USA.

Purpose and Mandate

SPREP's role is to support and ensure cooperation within the region to protect and improve the environment and to ensure and encourage sustainable development and strengthen national and regional capabilities and institutions to do so.

Governance and Administration

SPREP acts through two organs : the annual SPREP meeting comprising of representatives of all member countries and territories and the Secretariat which is headed by the Director who is the Chief Executive Officer of SPREP.

The SPREP meeting decides the general policies of SPREP, approves the action plan and annual work plan, adopts the annual budget, make recommendations to members, appoints a Director and gives direction for the implementation of the work plan and consults upon the two conventions for which SPREP is responsible for servicing which are: Convention or the conservation of nature in the South Pacific 1976 “the ‘Apia’” convention, and the Convention for the protection of the Natural Resources and Environment of the South Pacific Region and its Related Protocols 1986 the ‘SPREP’ Convention.

The Secretariat led by the Director is responsible for carrying out the work plan set by the SPREP meeting and providing support and technical assistance to member countries and territories on environmental matters.

Provisions for Amendment, Modification and Termination

Article II provides that any amendment to the Agreement may be made at the annual SPREP meeting and must be adopted by consensus by all parties i.e. member countries and territories attending the meeting and shall enter into force upon the acceptance ratification and approval by all parties.

Any party to the agreement may withdraw from the agreement by giving notice.

APPENDIX B

Approval of an international treaty by :			
Country	**Parliament**	**Government**	**other**
USA	The US Senate authorizes (by law) the President to ratify the majority of the treaties with the majority of 2/3 (1).	The President negotiates and ratifies treaties (2)	
American Samoa: Commonwealth and Territories of the United States of America	Under the US Federalauthority for the foreign affairs (3)	AS Govt may be consulted by the US Federal administration (4)	
Guam: Commonwealth and Territories of the United States of America	Under american authority for the foreign affairs (5)	Guam Govt nmay be consulted by the US Federal administration (5)	
Nothern Mariana Islands: Commonwealth and Territories of the United States of America	Under american authority for the foreign affairs (6)	It may be consulted by the US Federal administration (7)	
Federated States of Micronesia - Freely Associated States under the Compact of Free Association	Approval (majority of 2/3) of Congress after the negotiation led by the Executive then approval by FSM states (8)	Responsibility of the government in relation with the United States, according tothe agreement (9)	
Palau - Freely Associated States under the Compact of Free Association,	Treaty must be approved by at least two thirds of each assembly (10)	The Government prepare and negotiate the treaty (11)	
Marshall Islands - Freely Associated States under the Compact of Free Association	Approval of treaty by Nitijela (12)	Responsibility of the Cabinet Office in accordance with the United States, according the agreement (13)	

Australia	The practice is that the Federal Parliament is always consulted (reform in 1996) in relation to the acceptance of treatyobligations and makes the domestic amendments to Federal law during that process(14)	According the Constitution, the negotiation and the ratification of international instruments are the responsibility of the Federal government (15)	
New Zealand	The Executive refers to the House (reform in 1997 and 2000) and to the special Select Committee of the House (16)	The Executive through The Ministry of Foreign Affairs and Trade lead the process of negotiation and approve the ratification subject to the consideration of Parliament(17),	
Tokelau	Currently undertaken by the Administrator of Tokelau in consultation with the NZ Ministry of Foreign Affairs and Trade and the Ulu of Tokelau		
Cook Islands	Cook Islands Parliament may accept or ratify any treaty approved by the Executive	Independendant State, free to conduct the process of treaty negotiations through the Ministry of Foreign Affairs & Immigration (18)	
Niue	Niue Parliament	New Zealand retains responsibilities for the external affairs and defence (19)	
Fiji Islands	Fiji Parliament has authority to approve, ratify or accept any Treaty negotiated by the Executive. Those powers currently suspended under Emergency Orders by the Military Govt since Dec 2006	The Executive through the Ministry of Foreign Affairs and External Trade	

France	Parliament gives the power to the Executive to enter into international treaties (20) and to propose any consequential changes to domestic law	The French President is free to approve or veto the country's acceptance of a treaty after the decision of the Parliament (21)	Referenda for very important issues may be decided by the President (22)
New Caledonia	Consultation of local assembly by France (23)	It may be consulted by the French administration (24)	
French Polynesia	Consultation of local assembly by France (25)	It may be consulted by the French administration (26)	
Wallis et Futuna	Consultation of local assembly by France (27)	It may be consulted by the French administration (28)	
Kiribati		The Treaties are negotiated and signed by the government (29)	
Nauru	Ratification by parliament (30)	Responsibility of the President and Ministry of foreign affairs, (31)	
Papua New Guinea	Parliament has to vote upon the acceptance of a treaty under the Responsability of the Speaker (32)	The Treaties are prepared by the government under the responsibility of the Head of State (33)	
Pitcairn Islands	No power in foreign affairs, under the responsibility of UK Foreign and Commonwealth Office and the Govenor of Pitcairn also the British High Commissioner to NZ(34)	Reponsibility of the Executive for all the process, in some case presentation in parliament (35)	Referenda for very decided by the Prime Minister (36)
Samoa	All Treaties required to be tabled in Parliament which must approve the passage of any amendments to Domestic Law	The authority to negotiate and ratify Treaties is in the hands of the Executive and must be approved by the Cabinet of Ministers	

Solomon Islands	Parliament reviews and decides any recommendations to join international treaties (37)	Responsbility of the executive for the process of negotiation and approval by Parliament (38)	
Tonga	Ultimate approval of all matters relating to Foreign Relations are subject to the authority and approval of the King through the decisions of the Privy Council	The Prime Minister is responsible for Foreign Affairs and leads the process of negotiation and approval(39)	
Tuvalu	Executive may refer any matter to Parliament for consideration or approval	Prime minister is in charge of foreign affairs and leads the process (40)	
Vanuatu	Most treaties are approved by Parliament (41)	Treaties are negotiated by the government (42)	

(1) and (2), Constitution of the United states of America, amendments and practice, see : http://www.senate.gov/pagelayout/legislative/d_three_sections_with_teasers/treaties.htm, http://www.un.org.vn/undp/projects/vie02007/in_focus/international_treaties.htm#Process_of_Approval_of_International_Treaties_in_Selected_Countries_

(3),(4) (5) (6) (7) (8) (9) (10) (11) (12) (13) see www,state,gov and http://www.doi.gov/oia/Firstpginfo/islandfactsheet.htm,

(8) and (9) see compact of free association, Article II and Constitution of 1975 of FSM, Article IX, Section 1 and 2,

(10) and (11) see compact of association with the United State entry in force in 1994, and Constitution of Palau of 1979 (Article XIII, Section7, Article IX Section 4),

(12) and (13) see compact of free association with United States and the Constitution of the Republic of Marshall Islands, article 5,

(14) and (15) see www,info,dfat,gov,au/treaties and the document called "Australia and international treaty making information kit", and also the constitution of Australia,

(16) and (17) and (19) and Tokelau, see the information paper of the legal division in the Ministry of Foreign Affairs and Trade of New Zealand, www.mfat.govt.nz/Treaties-and-International-Law/Treaty-making-process/index.php, and the Constitution of Tokelau and Niue adopted in 1974
(18) Myra Patai, assistant legal adviser, Ministry of foreign affairs and immigration, Government of the Cook Islands
(20) and (21) see the Constutition of the Fifth republic, 1958, article 53 and 52,
(23) and (24) article 28 and article 89 of the Organic law of March 19th, 1999,
(25) and (26) article 9 of the Organic law of February 27th, 2004,
(27) and (28) according to accepted practice,
(29) see the Constitution of Kiribati, and the Treaty of the America, friendship and territorial sovereignty signed in 1979 with United States of
(30) and (31) see Constitution of Nauru
(32) and (33) see the Constitution of PNG, point 117
(34) (35) and (36) see the Guideline on extension of treaty on overseas territories, Guidance on practice and procedure for treaty and MOUs (foreign office), treaties information of the House of Commons,
(37) and (38) see the Parliamentary Handbook Section 1,35 and Standing Order 71 B
(39) Constitution of Tonga
(40) See the Constitution of Tuvalu
(41) and (42) See the Constitution of Vanuatu, chapter 4, 26,

APPENDIX C

The regional organisations under review are established under the following treaties/ agreements :

BODY	AGREEMENT	YEAR
Pacific Islands Forum Fisheries Agency **FFA**	South Pacific Forum Fisheries Agency Agreement	1979
Pacific Islands Applied Geoscience Commission **SOPAC**	South Pacific Applied Geoscience Commission Agreement	1989
South Pacific Board for Educational Assessment **SPBEA**	South Pacific Board for Educational Assessment Agreement	1989
The Pacific Secretariat for Community **SPC**	Canberra Agreement	1947
South Pacific Tourism Organisation/ South Pacific Travel **SPTO**	South Pacific Tourism Organisation Agreement	1999
Secretariat of the Pacific Regional Environmental Programme **SPREP**	The South Pacific Regional Environmental Programme	1993
Pacific Islands Forum Secretariat **PIFS**		