

SOPAC Council Committee of the Whole on the Regional Institutional Framework Progress Report to the 2008 Pacific Islands Forum Leaders Meeting

Submitted by:

Honourable Siosaia Tuita
Minister for Lands, Survey, Natural Resources
Kingdom of Tonga

Chair of SOPAC Governing Council

PREAMBLE

- 1) Following the 2007 Leaders Meeting, the SOPAC Governing Council considered paragraph 19(b) of the Communiqué which states “*the need to rationalise the functions of SOPAC with the work programmes of SPC and SPREP, with the view to absorbing those functions of SOPAC into SPC and SPREP*”.
- 2) The Council agreed to accept the challenge offered by the 2007 Leaders Communiqué. In arriving at their decision the Council noted *inter alia* that:
 - (a) The core business of SOPAC is excellence in applied scientific and technical information and knowledge of earth systems, and demonstrating how this knowledge contributes to sustainable development for its island Members.
 - (b) SOPAC has grown substantially over the past 35 years in many aspects into a well-established, and well respected regional organisation serving its Pacific Island Members in developing natural resources, principally non-living resources, in a sustainable manner and strengthening resilience through integrated solutions in its three programme areas: Ocean and Islands management, Community Lifelines development and Community Risk management.
 - (c) Council is fully cognisant of the need to maintain the momentum established by the Leaders decision, in order to ensure the continuity in both the quality and effective delivery of service in meeting the needs of the people.
- 3) During the debate on this issue Members generally agreed that the processes for rationalisation neither disrupt service delivery; nor subject SOPAC's current work programmes to fragmentation; and that the excellent science being mobilised through the STAR network must be retained as a highly valued resource for the region.
- 4) The SOPAC Governing Council agreed to establish a Committee of the Whole (SCW) on the Regional Institutional Framework to meet during the coming inter-sessional period between Council meetings. At its first meeting it would consider and agree on its Terms of Reference.
- 5) During the first half of 2008 the Committee met 3 times, 19th March, 4 June and 16th July. Representatives attended from the following Member countries: Australia, Cook Islands, Federated States of Micronesia, Fiji Islands, Kiribati, Marshall Islands, Nauru, New Zealand, Papua New Guinea, Tonga and Tuvalu together with the CEO of the SOPAC Secretariat. Participating observers from the USA, France, PIFS, and including the CEOs of the SPC and SPREP Secretariats attended the second and third meetings.
- 6) The agreed summary records of the three Committee meetings are annexed to this report.

TERMS OF REFERENCE FOR THE COMMITTEE OF THE "SOPAC COUNCIL AS A WHOLE" (SCW)

7) The SOPAC Governing Council during its 36th Annual Session meeting made the following decision:

- (a) Agreed to accept the challenge offered by the 2007 Leaders Communiqué which states "the need to rationalise the functions of SOPAC with the work programmes of SPC and SPREP, with the view to absorbing those functions of SOPAC into SPC and SPREP".
- (b) Agreed the following course of action as a way forward in responding to the Leaders decision:
 - (i) Agreed that a Committee of the "SOPAC Council as a Whole", be established and adequately resourced, to guide and advise the Director during the consultative process with the Terms of Reference to be agreed at its first meeting.
 - (ii) Agreed that the Director of SOPAC engage in a consultative process with the Director General of SPC and Director of SPREP, with the option of engaging the SG of PIFS as appropriate, providing regular briefings to the Chair of SOPAC Governing Council in the preparation of a draft road map to be submitted to the SOPAC Governing Council for consideration and approval with the intent of a final road map submitted to the Forum by 2010.
 - (iii) Agreed that during this consultative process some of the issues to be considered will include:
 - Proposing possible options for rationalisation and possible organisational models for the new arrangements taking into account realities such as the wider range of technical programmes, the possible rationalisation of certain common support services, the geographic location, and the Membership differences.
 - Examining the costs and benefits of the options considered during the process, the technical programmes, the Memberships, and the external supporting agencies, identifying opportunities for improved service delivery.
 - Proposing a realistic timing for implementation that would need to be taken into account including practical, legal, contractual obligations, and or any other problems that might require prior resolution as a result of rationalisation.
 - Finding a mechanism that will enable the benefits of STAR to be continued.
 - (iv) Agreed to emphasise to all stakeholders, especially Members, donor partners, and Secretariat staff, that in the interim the Commission would continue with its current work and efforts to secure resources for sustained service delivery keeping in mind consultations with the Director General of SPC and Director of SPREP.
 - (v) Agreed to immediately respond by writing to the Forum Chair, Chairs of the SPC and SPREP Governing Councils, Chair of STAR, donor partners and key stakeholders advising of the outcomes of its consideration of the issue at the 2007 Council Meeting.

8) To implement the SOPAC Council decision (Summary Record of 36th SOPAC Session, paragraph 252(ii) a), the Committee agreed that its Terms of Reference is as follows:

- (a) Examine the work programme of SOPAC with a view to identifying which activities they consider may be rationalised and absorbed within SPC and/or SPREP.
- (b) Examine how these activities of priority to the Island Member States may be delivered more effectively and efficiently, including governance and funding aspects.

- (c) Consider and comment on progress reports from the Director on her discussion with the CEOs of SPC and SPREP and other key SOPAC stakeholders, as the CEOs consider options toward preparing a draft roadmap.
- (d) Ensure adequate resources are provided for the Director to carry out the tasks required.
- (e) The Chair of the Committee to report to Council at its next session.

SOPAC DIRECTOR'S WORK PROGRAMME

- 9) At the first SCW meeting it was agreed that the Director was expected to:
- (a) Hold the first in a series of trilateral discussions with the CEOs of SPC and SPREP, in time to report the outcome to the second SCW meeting tentatively scheduled for mid-May.
 - (b) Present a more elaborate 'rationalisation at a glance' picture capturing the substance of trilateral discussions that would show the trends emerging in terms of institutional arrangements, at the May meeting.
 - (c) Provide a progress report on the legal assessment; and findings on contractual agreements SOPAC currently has with donors; also at the May meeting.
 - (d) Further articulate the preferred institutional arrangements after SCW advice received at the May meeting.
 - (e) Elaborate on a draft roadmap to implement or achieve the preferred institutional arrangement(s).
 - (f) Commission benefit-cost analyses between the second and third meetings (tentatively scheduled for mid-July) on the narrowed field of institutional arrangement options.
 - (g) Prepare documentation to report on progress to the SOPAC Governing Council in October 2008.

CONSIDERATION OF OVERARCHING ISSUES

10) During its meetings the Committee had discussions around a number of issues are summarised below.

11) **The Road Map and Responsibilities** – Whilst SOPAC Council has decided to have ownership and take the lead in this process, equally important is the imperative that wherever the components of the current SOPAC work programme are to be placed institutionally there is a need to be assured from that governing body or bodies that service support to island Members currently provided through SOPAC will continue and will improve.

12) In SOPAC's programme the underlying conceptual framework is that applied geoscience, technology and social science are integrated into unified and multifaceted outputs allowing for evidence-based policy and strategy formulations. It allows for better informed and more realistic decisions regarding policies and strategies by clients and Members to achieve desired outcomes such as improved coastal management, resource use, and disaster risk management. This conceptual framework is not unique but it is critical, and recognition of it is essential in the proposed rationalisation, absorption and new institutional arrangements exercise.

13) **Rationalisation First, Then Absorption Follows** – Necessarily, initial tasks of the road map process are dominated by examining issues surrounding rationalisation; (i) what are the guiding principles; (ii) an examination of the SOPAC, SPC and SPREP work programmes to determine what elements of the SOPAC work programme may be rationalised and (iii) what the preferred new institutional arrangements might be.

14) SCW, having reached agreement on what rationalisation will look like (what the preferred future institutional arrangements will be), will also by that time need to determine the process of absorption and have addressed and resolved any legal and contractual implications.

15) **Managing the Change Process (the Road Map) to ensure a Sustainable Outcome** – Before the change process can be determined, finalised and managed, the outcome of the change process needs to be considered and agreed upon in order that sustainability is addressed and assured. It will also be necessary to set a timeline framework for the change process.

16) **Improved Service Delivery and Effectiveness** – In order to guide further development of the road map, SCW continues to revert to the issue of “improved service delivery and effectiveness”, and recognises that this must be demonstrated as it remains an underlying purpose of the regional institutional framework.

17) **Plans for Absorption** – “Due Process” within the context of SOPAC Council responding positively to the Leaders Communiqué, will require that each of the proposed recipient organisations (SPC) and /or SPREP) must develop a plan for absorption to: (i) support their claims in regard to SOPAC’s work programmes; (ii) demonstrate how they will absorb, sustain and improve service delivery and effectiveness; and (iii) retain the services to the region of STAR. The SOPAC Director cannot take responsibility for the development of these plans, as there is no ultimate accountability since the position will have been terminated depending on the institutional arrangements outcome. The SOPAC Director will however, be required to provide any necessary data and information, particularly that pertaining to current circumstances, and which may well be used as a starting point to measure improved service delivery and effectiveness.

18) **Due Diligence** – The application of “Due Process” will require SCW to ensure due diligence checks on each of the plans for absorption, as an independent means of validation. These checks must be completed before the SCW can make a decision. As the SOPAC Director will not have responsibility for developing these plans, she will be an option for facilitating the due diligence checks.

TRILATERAL MEETINGS BETWEEN SPC, SPREP AND SOPAC

19) At the first SCW Meeting it was agreed the SOPAC Director begin trilateral consultations with the CEOs of SPC and SPREP at the earliest opportunity and that the trilateral exercise would be a first step in which the CEOs can bring together their knowledge of what each organisation was doing, and narrow the options for the new institutional arrangement.

20) During the first half of 2008 the CEOs met twice (16/18th April and 5 June). In addition two trilateral meetings at Programme Level have been convened (15/16th May and 23/24th June).

21) As of the date of this report considerable time has been dedicated to these trilateral meetings by the participating organisations. In addition to preparatory time, some 11-16 senior staff have been committed over a four-day period supported by an independent Facilitator. Discussions at this level have progressed well but remain incomplete. Staff from each of the Secretariats have acknowledged the immediate benefits gained from the opportunity to become better informed about the respective work programmes.

22) It is clear from the meetings that the ultimate objective, regardless of the final institutional arrangement, is that SOPAC’s work programme should remain intact and net improvement in service delivery realised. Furthermore, during discussions there was no clear elaboration on the issue of how “all round” improvement of service delivery would be realised. It was acknowledged that during the discussions SOPAC staff had not expressed any preference toward either of the potential receiving organisations.

- 23) At the conclusion of the 2nd Programme Trilateral Meeting it was agreed that:
- (a) Meaningful progress from this point could only be achieved by having the respective, receiving organisations (SPC and SPREP) develop plans outlining how they will absorb all of the services and functions of SOPAC and demonstrate how the delivery of services and functions of SOPAC and the receiving organisation will be improved as a result of absorption. This would need to commence following consideration of paragraph 19b of the 2007 Leaders' Communiqué by the SPREP Council.
 - (b) The full merits of the trilateral proceedings combined with the absorption plans would need to be considered by the CEOs and ultimately by the respective governing bodies of SPC, SPREP and SOPAC.
 - (c) SPREP coordinate, out-of-session, the ToR for developing SPC and SPREP plans for absorption.
 - (d) SOPAC to collate and make available all relevant documents.

LEGAL CONSIDERATIONS

24) The third SCW meeting received a draft legal assessment prepared in accordance with the following Terms of Reference. Members have yet to consider the report. The objective of this assessment is to address the full range of legal issues that the SOPAC Members must consider, should the eventual outcome be dissolution or suspension of the Commission.

25) The Agreement Establishing SOPAC (1990), in Article 4 establishes the legal status, privileges and immunities of the Commission. Article 16 addresses the issues of dissolution and suspension.

26) **Terms of Reference** – The Consultant is required to carry out the following tasks and report to the SOPAC Director:

- (a) Examine the legal obligations, if any, that the SOPAC Council has to the Pacific Islands Leaders Forum, and thereby any requirements for a response from SOPAC Council to a Pacific Islands Forum Leaders Communiqué.
- (b) In regard to dissolution and suspension (Article 16):
 - (i) Clarify the legal processes and their implications that differentiate between dissolution and suspension of the Commission; and in regard to a resolution to suspend the Commission, describe possible options for suspension being terminated and the organisation revived.
 - (ii) A decision to dissolve or suspend requires ratification by two thirds of the Members. Examine the process(es) that will be required at the national level to enable countries to ratify such a decision.
 - (iii) Consider options for the eventuality that two thirds of the Members are not in a position to ratify by the time of the next annual session, and thereby not able to make a decision on the date of dissolution or suspension of the Commission.
 - (iv) Provide options for the Commission to consider in order to decide on the manner in which the assets and obligations of the Commission should be liquidated, distributed or borne.
- (c) Comment on the possible legal implications for SPC and SPREP of absorbing any, or all, of SOPAC's work programme functions.
- (d) Provide comments on any other legal issues the Consultant may consider relevant.

THE ROAD MAP FOR A WAY FORWARD AND POSSIBLE TIMELINES

27) The SCW considered the following as a way forward and possible timelines to progress the Council decision on this matter.

Step 1: Rationalisation

28) The first step to rationalise the SOPAC work programme and its activities with those of SPC and SPREP has commenced through trilateral meetings. In the first SCW the SOPAC Director presented "Rationalisation at a Glance". The Committee appreciated that there were various ways and levels of detail, that one could consider in this task to rationalise SOPAC's work programme.

29) Key to this step is addressing the applied technical and scientific aspects of SOPAC's work programme, as these are considered excellent and must not be allowed to be put at risk or compromised. It must be demonstrable and not intuitive that: (i) the integrity of the applied science and technical services are maintained; (ii) linkages, and synergies exist; and (iii) improved service delivery will result.

30) It is agreed at various levels that that SOPAC's work programme should as far as necessary be kept "together" in one institution and thus not jeopardise the established practice in SOPAC of the production of "integrated solutions" across the programme of work. Indeed, the linkages and synergies should demonstrate new and a broader range of integrated solutions. Independent advice to examine and recommend optimum Institutional Arrangement Options for Rationalisation is being sought, with a TOR for this initiative under development for both rationalisation and then absorption plans to be realised.

Step 2: Institutional Arrangements

31) SCW 1 was presented with 5 options for future institutional arrangements:

- (a) Option 1: Fragmentation: In effect a process not unlike an auction, implicitly adhoc, and with the possibility that elements of the work programme will be lost. The record of the Council discussion clearly indicates that this option must not emerge.
- (b) Option 2: SOPAC work programme absorbed fully into SPC: This option of course was considered at length in 1999-2000, and the outcome at that time was in effect the status quo. In the interim institutional arrangements have changed in both organisations, for example SOPAC Council now has a well-developed Strategic Plan 2005-09 and new work programme structure. It is timely to review this option drawing upon the 1999 review report.
- (c) Option 3: SOPAC work programme absorbed fully into SPREP: This option has never been considered at length and clearly this task must be undertaken before the Committee can complete its work.
- (d) Option 4: SOPAC work programme absorbed substantively into either SPC or SPREP with the balance into the other: Clearly, arrangements to bring into effect this option will emerge as a result of the outcome of consideration of Options 2 and 3.
- (e) Option 5: SOPAC work programme remains stand alone: Arrangements to bring into effect this option will emerge as a result of the outcome of consideration of Options 2 and 3, which may provide the opportunity to rationalise the services of all three technical organisations under Pillar Two.

32) The ongoing trilateral discussions will report to SCW with regard to the preferred institutional arrangement as these discussions mature. In the meantime copies of this Progress Report and other reports of the SCW will be shared with Members and Observers that are participating in this process.

Step 3: Development of Plans for Absorption

33) The SCW recognises that plans for absorption should be developed and agreed upon before a decision can be made by SOPAC Council, as the handover organisation, to the governing body of the receiving organisation. The CEO trilateral has outlined their preference that the plans for absorption be non-competitive and currently a Terms of Reference framework is being developed.

34) It is expected that these plans should be developed over a period of two to three months. The SCW acknowledged that it can only encourage these CEOs to carry out this work. However in realising this, the SCW hoped that the relevant governing bodies appreciate the need to sanction this work.

35) The CEOs of SPC and SPREP should take responsibility for these plans, and will be supported as necessary by the CEO of SOPAC.

Step 4: Due Diligence

36) Both plans for absorption would be subject to independent due diligence checks initiated by the SCW. It is expected these checks should require no more than one to two months. When the plans for absorption and their accompanying due diligence checks are completed they will be considered by the SCW.

Step 5: Other Assessments Completed

37) SCW should have received and considered any other assessments commissioned by them no later than when they consider the plans for absorption and the due diligence checks.

Step 6: SCW Finalises its Work

38) By July/August 2009 SCW should be in a position to prepare recommendations to Council.

Step 7: Absorption

39) By the end of October 2009, all relevant governing bodies should have completed their consideration of this matter leaving implementation (absorption) to commence by 1 January 2010. It may be useful to consider having these three governing bodies meet concurrently in the same location in 2009 in order to have a one day high-level joint session to endorse the way forward.

40) In accord with the timelines in the Council decision, the SCW will continue its work, and report to the SOPAC Council to be held from 22 to 29th October in Funafuti, Tuvalu. In the interim the SCW will need to convene as required to consider responses to this report from the Leaders Meeting and the SPREP and SPC governing council meetings to be held during the early September to mid October period.

41) In the future, beyond the SOPAC Council meeting, it is anticipated the SCW will need to continue to meet to finalise its work by July/August 2009.

ANNEXES

Summary Records of the three SOPAC Council of the Whole Meetings



SUMMARY RECORD

1st Meeting of the SOPAC Council Committee of the Whole (SCW) on the Regional Institutional Framework (RIF)

SOPAC Secretariat
Wednesday, 19 March 2008

1) The first meeting of the SOPAC Council Committee of the Whole (SCW) on the Regional Institutional Framework was held at the SOPAC Secretariat on Wednesday, 19 March 2008. The SCW was established according to the decision of the SOPAC Governing Council at its 36th Session, on the way forward to respond to the Pacific Forum Leaders' decision, referenced Para.19b of the 2007 Leaders' Communiqué.

2) The following member countries were represented: Tonga (Chair), Australia, Cook Islands, Federated States of Micronesia, Fiji Islands, Kiribati, Marshall Islands, Nauru, New Zealand, Papua New Guinea, Tonga and Tuvalu. A list of participants is attached (Annex 1).

3) The Honourable Siosaia Tuita, Minister of Lands Survey, Natural Resources and Environment of Tonga, chaired the meeting. His opening address to the Committee is attached (Annex 2).

Agenda Item 1 – Adoption of Agenda

4) The Agenda adopted for the meeting is attached as Annex 3. An annotated agenda was also provided to guide the meeting discussions, see the RIF CD provided with this Summary Record.

Agenda Item 2 – Documentation

5) All the SCW meeting documentation and background papers are available online to Council members on the SOPAC website <www.sopac.org>. Apply to the Director of the SOPAC Secretariat for the access codes to the dedicated page. CD versions of the same online compilation will be available from time to time; especially to coincide with SCW meetings.

Agenda Item 3 – Actions since Council Meeting

6) These actions are amply summarised in the Annotated Agenda (SCW01/1.1); and elaborated on by the Director see the Minutes of the First SCW in Annex 4.

Agenda Item 4 – Purpose of the SCW

7) The Committee agreed that its purpose was clearly stated in the SOPAC Governing Council Decision, which was to "guide and advise the Director during the consultative process".

Agenda Item 5 – Terms of Reference for the Work of the SCW

8) The SOPAC Governing Council also agreed in November 2007 that the SCW would agree a Terms of Reference (TOR) for its work at its first meeting.

9) The TOR aspect referring to resourcing of the Director to carry out tasks set by the SCW was debated at some length. The Committee acknowledged that it was not only SOPAC's task to resource the rationalisation initiative. This coupled with the uncertainty as to the SCW's mandate to approve resources for the Director; the following Terms of Reference was adopted subject to the Director providing some indicative costs for submission to Council for their approval and clarification as to the SCW's mandate on resources.

TERMS OF REFERENCE:

The SOPAC Governing Council during its 36th Annual Session meeting made the following decision:

- (a) Agreed to accept the challenge offered by the 2007 Leaders Communiqué which states "the need to rationalise the functions of SOPAC with the work programmes of SPC and SPREP, with the view to absorbing those functions of SOPAC into SPC and SPREP".
- (b) Agreed the following course of action as a way forward in responding to the Leaders decision.
 - (i) Agreed that a Committee of the "SOPAC Council as a Whole", be established and adequately resourced, to guide and advise the Director during the consultative process with the Terms of Reference to be agreed at its first meeting.
 - (ii) Agreed that the Director of SOPAC engage in a consultative process with the Director General of SPC and Director of SPREP, with the option of engaging the SG of PIFS as appropriate, providing regular briefings to the Chair of SOPAC Governing Council in the preparation of a draft road map to be submitted to the SOPAC Governing Council for consideration and approval with the intent of a final road map submitted to the Forum by 2010.
 - (iii) Agreed that during this consultative process some of the issues to be considered will include:
 - Proposing possible options for rationalisation and possible organisational models for the new arrangements taking into account realities such as the wider range of technical programmes, the possible rationalisation of certain common support services, the geographic location, and the membership differences.
 - Examining the costs and benefits of the options considered during the process, the technical programmes, the memberships, and the external supporting agencies, identifying opportunities for improved service delivery.
 - Proposing a realistic timing for implementation that would need to be taken into account including practical, legal, contractual obligations, and or any other problems that might require prior resolution as a result of rationalisation.
 - Finding a mechanism that will enable the benefits of STAR to be continued.
 - (iv) Agreed to emphasise to all stakeholders, especially members, donor partners, and Secretariat staff, that in the interim the Commission would continue with its current

work and efforts to secure resources for sustained service delivery keeping in mind consultations with the Director General of SPC and Director of SPREP.

- (v) Agreed to immediately respond by writing to the Forum Chair, Chairs of the SPC and SPREP Governing Councils, Chair of STAR, donor partners and key stakeholders advising of the outcomes of its consideration of the issue at the 2007 Council Meeting.

As per SOPAC Governing Council decision (Summary Record of 36th SOPAC Session, para. 252(ii)a), the Committee of 'SOPAC Council as a Whole' is now meeting "to guide and advise the Director during the consultative process" and establish "Terms of Reference to be agreed in its first meeting"

Terms of Reference for the SOPAC Council Committee as a Whole

To implement the SOPAC Council decision (Summary Record of 36th SOPAC Session, para. 252(ii)a), the Committee agree that its Terms of Reference is as follows:

- Examine the work programme of SOPAC with a view to identifying which activities they consider may be rationalised and absorbed within SPC and/or SPREP.
- Examine how these activities of priority to the Island Member States may be delivered more effectively and efficiently, including governance and funding aspects.
- Consider and comment on progress reports from the Director on her discussion with the CEOs of SPC and SPREP and other key SOPAC stakeholders, as the CEOs consider options toward preparing a draft roadmap.
- Ensure adequate resources are provided for the Director to carry out the tasks required.
- The Chair of the Committee to report to Council at its next session.

Agenda Item 6 – Institutional Arrangement Options

10) Options for institutional arrangements were presented under Agenda Item 6 (SCW01/6 – SOPAC Parameters) and the options are also summarised in the Annotated Agenda (SCW01/1.1). This paper was circulated at the meeting, and can also be found on the CD attached.

11) The Director presented a snapshot of key SOPAC facts and figures which would need to be considered as the basis on which "the rationalisation and absorption" process should proceed. The Director also presented her thoughts on timelines, the assessments that needed doing in the immediate future and the important meetings during the year that were milestone events for the work of the SCW. A copy of the presentation is also included on the CD.

12) The SCW agreed and encouraged the Director to begin trilateral consultations with the CEOs of SPC and SPREP at the earliest opportunity to elaborate the "rationalisation at a glance" exercise she had included in the background presentation to the meeting. The Committee agreed the trilateral exercise would be a first step in which the CEOs can bring together their knowledge of what each organisation was doing, verify the rationalisation at a glance chart, and consequently narrow the options for the new institutional arrangement. The Director indicated that such a trilateral could occur in early April 2008, given the potential opportunity in the margins of a series of regional meetings wherein the three CEOs may attend.

13) The Director was also tasked by the Committee to prepare a scoping of the cost areas and indicative costs for submission to Council members.

- 14) Details of the discussion are in the minutes (Annex 4).

Agenda Item 7 – Timelines and Constraints

15) The Committee noted the following dates and meetings as important for reporting and constrained what the SOPAC team could realistically do in terms of responding to the Leaders' Decision:

- i) Forum Meeting, 18 August 2008, in Niue (~five months away, progress report on the SOPAC Council Decision and progress since that decision to be tabled).
- ii) SPREP Meeting in September 2008, in the Federated States of Micronesia (2007 Forum Communiqué to be considered for the first time).
- iii) SPC's CRGA38 Meeting in early October 2008, in Noumea (SPC Director General was tasked at CRGA37 to report back to CRGA38 on a draft roadmap; and on clarification of certain issues to do with cost and legal implications as requested by the US and American Samoa).
- iv) SOPAC Council Meeting, 21-29 October 2008 (in Funafuti).

- 16) For the comments and discussion under this item see Annex 4.

Agenda Item 8 – SOPAC Director Work Programme

Agenda Item 9 – Proposed Schedule of Committee Meetings and Reporting

17) The Committee noted the tentative timelines of mid-May and mid-July for the remaining two SCW meetings in 2008, and the Director's outline of her work programme (below) within the timelines and constraints discussed in Item 7:

18) The Director expected to:

- i) hold the first in a series of trilateral discussions with the CEOs of SPC and SPREP, in time to report the outcome to the second SCW meeting tentatively scheduled for mid-May.
- ii) present a more elaborate 'rationalisation at a glance' picture capturing the substance of trilateral discussions that would show the trends emerging in terms of institutional arrangements, at the May meeting.
- iii) provide a progress report on the legal assessment; and findings on contractual agreements SOPAC currently has with donors; also at the May meeting.
- iv) further articulate the preferred institutional arrangements after SCW advice received at the May meeting.
- v) elaborate on a draft roadmap to implement or achieve the preferred institutional arrangement(s).
- vi) commission BCAs between the second and third meetings (tentatively scheduled for mid-July) on the narrowed field of institutional arrangement options.
- vii) prepare documentation to report on progress to the SOPAC Governing Council in October 2008.

Agenda Item 10 – Other Business

Future Observers at SCW Meetings

19) Prompted by the request for Observer status to SCW meetings by the United States, the Committee recommended that the Director write officially to Council members inviting responses to the request. The Committee also drew up a tentative list of other potential observers and participants to future SCW meetings that included: France and the Chairs and CEOs of SPC, SPREP and PIFS, for inclusion in the message to capitals by the Director.

Summary Record of 1st SCW Meeting

20) The Summary Record of the meeting will be made available to members shortly after the Easter break.

SOPAC

SUMMARY RECORD

**2nd Meeting of the SOPAC Council Committee of the Whole (SCW¹)
on the Regional Institutional Framework (RIF)**

**Banyan Room, Holiday Inn, Suva, Fiji
Wednesday, 4 June 2008**

Agenda Item 1 – Welcome and Introduction of Observers

- 1) Chairing the 2nd Meeting of the SOPAC Council Committee of the Whole (SCW02) was Tuvalu's High Commissioner to Fiji, HE Tine Leuelu. He welcomed his fellow members of the SCW, and the invited observers who would be participating in the Committee's work henceforth.
- 2) Observers in attendance were representatives of the United States of America, France and the Pacific Islands Forum Secretariat (PIFS); the Director-General of the Secretariat of the Pacific Community (SPC); and the Director of the Secretariat of the Pacific Regional Environment Programme (SPREP) (see Annex 1 for List of Participants).
- 3) The Chair read the Opening Remarks of the Chair of the SOPAC Governing Council (Hon. Tuita of Tonga) (see Annex 2), and outlined the substantive business of the SCW02, which was to consider the progress made by the Director of SOPAC with respect to trilateral consultations with the CEOs of SPC and SPREP; expanding on the rationalisation at a glance exercise she introduced at the SCW01 meeting; as well as the scoping of cost areas; and other assessments that might also have been undertaken.
- 4) The Chair's Opening Remarks encouraged SCW members as shareholders to agree and recommend to the SOPAC Governing Council those new arrangements that would allow for and demonstrate:
 - i) improved performance and delivery of services;
 - ii) improved timelines;
 - iii) improved relevancy to the needs of PICs and especially the SIS;
 - iv) that the present programme would be maintained and/or improved and expanded when considered necessary;
 - v) that these activities would be met with reasonable cost effectiveness; and
 - vi) that performances and services would be of the highest quality and relevancy possible.

Agenda Item 2 – Adoption of Agenda

- 5) The meeting adopted the Agenda attached as Annex 3.

Agenda Item 3 – Minutes of SCW01

- 6) The minutes of the First SCW Meeting (SCW01) were adopted.

¹ Acronyms used in the report are in Annex 6

Agenda Item 4 – Documentation

7) The documentation for the SCW02 was described by the Chair, and the Committee was directed to the RIF Page on the SOPAC Website, which provided access to the entire collection of RIF-related documentation from the regional background reports to all papers related to integration, mergers and rationalisation pertaining to SOPAC. Access codes were available to the Committee from the SOPAC Secretariat, on request.

8) The Committee raised no objections to the Secretariat request to share the RIF-related documentation freely with all participating observers.

Agenda Item 5 – Actions since SCW01

9) The Director used the Summary Record of the SCW01, para. 18, to report under the itemised tasks undertaken since SCW01. More details on verbal reports and discussion on the substantive agenda items (from 5 to 7) are in the Minutes of the Meeting (see Annex 4).

- i) *hold the first in a series of trilateral discussions with the CEOs of SPC and SPREP – Trilateral meetings between SPC, SPREP and SOPAC were held in the margins of the CROP Heads Meeting in Noumea in the middle of April, on the 16th and 18th of April.*
- ii) *present a more elaborate 'rationalisation at a glance' picture capturing the substance of trilateral discussions that would show the trends emerging in terms of institutional arrangements – A programme trilateral was convened on the 15th and 16th of May. Reporting this elaboration exercise was deferred to under Item 6.*
- iii) *provide a progress report on the legal assessment; and findings on contractual agreements SOPAC currently has with donors – The legal assessment was commissioned at the end of April. A draft opinion was received the day before SCW02, and the Director was yet to review it and provide comments back to the consultants.*
- iv) *further articulate the preferred institutional arrangements – This was also covered under Item 6; and the three CEOs elaborated on progress.*
- v) *elaborate on a draft roadmap to implement or achieve the preferred institutional arrangement(s) – A short presentation on perspectives for the way forward was given under Item 7 to elicit some discussion; and to assist the Committee in providing the Director with guidance on the tasks that she would be required to complete before SCW03.*
- vi) *commission BCAs – The Director covered this also under Item 7.*

10) Other actions completed included seeking Council's views on having observers participate at the SCW02 meeting (and future SCW meetings); the circulation to Council of the invitations to SCW02; and the regular updating of the RIF Page.

11) The CEOs of SPREP and SPC provided their respective perspectives on the report by the Director of SOPAC; and elaborated on trilateral meetings. The programme trilaterals were assessed at this stage to be work-in-progress in terms of looking in more depth at synergies among the three organisations.

12) The Committee noted the landmark meeting of the SPC-SOPAC-SPREP Programme Trilateral and progress made, which were very much appreciated by members. The Committee agreed on the importance of the trilateral meetings and encouraged these to continue.

13) The Committee also noted that while the process seemed simple in the beginning; it was clear however, that certain issues needed to be accounted for such as the impediment to SPREP's full engagement

in the process, in the absence of a Council decision, given that the 2007 and 2008 meetings of the Forum would be held before the SPREP Council meeting in September (2008).

Agenda Item 6 – Rationalisation-Beyond-a-Glance

14) This item was dedicated to discussing the substance of the trilateral meetings already introduced under previous agenda items, with the CEOs of SPC, SPREP and SOPAC providing necessary information to the Committee in respect of progressing rationalisation “beyond-a-glance”.

Reporting by the CEO on their trilateral outcomes were summarised in papers before the Committee, with presentations from the first programme trilateral being placed on the RIF Page for review and reference for the SCW. It was advised that other key outcome documents of the programme trilateral had just been received by the CEOs and were being treated as work-in-progress. In order to convene further trilaterals to continue the Rationalisation beyond a glance, the three would be mounting a joint proposal outlining resource requirements for presentation to Australia, New Zealand and France. The SOPAC Director had been tasked during SCW01 to provide indicative costs; and she submitted that this joint proposal was to be taken as proxy for that.

15) Frank and wide-ranging discussion tossed around opinions, concerns and requests on time lines; protecting and improving SIS-focussed service delivery; observership at programme trilaterals; EU participation at SCW meetings; technicality of work programmes being Rationalised; office location; legal and other issues. The SPC Director-General also took the opportunity “to present a SPC Secretariat viewpoint” that would dispel cloudy areas on certain issues raised by the Committee that included mandate and funding concerns.

16) The Committee expressed appreciation of the work carried out by the three CEOs; and of the discussions among the senior programme personnel, which was extremely important given the breadth and technicalities of the respective work programmes. It was apparent from the issues brought up during discussions that the SCW would be very much guided by the next consultations among the three agencies which would need to further discuss, focus and elaborate the more technical and practical options as the basis for progressing the Rationalisation of SOPAC’s functions.

17) The Chair noted that the various concerns raised by colleagues around the table were valid and were natural reactions that needed to be aired, for the three agencies to bear in mind as work on the various institutional arrangement options continued.

18) The Committee raised no objection to the programme trilateral meetings being open to Committee members, and that information on the dates and venues of forthcoming meetings be circulated to members so they could attend if they wished.

Agenda Item 7 – Roadmap for a Way Forward

19) The Committee had requested the Director to prepare a road map for a way forward between this Committee meeting (SCW02) and the 3rd meeting of the SCW (SCW03). In anticipation of this task and as a result of consideration of initial outcomes of the first round of trilateral meetings, the Director presented overarching issues in respect of a proposed way forward.

20) The Director circulated a paper and made a presentation, both accessible from the SOPAC-hosted RIF Page (and available from the Secretariat on request). The presentation highlighted the Guiding Principles, which are a combination of the guiding principles from the CRGA and SOPAC Governing Council decisions in response to Paragraph 19b of the 2007 Leaders Communiqué that have underpinned the trilateral meetings to date and should carry throughout the process. Further the Director submitted that the underlying ‘conceptual framework’ of SOPAC’s work programme – that is that applied geoscience, technology and social sciences are integrated into unified and multi-faceted outputs allowing for evidence-based policy and strategy

formulations must be recognised and acknowledged as rationalisation progresses to absorption and ultimately into the new institutional arrangement(s).

21) As a way forward the Director proposed that once rationalisation advanced sufficiently to crystallise certain institutional arrangements, the receiving organisations should be encouraged to develop 'business cases' on their arrangements to receive, sustain and improve the SOPAC functions and services that were transferring to them. These business cases should be developed in very close consultation with SOPAC and be subjected to due diligence. The business cases were to demonstrate how the services themselves would be absorbed, sustained and improved; and, how the services of the STAR would be retained for the region. These along with the due diligence checks would provide assurances to the respective Committee and Councils of SPC and SPREP that SOPAC's activities and programmes would endure and improve beyond absorption and where possible enhance the services that the mentioned organisations are currently responsible for delivering. Consequently the SCW would then consider the business plans in concert with the due diligence checks and submit its findings to the SOPAC Governing Council.

22) The Director also presented timelines on the Rationalisation activities that would maintain the momentum on the current process (trilateral and bilateral consultations; business case(s) development; due diligence checks on business cases; finalising the legal assessment) and, with all events happening as anticipated and on time, offered that the SOPAC Council could be sufficiently informed and comforted to take the decision whether to dissolve or suspend the organisation at its 2009 Governing Council meeting. See SCW02/7.1 & 7.2 for the full paper and presentation and the Minutes of the Meeting (Annex 4) for more details.

23) The Chair noted the Marshall Islands question on how much had already been spent on the whole RIF exercise and invited the PIFS to provide that information for the next meeting. His sense of how things stood at the end of discussion was that members wished to be involved in the entire process; and also in scrutinising outcomes at every step.

24) The decision of the Committee under this item was revisited under Item 11 – Other Business, and clarified.

25) The Committee noted the presentation by the Director of SOPAC; which was to be used by the CEOs and the three organisations as a basis for further work. The organisations were encouraged to continue their work, bearing in mind the catalogue of concerns raised and were encouraged to report back to the next SCW meeting on any progress made. The Committee would scrutinise the outcomes of the next trilateral meetings which are expected to provide further clarity for rationalisation and the proposed institutional arrangement(s) options requiring detailed assessments through the development of 'business case(s)'.

26) The Committee noted the timelines set out in the 'way forward' proposal and the sequencing of the key meetings at which progress reports on the Rationalisation would be tabled.

27) The Committee accepted the proposed way forward and that the 'business case' label used by the SOPAC Director should be replaced with a term that was more acceptable.

28) The Committee urged the CEOs in their trilateral meetings to come up with one agreed approach to put to their respective Councils on the matter of the Rationalisation.

Agenda Item 8 – Update on Timelines and Constraints

29) The confirmed dates of the major meetings related to the RIF exercise on SOPAC are as follows:

30) The next SOPAC Session (37th) would be held during 22-30 October 2008, in Funafuti, Tuvalu.

31) The SPREP Council meeting that would consider para.19b of Forum Leaders' Communiqué 2007 for the first time would be held during 8-12 September 2008 in Pohnpei, Federated States of Micronesia.

- 32) The 2008 CRGA meeting for SPC would be held during 13-16 October in Noumea, New Caledonia.
- 33) The dates for key Forum meetings provided by PIFS representatives were 19 August for the Leaders' Retreat; 23-24 July for the pre-Forum FOC; and 21-22 July for the pre-FOC Pacific Plan Action Committee meeting.

Agenda Item 9 – SOPAC Director Work Programme between SCW02 and SCW03
- Tasks to be Completed

- 34) The Committee took as read the proposals by the Director of SOPAC to continue advancing the activities already begun after SCW01; and the additional activities outlined in her presentation under Agenda Item 7 for work to be undertaken beyond SCW02. The presentation is attached in Annex 5.

Agenda Item 10 – Date of SCW03

- 35) The tentative date of 16 July 2008 for the third Committee meeting (SCW03) was adopted.

Agenda Item 11 – Other Business

- 36) The first matter brought up was the earlier unresolved issue of whether to invite the EU to observe at future SCWs. The Committee decided that the EU be included among those in the circulation list to receive the outcomes of SCW meetings; and that the SOPAC Director keep SOPAC donors and development partners updated.
- 37) The second matter was clarification of the Committee decisions under Item 7 – Roadmap for a Way Forward. See under Item 7 for that clarified articulation.
- 38) The third and final matter was a reminder that the first task for the CEOs immediately following SCW02 would be to finalise and submit a joint proposal for additional financial resources to assist them undertake the processes proposed in the roadmap for the way forward.

Agenda Item 12 – Closing

- 39) The Chair expressed deep appreciation to the members and other participants at the SCW02 for their patience and contributions that made a productive meeting despite the sensitivity of the issue. He commended the Committee for the progress made to date and was confident that through the Chair from Tonga, SCW would have a progress report ready for the Forum.
- 40) Fiji thanked the Chair and the Secretariat for the hard work on behalf of members.
- 41) The SOPAC Director made closing remarks, chiefly to thank the observers for participating and her SPC and SPREP counterparts.

The meeting ended at 4:20 pm.

SOPAC

FIRST DRAFT SUMMARY RECORD¹

**3rd Meeting of the SOPAC Council Committee of the Whole (SCW²)
on the Regional Institutional Framework (RIF)**

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

Agenda Item 1 – Welcome

The Chair of the SOPAC Governing Council (Hon. Tuita of Tonga) chaired the 3rd Meeting of the SOPAC Council Committee of the Whole (SCW03). He welcomed his fellow members of the SCW, and the observers.

Observers in attendance were representatives of the United States of America, France and the Pacific Islands Forum Secretariat (PIFS); the Director-General of the Secretariat of the Pacific Community (SPC); and the Director of the Secretariat of the Pacific Regional Environment Programme (SPREP) (see Annex 1 for a List of Participants).

The Chair made Opening Remarks (see Annex 2), and outlined the two major objectives of the SCW03, which was to consider (i) progress since SCW02; and (ii) the progress report of the SCW to the 2008 Forum Leaders' meeting.

The Chair stated that while he was of the opinion that the SOPAC Committee had “responded positively to the Leaders' Communiqué and the SOPAC Governing Council decision;” the task being undertaken was not a straightforward matter as learned in the course of the Committee's work so far, and would “require long-term and steady dedication.”

The Chair ranked the task as “an urgent priority” which he believed could be moved forward with confidence to identify the “most effective institutional arrangements based on the logic of the most effective means of meeting [the] needs of member states with excellence in quality, relevancy and timeliness”.

Agenda Item 2 – Adoption of Agenda

The meeting adopted the Agenda attached as Annex 3.

Agenda Item 3 – Approval of Minutes of SCW02

The summary record and minutes of the Second SCW Meeting (SCW02) were adopted.

Agenda Item 4 – Matters Arising

Chair recorded that in response to his writing to the SOPAC Governing Council to seek approval to, on its behalf, send a progress report on the SCW work to the Forum Leaders' meeting scheduled

¹ Yet to be reviewed and cleared by the SCW

² Acronyms used in the report are in Annex 7

for mid-August in Niue – that he had received formal assents from Samoa, the Cook Islands and Nauru. Fiji confirmed their agreement verbally at this point, with intent to formalise very shortly.

The Chair took the absence of dissenting voices to his request for further comments from other members round the table as tacit approval of his intent to provide a progress report to the Forum Chair.

Agenda Item 5 – Update since SCW02

The SOPAC Director reported the following 'concrete' actions after the Second Committee Meeting: (a) a very brief trilateral of the three CEOs immediately following the SCW02; (b) a second programme trilateral meeting (23-24 June) among SPC, SPREP and SOPAC programme staff; and (c) the review by the Secretariat and receipt of the final draft report of the legal assessment commissioned by the SOPAC Director. The three CEOs also finalised and transmitted a joint letter of request for financial assistance to Australia and New Zealand which has received a response requesting more information. The letter and response were distributed to participants at SCW03 for their information.

The Independent Facilitator of the programme trilateral meetings of the three organisations, Mr Garry Wiseman, was invited to present his reflections on the whole programme trilateral process, given that he hadn't had the opportunity to do so before the Committee since his involvement from the first programme trilateral meeting.

Mr Wiseman had found the process educational, observing that it was probably just as educational for the other organisations to hear from each side what they were doing and perhaps revealed that "insufficient opportunity had been taken for greater collaboration and coordination" of some of things they could have been doing together. Hence the first programme trilateral "just pointed to the need for better cooperation, coordination within organisations and across organisations regardless of where SOPAC's work programme might end up being located."

The Independent Facilitator observed that the second programme trilateral which came together to progress further the first trilateral discussion on synergies (with respect to the option of "SOPAC's work programme to be absorbed primarily into either SOPAC or SPREP with minor elements into the other") found it "very difficult [...] to focus on what might be an appropriate split." He had tried to push it but he thought it seemed "very hard for the programme staff to actually come up with a firm position either way" and that in the end there "seemed to be much more comfort in SOPAC's work programme going wholly into one or the other."

Based on those observations Mr Wiseman advised the Committee that it all depended on which angle SOPAC's work was viewed from – if members "would like to see SOPAC's work focus greater on environmental management, then the SPREP home" seemed obvious"; but if the desire was to see "SOPAC's work strengthen [...] the resource use management aspects of the work of SPC", then the SPC home was logical.

Mr Wiseman also raised aspects of the rationalisation/absorption process that would be critical to consider for a good outcome to this exercise. These included the sizes of the two recipient organisations in relation to SOPAC, hence the changes that would need to occur in them to accommodate the absorbed entity so that quality of services didn't suffer and actually improved. Also the modes of interaction with the membership each organisation would certainly affect the quality of services to be delivered.

The Independent Facilitator concluded with the general agreement at the end of the second programme trilateral that "programme staff had taken the process as far as they could and there was now a need for a greater level of independence in final decision making." He was of the opinion that the trilateral meeting were important steps in this process but "because of the obvious

and normal defensive nature of those closest to programme delivery that a more 'hard-nosed' decision-making process" needed to be invoked at this stage. He also later attributed the inability of programme staff to go beyond where they got to because they were not "necessarily able to talk about the institutional and other aspects of absorption in either one of the organisations" because it was part of a broader discussion that had to take place within the recipient organisations.

See the minutes of the meeting in Annex 4 for full details of the presentations by the Director of SOPAC and Mr Wiseman.

Members all appreciated the very useful presentation by Mr Wiseman, which generated some good debate (see Annex 4 for details).

The Committee also noted the agreement of the SOPAC Director to a request initiated by the Marshall Islands for the development of a detailed matrix which outlined actions within the RIF process and more detailed costs associated.

Agenda Item 6 – Consideration of Progress Report to the Forum

The Committee noted the representative of the PIFS outline of the reporting procedures for the wider RIF process via the PPAC, to the Forum Leaders.

The attached Progress Report (see Annex 5) was confirmed by the Committee as the report to be sent by the Chair of the SCW on behalf of the SOPAC Council to the Chair of the Forum. It was amended by Committee and approved (see the Minutes of the Meeting for detailed discussions on this item).

Agenda Item 7 – Consideration of Council Chair Covering Letter

The attached Cover Letter (see Annex 6) to accompany the progress report was also slightly amended and approved by the Committee (see the Minutes of the Meeting for detailed discussions on this item).

Agenda Item 8 – Date of Next Meeting, Update on Timelines and Constraints

The Committee noted the proposal for a fourth SCW meeting (SCW04) in the period late August/early September to look at the 2008 Leaders' Communiqué; have some discussion around the recently completed legal assessment; and prepare its report to the SOPAC 37th Session scheduled for late October in Funafuti, Tuvalu.

Agenda Item 9 – Other Business

The French representative directed a question at Jimmie Rodgers of SPC on whether someone had studied the legal implications surrounding membership issues given that France (and the US) were members of both SPC and SPREP, but not of SOPAC. The SPC CEO informed the meeting that apparently the French Government had supported working towards implementation of the Communiqué decision in 2007, and had done an initial legal assessment, outcome of which they had accepted.

The US representative confirmed that they were in a similar situation to France, of being a member of both SPC and SPREP but not of SOPAC; and neither was it a participant in the Forum where the decision (referred to as para. 19b of the 2007 Communiqué) was taken. The US had expressed some concerns which required a legal response; and the representative informed that they had

evaluated the response to those concerns and their attorneys came up with still more questions that needed answering. He remarked that both SPREP and SPC had their own internal processes that would have to be respected as this regional and institutional structuring moved ahead.

10 Closing

In closing the Chair expressed sincere appreciation to all the participants for the good progress achieved by the meeting. He especially thanked the Deputy Prime Minister of Tuvalu for his attendance; and expressed the hope of seeing them all at the next Committee meeting.

The meeting ended at 1:24 pm.