

**SECRETARIAT OF THE PACIFIC COMMUNITY****FORTY-FOURTH MEETING OF THE
COMMITTEE OF REPRESENTATIVES OF GOVERNMENTS AND ADMINISTRATIONS**
(Noumea, New Caledonia, 4–7 November 2014)

AGENDA ITEM 4: MEMBERSHIP POLICY**AGENDA ITEM NO 4.2: UPDATE ON SPC MEMBERSHIP AND OBSERVER STATUS**

(Paper presented by the Secretariat)

Summary

1. Following on from the recommendation made by the 2012 independent external review of SPC, CRGA 43 mandated the Secretariat, together with a working group composed of Member countries and territories, to explore how new categories of Associate member and Observer may be created and to develop an SPC Policy on Membership and Observer status.
2. In particular, the formal creation of new membership categories was seen as a means to respond to the shared will of SPC and the European Union for greater institutional recognition of the EU's role as an important partner for the Pacific Community.
3. Several exchanges between founding members have since taken place due to a difference of opinion on the legal procedure to effectively create such new categories. At the date of drafting of this paper, several outstanding issues remain to be resolved.
4. The European Union has also clarified that it is not, at this time, seeking associate membership of SPC but would prefer to crystallise its engagement with SPC in the framework of a Memorandum of Understanding (MOU).
5. This paper provides a summary of the situation to date and a proposed way forward on the issue of (a) engagement with the European Union and (b) creation of new categories of Associate member and Observer.

Recommendations

6. CRGA is invited to:
 - i. mandate the Secretariat to conclude a non-binding Memorandum of Understanding with the European Union, in order to recognise the special partnership between the EU and SPC;
 - ii. decide not to amend the Canberra Agreement at this time to provide for new categories of Associate member and Observer;
 - iii. endorse the Secretariat's proposal to follow United Nations practice and allow for Permanent Observer Status to be granted to States and intergovernmental organisations by means of unanimous resolution;
 - iv. mandate the working group on membership to develop an SPC Policy on Permanent Observer Status, which would set out the criteria, admission procedure, rights and obligations of any entity

wishing to request such status with the Pacific Community, and to provide this Policy to the 9th Conference of the Pacific Community for adoption; and

- v. mandate the working group on membership to consider the specific case of the European Union and make recommendations which would ensure a harmonised approach between Permanent Observers and the EU.
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UPDATE ON SPC MEMBERSHIP AND OBSERVER STATUS

Background

7. The 2012 independent external review of SPC suggested that '*...SPC may want to review whether it wants to expand its membership or develop alternatives to full membership for parties that would like to work more closely with SPC for further consideration by CRGA*'.¹
8. CRGA 43 mandated the Secretariat, together with a working group composed of Member countries and territories, to explore how new categories of Associate member and Observer may be created and to develop an SPC Policy on Membership and Observer status.
9. This was thought to be particularly necessary in light of the European Union's request for closer engagement with the Pacific Community and early indications that Associate member status may be an appropriate means to provide such engagement and recognition of the EU's role as a key development partner.

A proposed way forward as regards engagement with the European Union

10. As regards the EU situation, during the Director-General's recent visit to Europe, the Secretariat received a clear indication from Brussels that many EU member states consider it inappropriate for the EU to be a member/associate member of an organisation that it finances. Moreover, any form of new legal standing with an international organisation would require endorsement from all EU member states which could take significant time and effort to obtain.
11. As such, it is now the EU's view, shared by the Secretariat, that it would be preferable to develop a Memorandum of Understanding (MOU) as the means of providing the EU with closer institutional engagement with the Pacific Community.
12. This would provide a formal, written framework for relations between the EU and SPC and would allow this matter to progress quickly whilst providing sufficient basis for greater participation of the EU in SPC meetings and processes.
13. This non-binding MOU is in the course of being drafted and finalised and the Secretariat requests CRGA's agreement to continue developing this instrument in cooperation with its EU counterparts.
14. The Secretariat invites CRGA to endorse this approach, as this would provide the level of participation, recognition and visibility that the EU and the Pacific Community have been seeking to give to their partnership.

A proposed way forward as regards the creation of new categories of membership and the SPC Policy on Membership and Observer Status

15. Before beginning the substantive work on the SPC Policy on Membership and Observer Status, it was necessary to examine the legal mechanism and procedure for creating new categories of membership.
16. It was apparent at CRGA 43 and from subsequent discussions with founding members that there is an important difference of opinion on how to proceed. The Secretariat has, therefore, spent considerable time consulting with founding member countries and it appears that there are two prevailing schools of thought:

¹ Independent External Review of SPC, paragraph 85.

- (a) Creation of new membership categories under the Canberra Agreement requires formal amendment of the Canberra Agreement and subsequent ratification of such an amendment following the internal processes of each member country.
 - (b) Creation of new membership categories under the Canberra Agreement can be done by unanimous resolution of the Conference of the Pacific Community and would enter into effect one year from the date of adoption of said resolution, provided no participating Government or territorial administration registers their opposition, in writing, with the Government of Australia, as depository of the Canberra Agreement.
17. Should CRGA instruct it to do so, the Secretariat will pursue consultations with legal experts from each founding member, in order to come to a satisfactory resolution. The Secretariat considers that such a resolution is necessary before beginning work on the substantive provisions of the Policy on Membership and Observer Status.
18. However, in light of the solution found to the request made by the European Union and taking into account the practice developed at the United Nations as regards permanent observers², the Secretariat proposes the following as an alternative to the organic creation of new membership categories:
 - The possibility for Member countries and territories to admit intergovernmental organisations or States by consensus as Permanent Observers to CRGA and Conference.
19. It is the Secretariat's view that this would preclude the need for formal amendment of the Canberra Agreement and require only the adoption, on a case by case basis, of a unanimous resolution by Conference (or CRGA between Conferences) admitting the requesting organisation, State or territory as a Permanent Observer.
20. Given that this approach is based on United Nations practice, it would also provide a practical, internationally recognised means of closer engagement with partners and outreach for the Organisation, whilst avoiding what could be significant complications if it was decided to pursue the legal creation of new membership categories.
21. Should CRGA approve this alternative, the Secretariat suggests that the working group originally set up to examine the creation of associate member and observer status instead be tasked with developing an SPC Policy on Permanent Observer Status which would set out the criteria, admission procedure, rights and obligations of any entity wishing to request such status with the Pacific Community.
22. This new policy could then be submitted to the 9th Conference of the Pacific Community for adoption and subsequent implementation.
23. As a starting point for discussions on the substance of this policy, the Secretariat suggests that CRGA invite the working group to consider and discuss the following for possible inclusion among the participatory rights of Permanent Observers:
 - (a) The right to attend and to speak at SPC's governing body meetings including CRGA and Conference.
 - (b) The right to attend and to speak at other SPC ministerial and technical meetings.

² The status of a Permanent Observer is based purely on practice, and there are no provisions for it in the United Nations Charter. The practice dates from 1946, when the Secretary-General accepted the designation of the Swiss Government as a Permanent Observer to the United Nations. Permanent Observers have free access to most meetings and relevant documentation. Many regional and international organizations are also observers in the work and annual sessions of the General Assembly.

- (c) The right to participate in working groups established by the governing body and other ministerial meetings, subject to the normal decision-making processes among Member countries and territories when deciding on the composition of working groups.
 - (d) The right to be included in all decisions reached through consensus; however any dissenting views from a Permanent Observer will not prevent decisions being made where there is consensus among SPC's Member countries and territories.
 - (e) When decisions are taken by a vote in any SPC meeting, Permanent Observers may present their position but will not have the right to vote.
 - (f) Permanent Observers are required to fund the participation of their representative(s) in SPC meetings and activities.
24. The Secretariat also suggests that, in order to harmonise arrangements with Permanent Observers and partners, the working group should include the participatory rights of the EU within the scope of its discussions and recommendations.

Recommendations

25. CRGA is invited to:
- i. mandate the Secretariat to conclude a non-binding Memorandum of Understanding with the European Union, in order to recognise the special partnership between the EU and SPC;
 - ii. decide not to amend the Canberra Agreement at this time to provide for new categories of Associate member and Observer;
 - iii. endorse the Secretariat's proposal to follow United Nations practice and allow for Permanent Observer Status to be granted to States and intergovernmental organisations by means of unanimous resolution;
 - iv. mandate the working group on membership to develop an SPC Policy on Permanent Observer Status, which would set out the criteria, admission procedure, rights and obligations of any entity wishing to request such status with the Pacific Community, and to provide this Policy to the 9th Conference of the Pacific Community for adoption; and
 - v. mandate the working group on membership to consider the specific case of the European Union and make recommendations which would ensure a harmonised approach between Permanent Observers and the EU.
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