



SECRETARIAT OF THE PACIFIC REGIONAL ENVIRONMENT PROGRAMME

Twentieth SPREP Meeting

Apia, Samoa
17 – 20 November 2009**Agenda Item 10.1: The Role of the Environment Ministers' Forum in the context of the SPREP Meeting****Purpose**

1. To clarify the role and status of the Environment Ministers' Forum in the context of the SPREP Meeting and the nature of its decision making powers.

Background

2. The Environment Ministers' Forum (MF) in Pohnpei 2008 raised the issue of the status of that meeting and the nature of its decision-making powers.

3. The advice given to the meeting based on the Agreement Establishing SPREP (AES) 1993, under subarticle 2 of article 1 (hereafter notated as art. 1.2) was that "The organs of SPREP are the SPREP Meeting and the Secretariat". It was further noted that art. 3.3 declares the SPREP Meeting (SM) to be "the plenary body".

4. As the plenary body the SM has in its sessions assumed and exercised plenary (complete) powers. It is not envisaged in the AES that the Secretariat, as the only other organ, possesses these powers and no mention at all is made of a Ministers' meeting. On the other hand the SM under art. 3.4 "may establish such committees and subcommittees and other subsidiary bodies as it considers necessary". It appears that it is pursuant to this power that the MF has come into existence. A less generous view is that the MF is on the same footing as a side meeting. This is the interpretation given to the Ministerial segment of the Conference of the Parties to the Convention on Biological Diversity.

History

5. Table 1 sets out the number of times Environment Ministers have met.

6. The "Conference on the Human Environment in the South Pacific", 8-11 March **1982**, was a Ministerial level meeting. It was here that SPREP was established as a separate entity hosted by the SPC and jointly coordinated by the SPC, SPEC, ESCAP and UNEP. It was not until **1986** however that the first intergovernmental meeting was held, allowing governments to be directly involved in the running of SPREP.

7. A Ministerial-level Meeting was again held on 8-9 July **1991**. This seems however to have been an isolated occurrence, possibly convened because a Ministerial Statement was needed for the 1992 Rio Earth Summit. Around this time it was decided that SPREP should become an autonomous organisation, established by treaty. In 1992 SPREP relocated to Samoa and in 1993 the Agreement Establishing SPREP was concluded which made SPREP autonomous and no longer part of SPC. The AES entered into force in 1995. The SM of 1995 agreed on a timetable of meetings from 1996-2002 that included a “SM at Ministerial level” to be held in 1996 and again in 2001.

8. Accordingly, in 1996 a Ministerial meeting was held, the first Ministerial-level meeting under an autonomous SPREP. The SM proposed to the MF that MFs be held every 4 years. This was agreed to, and the next Ministerial meeting took place in 2000.

9. In 2000, the SM requested the MF to consider whether to continue to meet every 4 years or whether to meet every 2 years. The Ministers agreed to meet every 2 years, (in the process cancelling out the 1995 decision for a MF to be held in 2001).

10. In 2002 the SM proposed that the MF be held annually and this was agreed to by the MF. A MF was duly held in 2003.

11. In 2004 however the MF agreed to “meet every 2 years or as necessary”. This is the latest pronouncement regarding the frequency of the MF. There are several ways this may be interpreted, but a charitable view would be that the MF meet at least every 2 years, but could also meet the year following if it was considered necessary.

TABLE 1: Years in which Ministers have met, alongside Intergovernmental Meetings (IGMs) and SPREP Meetings (SMs)

IGMs & SMs	Year	Ministers' Meetings	Venue
1. IGM	1986		Noumea
-	1987	-	-
2. IGM	1988		Noumea
-	1989	-	-
3. IGM	1990		Noumea
4. IGM	1991	y	Noumea
5. IGM	1992		Apia
6. SM	1993		Suva
7. SM	1994		Tarawa
8. SM	1995		Apia
9. SM	1996	1 st	Nukualofa
-	1997	-	-
10. SM	1998		Apia
-	1999	-	-
11. SM	2000	2 nd	Agana
12. SM	2001		Apia
13. SM	2002	3 rd	Majuro
14. SM	2003	4 th	Apia
15. SM	2004	5 th	Papeete
16. SM	2005		Apia
17. SM	2006	6 th	Noumea
18. SM	2007		Apia
19. SM	2008	7 th	Pohnpei
20. SM	2009		Apia

Status of Ministers' Forum

12. If the MF comes into being under art. 3.4 of the AES as a subsidiary body, why is it requested by the SM to “endorse” its major outcomes? Endorsement tends to suggest the MF has the final say, not the SM. There are several factors that indicate this is not the case.

- (a) Frequency. It is obvious from the foregoing passages that there is no consistency in the frequency of the MF, particularly in the years when SPREP first became autonomous. This indicates there is no clear mandate regarding the MF. In addition, it has been almost always the SM, rather than the MF itself, which has dictated the frequency of the MF.

A question arises as to what happens in those years that the MF is not convened. Does this mean the SM outcomes do not require endorsement? What happens to those outcomes? The AES supports the view that the SM has that power at all times. There is no solid support for the view is that the power alternates between the SM and the MF.

- (b) Delegation. Article 3.3 lists a number of functions of the SPREP Meeting, including for example art. 3.3.g: “to appoint the Director”. Does the SM have the ability to delegate its functions and has it impliedly done so by seeking the MF’s “endorsement”? If the SM can delegate its functions, and this arguable, it should do so in express and unambiguous language. It is submitted that a request to endorse is not a clear enough expression of delegation of a final decision-making power. It is therefore submitted the endorsement is merely the ability to confirm however a non-confirmation carries no substantive consequences.
- (c) Existing avenue. If Ministers wish, they can represent their countries by attending as delegates to the SM. The SM in some years has been called the SM of officials, but the AES does not mention that term at all.
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Officials are extensions of their Ministers and should present positions that are consistent with their Ministry’s policy and by implication, the Minister’s will. These positions are then discussed at the SM and a decision reached by consensus. It would be needlessly repetitive for Ministers to be able to reopen and redebate those positions. Moreover, to arrive at a contrary decision would be a source of embarrassment. On present advice, a contrary decision by the MF would be seen as “unconstitutional” or even inconsequential.

On the other hand, it may be feasible for a matter on which a consensus decision had not been reached at a SM to be referred to the MF for resolution.

13. For the above reasons, and because the MF appears to have been created pursuant to art. 3.4 of the AES, it is submitted that the MF has an advisory rather than a final decision-making power. The forum for making final decisions is the SM.

Conclusion

14. The current situation therefore seems to be that (i) MFs will be convened as necessary; and (ii) MFs do not have final decision-making powers.

15. If it is the desire of the SM that the Ministers should have final decision-making powers then this should be made clear, or clearer than it is at present. For the MF to be empowered to have the final say, above that of the SM, the AES would probably need to be amended in unambiguous language.

16. In contrast, a similar result could be achieved if Ministers simply attended the SM as heads of delegation: the so-called “SM at Ministerial level”. There wouldn’t be a need for a separate meeting for Ministers and no need to amend the AES or pass any enabling resolutions.

Recommendation

17. The Meeting is invited to:

- **consider** the current situation regarding the Ministers’ Forum and **decide** whether any changes need to be made or action taken particularly in relation to the decision-making powers of Ministers.