

DISCUSSION PAPER

ESTABLISHING THE PACIFIC ISLANDS LAW OFFICERS' NETWORK (PILON) AS A REGIONAL ORGANISATION

Discussion paper contents

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Introduction

At the 25th Pacific Islands Law Officers' Meeting (PILOM) held in Kiribati on 9-12 February 2007, members agreed that the annual meeting would have a broader role as a network of senior Pacific Island law officers titled the Pacific Islands Law Officers' Network (PILON). In making this change PILON must consider its future role, and how it should be constituted.

The Secretariat in consultation with the Steering Committee has developed a draft Charter (**Annexure 1**) and Rules of Procedure (**Annexure 2**) for PILON. This paper discusses those documents and outlines proposals put forward by the Steering Committee for the establishment of PILON as a regional body.

The Steering Committee's proposals reflect the outcomes from the 25th PILOM, as outlined in the *Report of Chair – 25th Pacific Islands Law Officers' Meeting – Bikenibeu, Tarawa, Kiribati – 9-12 February 2007* (Chair's report) (**Attachment A**). Consideration has been given to the approaches of other regional Pacific organisations. They are also informed by two papers presented at the 25th PILOM, the *Pacific Islands Law Officers' Meeting Review* (PILOM Review) paper coordinated by the Pacific Islands Forum Secretariat (**Attachment B**), and the Australian *Proposal for a Permanent PILOM Secretariat* discussion paper (**Attachment C**).

Executive summary

This discussion paper puts forward 19 proposals to establish and formalise PILON as a regional organisation. The proposals in this paper were developed by the Secretariat and have been endorsed by the Steering Committee for PILON members to consider. For convenience they are listed at the end of the paper.

Charter and Rules of Procedure

The Steering Committee recommends that PILON endorse a draft Charter (**Annexure 1**) and Rules of Procedure (**Annexure 2**). The Charter would be a founding document for PILON while the Rules of Procedure would formalise existing and proposed conventions governing annual meetings.

Legal status and powers

It is necessary for PILON to address the issue of the legal status of the organisation. The discussion paper sets out three options. The Steering Committee recommends that the current arrangement of a member agency supporting the Secretariat continue and consideration of establishing a legal entity be deferred for two years until funding has been secured.

Funding

PILON has no established funding and the Secretariat is being hosted by the Australian Attorney-General's Department on an interim basis. Until significant and sustainable funding is available the Secretariat will not be able to be established in Fiji. The Steering Committee recommends members consider their position on funding the Secretariat for discussion at the 26th PILON meeting. The Secretariat will examine long term funding options with the aim to settle the issue by the 27th meeting.

Establishing the Secretariat

The Steering Committee recommends that the role of the Secretariat would be to progress PILON outcomes, information sharing, regional liaison, and general secretariat services. These roles are included in the draft Charter and Rules of Procedure.

- Secretariat staffing - In accordance with the PILOM Review, the Steering Committee recommends that the Secretariat be staffed initially by two officers. These officers would be a Secretariat Coordinator and a policy officer who would also cover administrative responsibilities. The draft Charter provides for employment of additional Secretariat staff.
- Recruitment - The paper puts forward options for recruitment depending on the structure members determine for PILON. Recruitment is proposed to be run by the Coordinator in consultation with the Steering Committee and the agency supporting the Secretariat.
- Term of Secretariat positions – The Steering Committee recommends that Secretariat positions have a maximum term of three years with an option to renew if appropriate.
- Secretariat responsibilities – The Steering Committee recommends some responsibilities of the Chair be shifted to the Secretariat in consultation with the Chair. Accordingly, the Secretariat would be responsible for meeting invitations, settling the agenda, preparing and publishing the outcomes report, performing secretarial services for the annual meeting, and maintaining official reports.

Steering Committee and other PILON committees

The Steering Committee recommends that a permanent Steering Committee be established and comprise the Chair and the Incoming Chair approved by PILON members and at least two other member countries. It also recommends topic specific committees be created on a needs basis.

Role of Chair and host country

In accordance with recommendations for the Secretariat responsibilities, the Steering Committee recommends that the existing convention of the host country organising and chairing the meeting and covering the costs be formalised. The Secretariat would work with the Chair and host country on the organisation of the meeting in a coordination role as appropriate.

Membership

The draft Charter and Rules of Procedure set out provisions to formalise PILON membership. The Charter contemplates two tiers of membership as ‘member countries’ and ‘observer members’.

- Member countries - The Steering Committee recommends that traditional PILOM member countries be formalised as founding members of PILON. Membership expansion may be extended by consensus agreement, including territories. Members may wish to consider admitting French Polynesia and New Caledonia as member country of PILON.
- Observer members - The Commonwealth Secretariat, the International Committee of the Red Cross, the Pacific Islands Maritime Law Association, the Pacific Islands Forum Fisheries Agency, the Pacific Islands Forum Secretariat, the Pacific Legal Information Institute, the Pacific Regional Environment Programme, the Secretariat of the Pacific Community, and the University of the South Pacific are proposed to be formalised as founding observer members of PILON.

Provision may be made for future admission of additional observer members by resolution of the member countries.

The Steering Committee also recommends processes for non-member observers to attend PILON meetings either by request to or invitation from the Secretariat.

Participation at the annual meeting

The Steering Committee recommends that PILON member countries and observer members be able to participate in the annual meeting in their respective capacities. The Chair may close PILON meetings for member country and selected observer member attendance only. The paper sets out a process for the Secretariat to invite or receive a request from an observer member or a non-member observer to give a presentation at the meeting.

Quorum

The Steering Committee recommends that quorum be established by a majority of PILON members present at the annual meeting. Provision has been made for a situation where a majority of members are unable to attend the annual meeting. In this instance it is recommended that the Chair should have discretion to run the meeting if a majority of members consent to the meeting proceeding.

Suspension of members

PILON members may wish to consider whether the organisation should have the power to suspend members.

Background

Traditionally PILOM was a forum in which senior law officers across the region met informally on an annual basis to discuss law and justice challenges facing them in their respective countries and across the region. Each country submitted a country report outlining significant law and justice issues which could be shared and discussed. The meeting tended not to have formal outcomes. Matters were discussed informally and outcomes were generally left to interested parties to progress out of session.

At the last PILOM members considered the PILOM Review and endorsed a name reflecting a new role, the Pacific Islands Law Officers' Network. The change reflected members' desire for a renewed emphasis to be given to the information-sharing role of the organisation, as well as signifying the importance of moving forward on an agreed work plan between meetings. The work plan is being supported by a Secretariat which has carriage of many of the action items.

PILOM members confirmed that a permanent Secretariat should be established, with the Australian Attorney-General's Department running the Secretariat in Canberra on an interim basis.

Charter and Rules of Procedure for PILON

At the 25th PILOM, members agreed that the Steering Committee should develop a draft foundation document for PILON to specify its purpose, roles and responsibilities.

A charter or foundation document would govern the operation of the organisation, including the exercise of its powers and responsibilities. The adoption of such an instrument would mark a departure from past PILOM practice which permitted informal rules to be established as the chair of each meeting saw fit.

To turn PILOM into an effective PILON there is a need to formalise the arrangements that have been loosely followed over the years. Accordingly, the Steering Committee recommends adopting a charter and procedural rules on running meetings. The Steering Committee recommends that the draft Charter at Annexure 1 and draft Rules of Procedure at Annexure 2 be endorsed by PILON following discussion and resolution of a range of issues outlined in this paper.

Proposal 1: That PILON agrees that it should be established by a Charter, and considers the text of the draft Charter at Annexure 1 and draft Rules of Procedure at Annexure 2.

The new role of PILON

One of the key issues for the Charter is the expression of PILON's role through a purpose clause. The significance of the purpose clause depends on the legal status of PILON.

Depending on the structure of the organisation the purpose clause may be used as a guide, but it could also limit PILON's activities. Accordingly, such a clause would need to be broad enough to cover activities that are not currently envisaged, but give sufficient guidance on what PILON stands for.

The PILOM Review suggested some parameters in which a revitalised PILON could operate, which were endorsed at the 25th meeting. Under these parameters PILON's new role is to:

- address legal gaps in the regional security and law and order agenda, for example through engagement with the Forum Regional Security Committee¹
- contribute to the broader regional legal agenda taking on issues from members and stakeholders, and
- develop its own agenda of priorities.²

Another consideration for the purpose clause is the possible geographical jurisdiction of PILON. Although PILON is a Pacific organisation there should be flexibility to work with international organisations or non-government organisations, regardless of location.

The Steering Committee proposes that the purpose of PILON be set out under article 2 of the draft Charter. The clause is drafted to give PILON members flexibility to conduct activities that fall within the Review Team's suggested parameters, but ensures there is scope for new activities to be undertaken.

Proposal 2: That PILON endorses article 2 of the draft Charter setting out PILON's role.

¹ David Lambourne, Solicitor General of Kiribati, attended FRSC on 28 June 2007 and made a statement about PILON outcomes from the February 2007 meeting.

² Pages 15 to 22 of the PILOM Review.

Legal status and powers

PILON members have indicated that they wish to consider establishing a legal entity for the organisation. Having a legal entity would enable PILON to, among other things, employ staff and enter into contracts and agreements with other entities. This would include raising money and leasing premises for the Secretariat. It would also be necessary for PILON to consider the requirements to protect it from lawsuits.

Three options for establishing a legal entity have been considered:

- establishment by international agreement
- establishment of a legal entity in a country, and
- no legal entity but agency hosting and support.

Option 1 - Establishment by international agreement

One of the most common bases for Pacific regional organisations is formal establishment following international agreement. Although the legal basis of each organisation differs, Pacific regional organisations' founding documents enable each organisation to enter into contracts and conduct business as required to achieve the organisation's outcomes. This includes the right to sue, and flowing from that, the ability to be sued.

For this option to be carried out the Secretariat would need to draft an international agreement based on the Charter. The agreement would need to be settled between member countries prior to consideration by PILON members. Once established, the agreement would also need to be given effect by member countries either through memorandum of understanding or by ratification.

Establishment by international agreement relies on countries implementing agreements and conventions to confer rights and obligations on the organisations for their activities in each country.

Although international agreements need not have legal effect, many Pacific regional organisations' founding documents attempt to create some aspect of immunity from being sued through agreements with member countries.

The basis for the Pacific Islands Forum Secretariat and the South Pacific Regional Environment Programme are considered as examples below.

Pacific Islands Forum Secretariat

In 2000 the *Agreement establishing the Pacific Islands Forum Secretariat* was done in Tarawa, Kiribati. The agreement establishes the Pacific Islands Forum and its Secretariat. It provides for officials committees, a Secretary-General, to employ and regulate conditions of staff, establish a budget, and the legal status and immunities of the Secretariat.

Article XI of the agreement sets out the legal status, privileges and immunities for the Forum Secretariat (see **Attachment D**). This provision permits the Forum Secretariat to operate as a body corporate with the benefit of immunities by way of agreement with each country.

A subsequent agreement has been proposed to establish the Forum as an international organisation. The *Agreement establishing the Pacific Islands Forum 2005*, which is not yet in force, sets out the

internal rules of operation of Pacific Islands Forum. It updates the existing Agreement Establishing the Pacific Islands Forum Secretariat to better reflect the changes in the way in which the Forum operates, and to give the Forum itself legal personality.

Article X of the new agreement sets out the framework establishing the Forum as a legal entity (also at Attachment D). This provision clearly establishes the Forum as a body corporate in each member country in a similar manner to what has been conferred on the Forum Secretariat above. Each member state when ratifying this agreement would need to determine the immunities for members of the Forum.

South Pacific Regional Environment Programme–SPREP

SPREP is a regional organisation established by the governments and administrations of the Pacific region to look after its environment. SPREP is based in Apia, Samoa. SPREP is established under the *Agreement establishing the South Pacific Regional Environment Programme 1993*. The agreement sets up SPREP as an “intergovernmental organisation”.

It is important to note that SPREP’s Secretariat has no separate status. The legal status of SPREP is covered in article 8 of its agreement:

1. SPREP shall have such legal personality as is necessary for it to carry out its functions and responsibility and, in particular, shall have the capacity to contract, to acquire and dispose of moveable property and to sue and to be sued.
2. SPREP, its officers and employees, together with representatives to the SPREP Meeting, shall enjoy such privileges and immunities necessary for the fulfilment of their functions, as may be agreed between SPREP and the party in whose territory the Secretariat is located, and as may be provided by other parties.

The immunities conferred in this agreement are similar to the Secretariat, though SPREP is not named as a body corporate. Accordingly the Secretariat for SPREP would need to secure arrangements for its establishment and immunities in the member country in which it is located and in other member countries as appropriate.

If PILON endorses this option, the PILON Secretariat would also need to secure such agreements and consume significant resources of the Secretariat to establish itself.

Option 2 - Establishment of a legal entity in a country

An alternative way to establish PILON would be to establish a body corporate or incorporate as an association within a member country. The entity could be either for the Secretariat, or for both PILON and the Secretariat. The Charter would serve as the foundation document providing a legal status which binds the organisation.

Under this option it would be necessary to comply with Fiji legislation. This could raise compliance issues, and would require officers to be identified as office bearers of a company or an association.

Establishing a local entity does not address the issue of immunities. Given members have agreed that the Secretariat be based in Fiji, this issue could be overcome by the Fiji Government agreeing to confer the same privileges and immunities on PILON as the Pacific Islands Forum Secretariat.

Under this approach PILON members would have to be comfortable with PILON being a locally incorporated entity in Fiji, despite being a regional organisation.

Agreement to this structure would only need to be recorded in the outcomes of the PILON meeting authorising the PILON Secretariat to work with the Steering Committee to establish the entity. The PILON Secretariat would then be in a position to become a legal entity which would entitle it to receive funding, employ staff and enter into contracts.

Option 3 - No legal entity but agency hosting support

The third option would involve PILON continuing to be an informal association but with the organisation's principles and procedures enshrined in a Charter. This document would set out the aspirations and internal procedures for PILON rather than serve as a legally binding document.

This option would require an organisation in a member country supporting the permanent Secretariat. PILON Secretariat staff would be employed by the agency and have access to the structures of that agency. Funding would not necessarily need to come directly from the agency. For instance it would be possible for donors to provide funding for the Secretariat to the agency hosting the Secretariat, but indirect costs of engagement and activities would be expected to be absorbed.

Option 3 would also involve the member country agency supporting the work of the organisation at the wishes of PILON. For instance, the member country agency supporting the Secretariat would need to be willing and able to support the deployment of the Secretariat in its agreed location in Fiji at an appropriate time in the future. Two years would be an appropriate period for PILON to reconsider the choice of legal entity and location of the Secretariat which should enable it to achieve early goals and secure funding.

Pacific Islands Chiefs of Police

The Pacific Islands Chiefs of Police (PICP) is an example of a Pacific regional organisation that has a limited formal basis of a constitution but is not a legal entity. The PICP is an organisation of 21 member countries and territories in the Pacific which aims to share information, discuss issues, devise and promote strategies on policing in the Pacific Islands. A full meeting of the organisation is conducted yearly, with executive groups and project teams continuing the work throughout the year with the support of a full time secretariat.

The PICP bears some similarities to PILON. It changed its role in 2005 from an annual conference of chiefs of police to have a role throughout the year through by establishing the PICP Secretariat.

The PICP Secretariat is housed within the New Zealand Police. It uses New Zealand Police structures for contracts, human resources, legal and financial advice. The PICP regards its relationship with the New Zealand Police as sufficient to address legal issues that arise.

PICP funding is channelled through the New Zealand Police to the PICP. The PICP has advised that this structure works well and there are no plans to change it.

Pacific Immigration Directors' Conference

The Pacific Immigration Directors' Conference (PIDC) is supported by a member agency with a view to becoming a legal entity in the future. The PIDC Secretariat is currently run out of Fiji by Immigration New Zealand. Accordingly PIDC's financial, administrative and contractual processes

are undertaken on behalf of the PIDC through Immigration New Zealand at the New Zealand High Commission in Suva. The PIDC and its Secretariat are seeking to be established as an entity in Fiji, but since the coup the issue has not been settled with the current Fiji administration.

Create a legal entity or continue as an informal association?

These options are dependent on the degree to which PILON and the Secretariat intend to be self sufficient, including having sufficient funding and staff resources to achieve the objectives of the Secretariat.

Options 1 and 2 would require PILON and the Secretariat to largely stand alone. To minimise its exposure to legal liabilities PILON would need country members and organisations with which it deals to agree to immunities. This would initially mean an agreement would need to be made with Fiji (location for permanent Secretariat), the Forum Secretariat (host of Secretariat), and countries that host PILON meetings. It would also be necessary for PILON to consider other areas which may give rise to potential risk and ensure that the organisation is protected. This may include the organisation taking out insurance to cover areas for which it could be liable.

Without significant permanent resources and a defined role it would be difficult for the PILON Secretariat to operate effectively and for its efforts to be sustainable. The PILON Secretariat would be co-located with the Forum Secretariat rather than underneath that structure. The Forum Secretariat has offered in-principle agreement to provide office space free of charge, including administrative services, such as some use of shared facilities and financial services. In addition to the establishment and operating costs for an office, there would have to be sufficient funds for an office to be set up, Secretariat staff recruited, as well as insurance and legal costs.

For option 3 to be effective an agency from a member country would need to agree to support the Secretariat. There may be periods in which PILON would not be fully funded until it can secure its own funding. Accordingly it would be necessary for the supporting agency to have sufficient funds available to support the Secretariat to undertake its activities. In addition, the agency would need to be able to fulfil PILON members' wishes of having the permanent Secretariat located in Suva. In effect the employees of the responsible agency running the Secretariat would be employees of that agency working in Suva.

Option 3 would not prevent PILON from establishing a permanent Secretariat, or from achieving its goals of contributing to the law and justice policy of the region. Instead of obtaining funds to spend on establishing a separate legal entity, the Steering Committee considers that the PILON Secretariat focus on addressing some of the important law and justice issues within the region. The production of well researched policy material as a result of issues to be progressed during meetings would do more for PILON's reputation than establishing a legal entity at this time. PILON members may consider it necessary and within its means to establish a legal entity in the future. Accordingly, the issue of establishing a legal entity could be explored again in two years' time once funding for the Secretariat is secured.

Proposal 3: That PILON endorses option 3, continuing the arrangement for an agency of a member country to support the Secretariat, with a review of the arrangements in two years' time.

Funding options

At present PILON has no continued source of funding. The Australian Attorney-General's Department is currently hosting the Secretariat and absorbing its associated costs. There has been no additional allocation of funds and the role has been fulfilled in addition to the substantive work of the responsible area within the Department. Without significant funding to establish the Secretariat in Fiji, it is unlikely that the Secretariat will be able to be based in Fiji in the near future.

In the medium to long term funding may be able to be acquired from a number of international bodies. However, it may be difficult to attract funding without a proven record of success within the region. Even if PILON is successful in obtaining external funding it is still likely that that member countries will have to contribute financially to the organisation. Accordingly, the Steering Committee recommends that member countries consider contributing to the Secretariat and be willing to communicate their country's position on this issue at the 26th PILON meeting.

The Steering Committee proposes that the Secretariat be charged with investigating and securing long term funding options to the extent possible, with the aim of the issue being settled by the 27th PILON meeting.

Proposal 4: That members consider contributing funds to support the PILON Secretariat.

Proposal 5: That PILON agrees that the PILON Secretariat investigate future funding options.

Secretariat

At the 25th PILOM, member countries agreed that a permanent Secretariat should be established and located in the long term at the Forum Secretariat in Suva, Fiji.³ At the June 2007 Forum Regional Security Committee Meeting in Fiji, representatives for Fiji endorsed this proposal. PILON must now seek an endorsement from the Forum Secretariat. Before PILON can seek such an endorsement it is also necessary to settle the role of the Secretariat.

Role of Secretariat

The *Proposal for a Permanent PILOM Secretariat* paper presented by Australia at the last annual meeting made recommendations on the Secretariat. Broadly these roles involve the Secretariat:

- progressing PILON outcomes
- sharing information between members
- facilitating regional liaison, and
- providing secretariat services.⁴

This proposal was postponed to allow the Steering Committee to decide on the appropriate role. The four key areas above provide a clear mandate while remaining broad enough to allow the work of the Secretariat to evolve naturally without the need to seek approval from PILON or the Steering Committee for each task undertaken.

Progressing PILON outcomes

³ Subject to the formal approval of the Forum Secretariat and the Fiji Government.

⁴ Discussion paper, *Proposal for a permanent PILOM Secretariat*, considered at PILOM XXV, at page 4.

The Steering Committee recommends that the PILON Secretariat progress PILON outcomes through preparing discussion papers based on policy proposals endorsed at the annual meeting. The Secretariat's role would also include liaising with other Pacific and international organisations to progress these initiatives. The Secretariat would also be responsible for monitoring and coordinating the activities of PILON by reference to PILON's Strategic Plan and annual Work Plan.

Information sharing

This role would primarily involve maintaining the PILON website and providing a means by which members could easily communicate with one another, potentially through the website. The Secretariat would also be responsible for providing members with up to date information and reports about the work of PILON, as well as sharing useful information about law and justice issues.

Regional liaison

The regional liaison component involves the Secretariat engaging with Pacific regional organisations' activities. This would enable PILON members to have better access to the work of other Pacific regional entities, to forge links on shared interests, and respond to issues in a more coordinated way. Involvement in the Forum Regional Security Committee and its working groups would also provide PILON with a vehicle for progressing of law and justice issues where appropriate.

Secretariat services

The Secretariat would also provide secretariat services for each meeting. This would involve some devolving of responsibilities to the Secretariat from PILON members. It is recommended that the permanent Secretariat have responsibility for a number of tasks which have traditionally fallen to PILON members. This would prevent PILON tasks being delayed because of more pressing responsibilities of representatives. In addition, the Secretariat would be responsible for maintaining official meeting reports and copies of circulated documentation between meetings for members as requested to ensure there is a historical database of actions and decisions.

Proposal 6: That PILON endorses the role of the Secretariat, as provided for in the draft Rules of Procedure, to involve:

- (i) facilitating implementation of resolutions passed by PILON at its annual meeting in accordance with the PILON Strategic Plan and annual Work Plan***
- (ii) providing an information-sharing and communication network for PILON members***
- (iii) providing a focal point for liaison with other regional law and justice mechanisms, and***
- (iv) providing a full range of secretariat support services to PILON members, the Chair and host authorities.***

Secretariat staffing

The PILOM Review proposed that initially two positions would be created. This was based on a review of other Pacific organisations which have a similar structure. The PILOM Review divided the roles of the Secretariat Coordinator and the Administrative Officer as follows:

Administrative officer

- managing the administration of the office
- providing general secretariat service and support to PILON, the PILON Chair and host authorities, including in the organisation of the annual meeting
- maintaining the records of PILON, including minutes of its annual meeting and records of correspondence, and making them accessible to members as required, and
- preparing an annual financial report to PILON on the expenses of the office.

Secretariat Coordinator

- facilitating the implementation of PILON resolutions
- establishing an information and communication network for PILON members
- working with the PILON host to develop an issues-based agenda, identifying a list of regional priorities and consulting PILON members prior to each PILON meeting
- convening and supporting working groups or subcommittees, and
- reporting to the PILON annual meeting on the work carried out by the Secretariat in the past year.

These initial positions should be sufficient to deal with the expected workload of the Secretariat if supported by an agency or agencies in member countries. However, while there will undoubtedly be administrative work, it is unlikely that this will require a full time position and it may be a better use of resources for the second position to also have a legal policy and research focus.

The person employed in such a capacity would assist the Coordinator to write policy papers, conduct research, and perform administrative responsibilities. The officer would be tasked with assisting on logistical arrangements for travel and organising meetings, as well as being responsible for general office administration where it is required. It should be noted that there may be opportunities to utilise the services of a host country agency or the Forum Secretariat to effectively share existing resources for everyday administrative tasks on a part-time basis. Nonetheless the officer employed to assist the coordinator would need to be willing and able to perform these tasks.

Although it may be difficult to recruit a candidate who is willing and capable of fulfilling a position with legal/policy/administrative elements, a pay level competitive with a junior private practice lawyer, but with regular business hours, would be a suitable incentive to attract suitable talent for the position from across the Pacific. The type of person envisaged for this role would be a junior lawyer or a legal officer from a member country agency.

With this type of role in mind, the position could instead be titled ‘Assistant Coordinator’ and the following responsibilities inserted at the beginning of the job description:

- undertake research as directed by the Secretariat Coordinator, and
- assist the Coordinator to prepare discussion papers and other materials to further PILON objectives.

At certain times there may be opportunities to utilise other resources for specific tasks. For instance it may be possible to host a University of the South Pacific law intern to conduct research with a

view to a paper for PILON being written. Alternatively secondments may also be possible should there be sufficient demand.

At a later date, if necessary, PILON could create further positions for the Secretariat. Recruitment action should be provided for in the founding document and is proposed in draft form in article 7 of the Charter.

Should the other proposals in this paper be agreed, the Secretariat Coordinator would be responsible to the agency supporting the Secretariat for everyday activities. The Secretariat Coordinator would need to implement the wishes of the Steering Committee and the Chair as appropriate for the tasks the Secretariat is working on.

Recruitment of Secretariat staff

Recruitment of the Secretariat staff would depend on the options chosen in this discussion paper for PILON's legal status and the committees of PILON.

- *Option 1* - The Steering Committee or a specific committee of PILON could be established to undertake the recruitment process with the assistance of the interim Secretariat.
- *Option 2* - Alternatively, if the Secretariat is run by an agency of a member country, a process could be conducted by that agency in consultation with the Steering Committee or another committee of PILON.
- *Option 3* – Involves choosing option 1 or 2, but the Coordinator recommends for approval by the Steering Committee of the Assistant Coordinator following advertisement of the position in member countries.

This discussion paper recommends option three to allow the Coordinator to decide on the recruitment of the policy officer and other staff of the Secretariat, but in consultation with the Coordinator's supervisor and the Steering Committee. Depending on the structure of PILON, an appropriate human resources policy may need to be used for recruitment, including the Coordinator convening a recruitment panel.

Proposal 7: That PILON, in accordance with article 7 of the draft Charter:

- (i) ***endorses the recruitment of a Secretariat Coordinator and an Assistant Coordinator, and***
- (ii) ***agrees that the Secretariat Coordinator should recruit the Assistant Coordinator and other Secretariat staff as appropriate in consultation with the Steering Committee or other oversight body.***

Term of Secretariat positions

As part of the recruitment process, PILON should consider the term of the Secretariat positions.

A review of Pacific organisations reveals that some Secretariat positions are appointed according to specified terms. The Council of Regional Organisations of the Pacific (CROP), which includes the Secretariat of the Pacific Community and the Pacific Islands Forum Secretariat, has harmonised conditions of service. All CROP Agency staff are on three-year contracts, renewable once.

There should be some guidance in the Charter on the term for Secretariat staff. This would provide some structure to the recruitment process. However, there should be flexibility for PILON and/or the Steering Committee to determine staffing arrangements for the Secretariat. Placing a fixed term on the Secretariat positions may restrict the pool of people willing to undertake the position, as some people may not be willing to commit to a long term. This is particularly important in a fluid labour market where staff transition between jobs despite having fixed terms.

There should also be flexibility to attract staff who can only work for shorter periods. Adopting a flexible approach encourages honesty from applicants about their intentions on how long they wish to work in a particular position and is more conducive towards succession planning for effective transitions between officers.

The Steering Committee recommends that a maximum term of three years for the appointment of Secretariat staff be included in the draft Charter. The maximum period would allow appointments for any term up to that period. An option for review and renewal should also be available, to save the cost and time involved in a recruitment process if there is a suitable person already in the position who wishes to continue in that position.

A provision has been included in article 7 of the draft Charter reflect this position.

Proposal 8: that PILON endorses a maximum term for the Secretariat positions of three years with an option to renew in accordance with article 7 of the draft Charter, and that the Steering Committee (or a committee established on staffing issues) has responsibility for appointments.

The Steering Committee

The current Steering Committee was established at the 25th meeting of PILOM. It currently comprises Kiribati as Chair, the Cook Islands, the Federated States of Micronesia, and Tonga. A Work Plan for the Steering Committee was adopted at that meeting and focuses on the reform of PILON. The work plan is attached to the Chair's report at Attachment A.

Formalising mechanisms establishing PILON committees

One key issue in formalising PILON is whether a permanent Steering Committee should be established.

The Steering Committee recommends that PILON endorses the establishment of a permanent Steering Committee and also ad hoc issue specific committees to deal with specific issues. The establishment of these committees will help to ensure that PILON objectives are pursued between the annual meetings. The Steering Committee could also give direction to the Secretariat throughout the year, monitoring progress and addressing any issues as they arise and endorsing actions.

Steering Committee

A permanent Steering Committee would be useful to ensure that the Secretariat has guidance throughout the year and decisions made at the annual meeting can be effectively and quickly implemented.

In terms of the composition of the Steering Committee, a committee with four members has worked well. At present the interim PILON Secretariat has not had full capacity to work on PILON issues throughout the year, but this is expected to change with PILON's increasing engagement with substantive regional issues. This will inevitably place greater demands placed on the Steering Committee.

PILON members should retain flexibility to decide which members are on the Steering Committee. The presiding Chair and the incoming Chair should both be on the Steering Committee even if there is some overlap between those roles. There should also be at least two non-Chair member countries to ensure there is sufficient capacity to assist the Secretariat. The second member country representative on the committee should only be able to step down if another PILON member country representative nominates to replace that position. It is not proposed to include a maximum number of members for the Steering Committee.

The model would work as follows:

- The Steering Committee would comprise the Chair for a meeting and at least two other member countries.
- A member country representative would need to nominate his or her country to be part of the Steering Committee. Nominations would either be in writing to the Secretariat prior to the meeting, or be given orally to members during a meeting.
- Members at a meeting would consider endorsing the nomination for the representative to join the Steering Committee provided the requirements in article 8 on minimum membership are satisfied.
- The presiding Chair and any incoming Chair would not need to nominate for membership of the Steering Committee. If not already a member of the Steering Committee, the person in the role as Chair would be deemed to be a member of the committee.
- When a Chair finishes his or her role, the member country would continue on the Steering Committee.
- Members of the Steering Committee would be free to step down from the committee at any time if the minimum membership requirements of the committee are satisfied. The Chair would only be able to step down from membership of the committee if the meeting he or she is responsible for has occurred or has been cancelled.

Topic specific committees

In addition to a permanent Steering Committee, topic specific committees would also be established as needed.⁵ Topic specific committees could deal with specific meeting outcomes and give direction to the Secretariat on issues progressed in that context. This would reduce the amount of time members would have to dedicate to PILON activities as they would only be dealing with specific outcomes and issues to which the outcomes relate. It would also ensure that responsibility for progressing PILON outcomes is shared amongst a greater proportion of members.

Articles 8 and 9 of the draft Charter provide for a permanent Steering Committee and for PILON to establish topic specific committees.

⁵ This was suggested in the PILOM Review at page 17.

Proposal 9: that PILON endorses having a permanent Steering Committee in accordance with article 8 of the draft Charter.

Proposal 10: that PILON endorses article 9 providing for PILON to establish issue specific committees as and when required.

Meeting responsibilities

Article 4 of the draft Charter sets out requirements for meetings. The purpose of each meeting is to provide members with an opportunity to address common law and justice in the region. It also enables information sharing about the work of PILON and developments in each country, outcomes to be progressed, direction for the Secretariat, and committee establishment and membership.

There may be some circumstances where PILON members need to discuss an urgent issue that cannot wait until the next annual meeting. For this reason article 4 provides for holding special meetings, which would be run more flexibly than an annual meeting.

In terms of the responsibilities during meetings, rule 6 of the draft Rules of Procedure sets out general guidance on responsibilities for an annual or special meeting. This section of the discussion paper outlines the proposed new roles for the Secretariat and the host country represented by the chair of the meeting.

Role of the Secretariat

The Steering Committee recommends that the Secretariat take an active role in the organisation of the annual meeting and be responsible for:

- sending invitations
- finalising the agenda
- assisting to coordinate the annual meeting
- administration, and
- preparing an outcomes report.

Invitations to PILON meetings

Traditionally it has been the responsibility of the host country to issue invitations to the annual meeting. This convention evolved due to an absence of any body having responsibility for the task. However this year the interim Secretariat has undertaken this task. It is now recommended that this task fall to the Secretariat as provided for by rule 2 of the draft Rules of Procedure.⁶

Agenda

The Steering Committee recommends that the agenda for the annual PILON meeting be the responsibility of the Secretariat in consultation with the Chair. A significant aspect of the formalisation process involves changing the focus of the annual meeting agenda. Members agreeing at the 25th PILOM from a country report based agenda to an issues based agenda is hoped to facilitate action orientated discussion and outcomes.

⁶ Article 3 of the Charter sets out the members and observer members the Secretariat would send invitations to.

To implement this change, general guidelines on settling the agenda have been developed at rule 4 of the draft Rules of Procedure. Rule 4 provides that a provisional agenda be sent with an invitation to a PILON meeting and a revised agenda be issued at least two weeks before the annual meeting. This time line should ensure adequate consideration time with PILON members before the annual meeting.

Assisting to coordinate the annual meeting

The Steering Committee recommends that the Secretariat work with the host country on logistical arrangements at the annual meeting. The host country would be responsible for organising the meetings in consultation with the Secretariat. The Secretariat may assist with logistical coordination of arrangements where appropriate, but would not be responsible for costs incurred with making the arrangements. In such circumstances the Secretariat may fly in to a member country in the lead up to a meeting to meet relevant stakeholders and to assist with arrangements prior to the meeting. The Secretariat would bear its own travel and accommodation costs.

Administration of annual meeting

The Steering Committee recommends that the Secretariat oversee administration during an annual meeting, including performing secretarial services such as printing and circulation of documents. Facilities of the host country would need to be made available for these purposes, and administrative assistance would be required.

Preparation of outcomes report

At the 25th PILOM members endorsed the proposal that an outcomes report be produced at the conclusion of each meeting. The procedure for developing an outcomes report is set out in rule 7 of the draft Rules of Procedure. It would involve an ad hoc outcomes drafting committee of member country representatives having responsibility to work with the Secretariat to draft an outcomes report during the annual meeting.

The Steering Committee recommends that at the beginning of each meeting the Chair request that members interested in being part of the drafting committee nominate for the role and work with the secretariat during the meeting to develop an outcomes report. The Chair would approve the draft report developed by the Secretariat and the drafting committee. PILON member country representatives would then endorse the content of the report before the meeting concludes, making agreed amendments as appropriate. The Secretariat would finally circulate an official version of the report to members and observers and publish the report on the PILON website.

Proposal 11: that PILON formalises the functions of the Secretariat in accordance with rules 2 (invitations), 4 (agenda), 6 (annual meetings), and 7 (outcomes report) of the draft Rules of Procedure.

Host Country

Traditionally the host country has been responsible for the agenda, providing a Chair for the meeting, as well as the logistical arrangements for the annual meeting. Although proposal 11 is for the Secretariat to have responsibility for some of the tasks associated with organising the annual meeting, the Steering Committee recommends that the host country should retain some responsibilities during meetings.

Role of the host country for annual and special meetings

The Steering Committee recommends that the host country continue to be responsible arrangements to host annual meetings. As outlined above, this role would involve working with the Secretariat on logistical arrangements. The host country's role would include:

- determining an appropriate meeting venue within the host country
- selecting suitable accommodation options for meeting delegates, including a lower cost option
- organising transport to and from the meeting venue
- organising official functions, and
- covering the costs associated with the annual meeting.

During meetings the host country would also be responsible for providing:

- communication facilities
- information, communication, printing and copying facilities for the Secretariat, as well as members and observers as appropriate
- stationery and office supplies, and
- other assistance to the Secretariat as required.

Appointment as host country and term of the Chair

Traditionally the Chair of PILON has been a nominated representative of the host country. This convention should not be changed and has been formalised in article 10 of the draft Charter. The term of the Chair should begin when arrangements for a meeting need to be made, and continue until the outcomes, and other matters pertaining to the meeting being held in that country, are finalised.

At any given time there could be a presiding Chair and an incoming Chair. The Incoming Chair would begin his or her role by endorsement of their nomination to chair a future meeting. The incoming Chair would become the presiding Chair of a meeting when the presiding Chair is no longer required to perform his or her role. The presiding Chair would continue to be responsible for all matters relating to the meeting he or she nominated for. Although there may be some points of overlap between a presiding Chair for one meeting and an incoming Chair, each would only be responsible on behalf of the host country for the meeting the country representative nominated to chair.

Circumstances where the host country is unable to host the annual meeting

There may be circumstances where the Chair or the host country is unable to run the annual meeting agreed to at the last PILON meeting. For example, a natural disaster could result in the country not being in a position to host the meeting. In such an event the Steering Committee recommends that the Secretariat work with the Steering Committee to contact PILON members to establish an alternative meeting. Depending on the timing of the Chair or host country's withdrawal of the offer to host the annual meeting, the meeting may need to be deferred.

Role and responsibilities of the Chair

Despite the proposed changes to some the traditional role of the Chair, the Chair would continue to have the important function of organising and chairing PILON meetings. Accordingly, the Steering Committee recommends that the role of the Chair would cover:

- consulting with the Secretariat on the attendance and participation of observers (rule 3) (see ‘Participation in PILON meetings’ below)
- contributing to and approving agenda the Secretariat develops for the meeting (rule 4)
- organising host country logistical arrangements to host a PILON meeting and overseeing implementation of those arrangements (rule 5)
- chairing the meeting (rule 5)
- establishing an ad hoc committee to draft PILON outcomes during a meeting, and giving initial approval to the draft outcomes report (rule 7), and
- representing PILON, as required, for the period between meetings.

Proposal 12: That PILON endorses changes to the role of the Chair in accordance with article 10 of the draft Charter, rules 3 (participation), 5 (chairing meetings), and rule 7 (role of the chair in setting PILON outcomes) of the draft Rules of Procedure.

Guidelines for membership and participation

At the 25th PILOM it was agreed that criteria be developed for PILON membership and observers. The following discussion sets out proposed criteria for PILON membership as well as guidelines on the status of observer members.

Member countries

PILON membership has traditionally been made up of members of the Pacific Island Forum—Australia, the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, the Republic of the Marshall Islands, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu.

There are three distinct options which could be used to formalise country membership in the Charter.

The first option would involve linking PILON membership to Pacific Islands Forum membership. Accordingly, under this option membership would not be determined by PILON members but rather by Forum members. The Forum has expanded in recent years at the specific direction of Leaders, to further engage the non-sovereign territories of the region in its work. This approach has resulted in Forum membership being broadly understood to encompass traditional members, associate members, and observer countries and territories. Traditional members of the Forum are the same as for PILON. Associate members of the Forum include French Polynesia and New Caledonia. Country observers include East Timor, Tokelau and Wallis & Futuna.

This approach would simplify PILON spending time on membership issues during meetings. However, PILON is a distinct entity from the Pacific Islands Forum of non-political senior law officers. Linkage to Forum membership may not allow sufficient independence for PILON to make its own decisions about which entities should be granted membership. Further it would also be

necessary for PILON to have different observer membership from the Forum due to the nature of its engagement with organisations operating in the Pacific on law and justice issues relevant to PILON.

The second option would involve PILON members determining membership by consensus during meetings. Founding members would be the traditional members of PILOM which would be listed in the constitution. To avoid having to amend the Charter to admit a new member, PILON members could agree to new members being added by consensus during an annual meeting. This would give PILON the independence to determine its own membership regardless of the Forum's membership. However, it would also mean PILON would need to spend time considering membership issues, in particular whether the French and United States territories of the Pacific, amongst of other countries and territories, should become members or observers of PILON.

The third option would involve a mixture of the first and second options. However, membership would be decided separately from the Forum, but include the category of 'associate member'. This could include countries and territories that wish to be involved with PILON but do not fall within its traditional mandate of members. This may be because the country or territory has an independent legal system (such as the French, United States territories) or because the jurisdiction has an interest in the Pacific but do not fall within the geographical scope of PILON (for example, the broader Pacific including the United States, Japan, Korea, China, the Philippines, and Chile). An associate membership class would enable PILON to allow territories or countries to have a status above observer groups but voting rights below foundational members. Weighing against this is a more complicated structure of voting which would need to be determined.

The Steering Committee recommends option 2 to enshrine the traditional membership of PILON and to flexibly enable non-members to join or participate at PILON. The existing membership has been formalised in article 3 of the draft Charter. Founding members are stated in the draft Charter, but PILON will be able to admit new members if existing members agree by consensus to admit them. The draft Charter also provides for the Chair to allow non-member countries or territories to observe or become observer members to attend PILON meetings. Accordingly there is no need for an associate membership as it would unnecessarily complicate voting rights. Rather, non-member countries or territories should be permitted to be involved with PILON should they wish to engage in discussions at PILON meetings or otherwise be accepted as observers for a meeting. Alternatively they could be observer members to regularly attend and participate in the discussions at meetings, but not have a vote on decisions during those meetings.

PILON may also wish to consider potential new members to include the French and United States Territories in the Pacific. At PILOM In 2005, the Forum Secretariat raised the question of participation. However, discussion was deferred at the 2005 meeting to enable PILOM to develop guidelines on membership. This followed the Public Prosecutor of French Polynesia requesting the Pacific Islands Forum Secretariat engagement with other Pacific Island countries to enable contact and eventual collaboration between prosecuting authorities in the Pacific. The request referred to New Caledonia having also expressed an interest in engaging with other Pacific Island countries. The relevant correspondence concerning membership is at **Attachment E**.

Proposal 13: that PILON endorses the founding membership of PILON comprising Australia, the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, the Republic of the Marshall Islands, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu, and consider whether to admit French Polynesia and New Caledonia as member countries or observer members.

Observer members

The following regional organisations have been present as observers at PILOM during various meetings—the Commonwealth Secretariat, the International Committee of the Red Cross, the Pacific Islands Forum Fisheries Agency, the Pacific Islands Forum Secretariat, the Pacific Legal Information Institute, the Pacific Regional Environment Programme, the Secretariat of the Pacific Community, and the University of the South Pacific.

The Steering Committee recommends that these organisations become founding observer members of PILON in accordance with article 3 of the draft Charter. There will increasingly be synergies on the work PILON may become involved with other Pacific regional bodies. This may lead to additional linkages with other similar entities, such as the Pacific Islands Chiefs of Police and the Pacific Immigration Directors' Conference. PILON may also involve itself with international organisations at some stage in the future.

In view of these possibilities, the discussion paper recommends that flexible criteria apply to expand observer membership by resolution at the annual meeting. Accordingly, article 3 of the draft Charter sets out the application process which essentially consists of a request for observer status being sent to the Secretariat. The request is forwarded to members and placed on the agenda for the annual meeting. Observer membership is addressed at the annual meeting where PILON member countries endorse or reject the request.

PILON members should note that at the last meeting of PILOM in February 2007 the Pacific International Maritime Law Association (PIMLA) submitted its application to become a member of PILOM. Letters of support for PIMLA were tabled from Tonga, Papua New Guinea, Samoa and Nauru. However, consideration of the request for observer status was deferred until guidelines for observer attendance have been adopted. Accordingly, should the draft Charter and Rules be adopted, and in view of the early request for observer membership, the Steering Committee recommends that PIMLA be accepted as a founding observer member of PILON.

Proposal 14: that PILON endorses the Commonwealth Secretariat, the International Committee of the Red Cross, the Pacific International Maritime Law Association, the Pacific Islands Forum Fisheries Agency, the Pacific Islands Forum Secretariat, the Pacific Legal Information Institute, the Pacific Regional Environment Programme, the Secretariat of the Pacific Community, and the University of the South Pacific as founding observer members.

Participation in PILON meetings

There are two participation issues at meetings that PILON should to consider as part of its formalisation process.

The first issue concerns member country participation. Traditionally PILON has been a meeting of senior law officers, including Solicitors General, Attorneys General, Secretaries for Justice, and senior Crown Counsel. The Steering Committee considers that the term 'senior law officer' should be defined to ensure representatives are appropriate to engage in the interests of the member country which they represent. This is to ensure that representatives who are otherwise 'law officers', are sufficiently senior and work in an appropriate legal policy role to effectively contribute to decisions made at PILON meetings.

To address this issue article 2 of the draft Charter defines a ‘senior law officer’ as a person who is responsible at the highest level of the public service of a country or territory for certain functions. The corresponding responsibilities for senior law officers are that the person is responsible for providing or settling legal advice to government, drafting or administering legislation in the law and justice sector, or taking legal proceedings on behalf of the government. This definition makes it clear that the senior law officer is a person who is a public servant rather than a political appointee. Accordingly a senior law officer would have the end responsibility for giving legal advice to government, administering law and justice legislation, for instance for criminal justice legislation, or commencing legal actions for the government, including prosecutions and civil suits. However, to enable PILON meetings to be as inclusive as possible, the senior law officer may delegate this role as appropriate but only in writing to the PILON Secretariat.

The second participation issue concerns observers. The review of PILON examined the practice of external observers taking part in PILON meetings and summarised the issue as follows:

64...In the past, in addition to country reports, PILOM is often requested by external groups such as NGOs to make presentations on particular issues of interest to them. While these presentations can be informative and valuable, they contribute to a further weakening of the focus of PILOM, and eat into the time available for PILOM to consider its own priorities. It is suggested that the PILOM Host and Secretariat should carefully consider such external requests against the need for a focused meeting, particularly where a number of requests are received. PILOM may wish to further consider alternative options for such groups to provide their message to the meeting such as inviting them to circulate written materials, or to arrange a side presentation on the margins of the main meeting.⁷

Accordingly it is necessary to balance the time given to observers for PILON to benefit from their input with the need to allow sufficient time to deal with core issues. Guidelines on the participation of observer members and non-member observers would help to ensure this balance, and allow PILON to be more flexible about its membership.

The Steering Committee recommends that observer members be invited to attend future annual meetings. However, it is important to consider the amount of time allocated to observers. To ensure the appropriate mix of observer participation and dedicated time to PILON business the following guidelines are proposed:

- Observer members should be invited to the PILON annual meeting
- Observer members should be excluded from members only meetings except where their presence is requested by the Chair
- Observer members should be able to participate and contribute to open discussions at the annual meeting
- In consultation with the Chair, the Secretariat may invite observer members to make a presentation at the PILON meeting when appropriate, and it is considered the presentation will complement the thematic issues on the agenda
- Observer members may apply to the Secretariat to make a presentation at the PILON meeting. In deciding whether to grant such a request the Secretariat in consultation with the Chair should consider:
 - the agenda set down for the meeting and whether the presentation will complement and add significantly to the issues to be considered, and
 - the available time at the meeting, taking into account the proposed agenda, and the necessary time needed to deal with PILON business, and

⁷ Pacific Islands Law Officers’ Meeting Review page 17

- Observer members may organise side events and circulate papers during the meeting taking advantage of the gathering of senior law officers from the Pacific region.

It is proposed that non-member observers be treated in the same way as observer members. Participation of non-member observers will inevitably be ad hoc. There may be reasons to invite a person or organisation to a meeting where their attendance is relevant to the subject matter of the meeting. Accordingly it is proposed that the Secretariat extend an invitation a non member organisation to make a presentation at or address the annual PILON meeting where the topic of the presentation is relevant to or complements the meeting.

Proposal 15: that PILON endorses the definition of a ‘senior law officer’ in accordance with article 2 of the draft Charter.

Proposal 16: that PILON considers adopting the guidelines for the status of observer members in the above terms in accordance with rule 3 of the draft Rules of Procedure.

Quorum

It is essential that PILON be able to conduct its business at each annual meeting.

Not every member country is always represented at the annual meeting. Non attendance can be due to members having logistical difficulties in getting to the location of the meeting. As members would be well aware, logistical difficulties include limited flights available, long travel times for meetings, unpredictable weather, and some Pacific airlines operating flight schedules which are not always reliable. In addition the costs of air travel and accommodation, as well as work requirements at the time, can mean attending PILON can be difficult.

A meeting quorum constituted by a majority of PILON country members present at the annual meeting would be a practical option for PILON. Accordingly, a majority of PILON country members would need to be present at any PILON meeting to constitute a quorum. This would ensure that decisions are made in a democratic way. Observer members being present or not present would not be relevant for quorum purposes.

In circumstances where a majority of country members are not able to attend the PILON meeting, the Chair should retain discretion to run the meeting with the agreement of a majority of members, by phone or correspondence where necessary. The Chair should be able to raise issues and advocate for members which are unable to attend the meeting.

Quorum requirements are set out in article 11 of the draft Charter to ensure continuity in the decision making process.

Proposal 17: that PILON endorses a quorum for meetings as outlined in article 11 of the draft Charter.

Suspension of members

PILON members may wish to consider having the power to suspend members when the need arises. High ethical standards should be applied to the organisation. Accordingly PILON could include power in the draft Charter to suspend member countries or representatives who fail to meet this

standard. Such a power, if agreed, would only be used to ensure that the reputation of PILON within the region and with stakeholders is not damaged.

It is only envisaged that member countries or representatives would be suspended in extreme cases. Suspension could be considered when a member country's or a representative's participation would be detrimental to the reputation of PILON or have a substantial negative impact on its work or objectives. This may include circumstances where the member country is engaged in activities in flagrant breach of international or domestic law, where sanctions have been imposed, or where the member actively seeks to undermine PILON's activities or reputation.

It would not be necessary to suspend a member country because of the action of one of their representatives. Instead it is suggested that if PILON were to have the power to suspend, it could be exercised by preventing a representative from participating at PILON, and give that particular country the option of nominating another representative to take their place. This may be important in the case of a particular representative who refuses to agree to otherwise consensus resolutions.

A senior law officer within a country should not be prevented from taking part in PILON because of the actions of their government. However, caution would need to be exercised before a country member is suspended from the organisation on political grounds. Every effort would need to be made so that the suspension is on very serious substantive grounds.

Draft article 12 of the Charter has been included to inform discussion about the power to suspend PILON members. The article has been drafted in very broad terms, to allow flexibility and to ensure that PILON does not circumscribe grounds for suspension. It is recommended that if PILON members agree to the power, the provision should not specify the circumstances in which suspension is to be used. This would avoid pre-empting or circumscribing when suspension should occur. However, the article has been drafted to make it clear that this is not a power that is to be exercised without strong grounds.

The Steering Committee does not recommend for or against having a suspension clause. This issue should be considered by PILON members carefully to balance the ramifications of whether senior law officers should be involved in political matters between countries in the region, or whether the group should work to be inclusive regardless of the circumstances. Potentially an individual member of PILON undermining consensus may be dealt through a provision other than suspension by the Chair being able to direct that consensus decisions be made without the representative being present.

Proposal 18: that PILON considers whether it should have the power to suspend members or countries from the participation in PILON as drafted in article 12 of the draft Charter.

Amendments to the Charter and Rules of Procedure

Any Charter or Rules of Procedure developed and endorsed as part of the formalisation process should not inhibit flexibility and new conventions evolving. The draft Charter and Rules of Procedure have been drafted with the purpose of a formalised structure for PILON as well as to provide guidance on procedures. However, it is important that amendments can be made if necessary or appropriate.

Article 13 provide for members to propose amendments to the Charter. The proposed amendments should then be considered at the annual PILON meeting, having already been circulated to members prior to the meeting. Amendments to the Charter may only be made by consensus agreement of

PILON members present at the meeting. Amendments to the Rules of Procedure are outlined in rule 8 reflecting the requirement in article 13 that requires a consensus of members present at a meeting to agree to an amendment.

Amendments would come into effect immediately unless otherwise specified.

Proposal 19: that PILON endorses the procedure for making amendments to the draft Rules of Procedure and Charter in accordance with rule 8 and article 13.

List of proposals

Proposal 1: That PILON agrees that it should be established by a Charter, and considers the text of the draft Charter at Annexure 1 and draft Rules of Procedure at Annexure 2.

Proposal 2: That PILON endorses article 2 of the draft Charter setting out PILON's role.

Proposal 3: That PILON endorses option 3, continuing the arrangement for an agency of a member country to support the Secretariat, with a review of the arrangements in two years' time.

Proposal 4: That members consider contributing funds to support the PILON Secretariat.

Proposal 5: That PILON agrees that the PILON Secretariat investigate future funding options.

Proposal 6: That PILON endorses the role of the Secretariat, as provided for in the draft Rules of Procedure, to involve:

- (i) facilitating implementation of resolutions passed by PILON at its annual meeting in accordance with the PILON Strategic Plan and annual Work Plan
- (ii) providing an information-sharing and communication network for PILON members
- (iii) providing a focal point for liaison with other regional law and justice mechanisms, and
- (iv) providing a full range of secretariat support services to PILON members, the PILON chair and host authorities.

Proposal 7: That PILON, in accordance with article 7 of the draft Charter:

- (i) endorses the recruitment of a Secretariat Coordinator and a policy officer, and
- (ii) agrees that the Secretariat Coordinator should recruit the research/policy officer and other Secretariat staff as appropriate in consultation with the Steering Committee or other oversight body.

Proposal 8: that PILON endorses a maximum term for the Secretariat positions of three years with an option to renew in accordance with article 7 of the draft Charter, and that the Steering Committee (or a nominated committee for staffing issues) has responsibility for appointments.

Proposal 9: that PILON endorses having a permanent Steering Committee in accordance with article 8 of the draft Charter.

Proposal 10: that PILON endorses article 9 providing for PILON to establish issue specific committees as and when required.

Proposal 11: that PILON formalises the functions of the Secretariat in accordance with rules 2 (invitations), 4 (agenda), 6 (annual meetings), and 7 (outcomes report) of the draft Rules of Procedure.

Proposal 12: that PILON endorses changes to the role of the Chair in accordance with article 10 of the draft Charter, rules 3 (participation), 5 (chairing meetings), and rule 7 (role of the chair in setting PILON outcomes) of the draft Rules of Procedure.

Proposal 13: that PILON endorses the founding membership of PILON comprising Australia, the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, the Republic of the Marshall Islands, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu, and consider whether to admit French Polynesia and New Caledonia as member countries or observer members.

Proposal 14: that PILON endorses the Commonwealth Secretariat, the International Committee of the Red Cross, the Pacific International Maritime Law Association, the Pacific Islands Forum Fisheries Agency, the Pacific Islands Forum Secretariat, the Pacific Legal Information Institute, the Pacific Regional Environment Programme, the Secretariat of the Pacific Community, and the University of the South Pacific as founding observer members.

Proposal 15: that PILON endorses the definition of a ‘senior law officer’ in accordance with article 2 of the draft Charter.

Proposal 16: that PILON considers adopting the guidelines for the status of observer members in the above terms in accordance with rule 3 of the draft Rules of Procedure.

Proposal 17: that PILON endorses a quorum for meetings as outlined in article 11 of the draft Charter.

Proposal 18: that PILON considers whether it should have the power to suspend members or countries from the participation in PILON as drafted in article 12 of the draft Charter.

Proposal 19: that PILON endorses the procedure for making amendments to the draft Rules of Procedure and Charter in accordance with rule 8 and article 13.

Annexure 1

The Pacific Islands Law Officers' Network (PILON) Charter

Article 1

Establishment of PILON

1. This Charter establishes PILON.

Article 2

Purpose of PILON

1. The purpose of PILON is to:
 - a. provide a network for senior law officers in the Pacific to identify and discuss key regional law and justice issues;
 - b. facilitate dialogue and cooperation between member countries on regional approaches to law and justice issues;
 - c. engage with regional and international organisations to address legal gaps in the Pacific;
 - d. develop regionally supported law and justice policies for consideration by appropriate decision making bodies; and
 - e. develop connections with other law officer networks.
2. In this Charter, 'senior law officer' means a person who is responsible at the highest level of the public service of a country or territory for:
 - a. providing or settling legal advice to government;
 - b. drafting or administering legislation in the law and justice sector; or
 - c. taking legal proceedings on behalf of the government.
3. A senior law officer may delegate his or her role to another person for a meeting in writing to the PILON Secretariat.

Article 3

Membership

1. The founding member countries of PILON are Australia, the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, the Republic of the Marshall Islands, Samoa, the Solomon Islands, Tonga, Tuvalu, and Vanuatu.
2. A member country of PILON may include a territory of a country.
3. The founding observer members of PILON are the Commonwealth Secretariat, the International Committee of the Red Cross, the Pacific Islands Forum Fisheries Agency, the Pacific Islands Forum Secretariat, the Pacific Legal Information Institute, the Pacific Regional Environment Programme, the Secretariat of the Pacific Community, and the University of the South Pacific.
4. A country or territory may apply to the Secretariat to become a member country of PILON.
5. An organisation may apply to the Secretariat to become an observer member of PILON.
6. Upon receiving an application for membership of PILON under clauses 5 or 6, the Secretariat must:
 - a. circulate the request to each PILON member before the annual meeting; and
 - b. place the observer member request on the agenda for the next annual meeting; and
 - c. reply to the country, territory or organisation in writing concerning PILON's endorsement or rejection of its request.
7. A new member may only be admitted to PILON by the unanimous agreement of the member countries present at an annual meeting.
8. The Chair may permit a country, a territory or an organisation that is not a member country or an observer member of PILON to attend a PILON meeting as an observer.

Article 4

Meetings

1. Each meeting must be open to each member country and observer member in accordance with rules made under article 5.
2. PILON is to hold annual meetings.
3. PILON must determine the member country to host the next annual meeting during each annual meeting.
4. If a Chair appointed under article 10 for a meeting is unable to host the meeting, the Secretariat in consultation with the Steering Committee must attempt to find an alternative Chair.

5. PILON may only hold a special meeting with the agreement of the Steering Committee.
6. The purpose of each meeting is to:
 - a. provide members with an opportunity to address common issues with regard to law and justice within the region;
 - b. share information about each member by preparing a country report;
 - c. establish action based outcomes and make decisions as a result of meeting discussions;
 - d. give direction to the Secretariat in accordance with article 6;
 - e. endorse membership of the Steering Committee in accordance with article 8;
 - f. establish an issue specific committee in accordance with article 9; and
 - g. report to members on the progress of each committee and the Secretariat since the last meeting.

Article 5

Procedure of meetings

1. PILON members may establish rules for the operation of a meeting in accordance with this Charter.
2. PILON may amend the rules from time to time in accordance with article 13.

Article 6

Secretariat

1. The Secretariat is responsible for the coordination and management of PILON meetings and such other tasks as PILON members and the Steering Committee direct.
2. The function of the Secretariat includes, but is not limited to:
 - a. facilitating the implementation of resolutions passed by PILON at its annual meeting in accordance with the PILON Strategic Plan and annual Work Plan;
 - b. providing an information-sharing and communication network for PILON members;
 - c. providing a focal point for liaison with other regional law and justice mechanisms; and
 - d. providing secretariat services to PILON members, the Steering Committee, and the Chair.

Article 7

Staff of Secretariat

1. The Secretariat comprises:
 - a. the Secretariat Coordinator who is responsible for coordinating and managing the activities of the Secretariat; and
 - b. an Assistant Coordinator who is responsible to the Secretariat Coordinator for legal policy and research tasks, and providing administrative assistance for the functions of the Secretariat.
2. The Steering Committee may direct the process for appointment of the Secretariat Coordinator.
3. The Secretariat Coordinator may appoint the Assistant Coordinator or additional staff with the approval of the Steering Committee.
4. The staff of the Secretariat may be appointed for up to three years unless otherwise engaged.
5. The staff of the Secretariat may only be reappointed with the agreement of the Steering Committee.

Article 8

Steering Committee

1. PILON must appoint a permanent Steering Committee to oversee PILON matters and to provide guidance to the Secretariat between meetings.
2. PILON may only appoint a member country to the Steering Committee during an annual meeting.
3. The Steering Committee comprises:
 - a. the Chair;
 - b. if applicable, the incoming Chair; and
 - c. at least two other PILON member country representatives.
4. The Steering Committee may only comprise one representative per member country.
5. If a representative is unable to continue as a member of the Steering Committee during the interval between annual meetings, the representative must inform the Secretariat Coordinator in writing that he or she will no longer be able to hold the position and arrange a replacement representative from that member country.

Article 9

Establishment of issue specific committees

1. PILON may appoint a committee to address a specific issue or to conduct a specific activity for a set period or indefinitely.
2. PILON may only appoint the committee by majority resolution.
3. PILON may disband a committee if the task or activity:
 - a. has been completed;
 - b. is no longer required; or
 - c. is unable to be completed.

Article 10

Chair

1. The Chair is a nominated senior law officer of a host country who is responsible for arrangements concerning a meeting of PILON members.
2. The incoming Chair must nominate and seek endorsement of PILON member countries to host a subsequent PILON meeting before the end of the current meeting.
3. The incoming Chair becomes the Chair once the responsibilities of the presiding Chair have been executed.
4. The Chair's role ceases when:
 - a. his or her responsibilities for a meeting have been executed;
 - b. the outcomes report for the Chair was responsible for has been completed; and
 - c. there are no other outstanding matters relating to the meeting.

Article 11

Quorum

1. A majority of member countries must be present at a PILON meeting to constitute a quorum.
2. The Chair may determine quorum for a meeting with less than a majority of members if a majority of members agree to the meeting proceeding in the absence of the other members.

Article 12⁸

Suspension of members

⁸ The italicised text is suggested for discussion purposes only.

1. *PILON may suspend a country member or an observer member from participating at a meeting, but only:*
 - a. *in necessary or extreme circumstances; and*
 - b. *by consensus resolution of PILON members constituting the quorum of a meeting other than a member to whom the suspension relates.*
2. *A suspended member must not:*
 - a. *attend the annual meeting;*
 - b. *participate in PILON activities;*
 - c. *take part in a committee of PILON; or*
 - d. *seek to represent PILON in any capacity.*
3. *PILON may only remove a suspension of a member country by consensus resolution of members representing the quorum at a meeting.*

Article 13

Amendments

1. A member may propose an amendment to this Charter for consideration at a PILON meeting.
2. A member must request the Secretariat to circulate an amendment to the Charter no less than one month before the annual meeting, or before a special meeting.
3. PILON may only amend the Charter or the Rules if the amendment is endorsed by a consensus of members present at a meeting.
4. An endorsed amendment comes in to effect when it is agreed unless otherwise specified.

Annexure 2

The Pacific Islands Law Officers' Network (PILON) Rules of Procedure

Rule 1

Scope

1. These rules are made under article 5 of the PILON Charter.
2. Each rule applies to the Secretariat, the Chair, a committee of PILON including the Steering Committee, to each member country and observer member of PILON, and to any other person or organisation that attends a PILON meeting.
3. The Chair may dispense with a rule with the agreement of a majority of members present at a meeting.

Rule 2

Invitations

1. The Secretariat is responsible for inviting member countries and observer members to the annual meeting.
2. The Secretariat must aim to send invitations to each member no later than three months before the date set for each meeting.
3. Each member must advise the Secretariat of the name of a representative to attend a meeting before the commencement of the meeting.
4. The Secretariat, in consultation with the Chair, may invite another person or organisation to attend PILON as an observer if that person or organisation:
 - a. has requested to be an observer at a PILON meeting;
 - b. is relevant to a matter that is to be discussed at a PILON meeting; or
 - c. is relevant to PILON's purpose.

Rule 3

Participation

1. The Chair directs the participation of member countries, observer members and invited observers at a meeting.

2. Member countries, observer members and invited observers, are eligible to attend and participate at a PILON meeting unless the Chair directs that there be a closed session for member countries.
3. Member countries are solely responsible for voting and decision-making during a meeting.
4. The Chair may convene a closed session of a meeting in which member countries are entitled to attend as required.
5. The Chair may request the attendance of an observer member or invited observer during a closed session.
6. The Secretariat, in consultation with the Chair, may extend an invitation to an observer member or an invited observer to make a presentation or address a meeting where the topic of the presentation is relevant to PILON members or complements the meeting.
7. An observer member or invited observer may also seek approval from the Secretariat to make a presentation at a meeting.
8. In deciding whether to grant such a request, the Secretariat in consultation with the Chair must give consideration to:
 - a. the time constraints at the meeting; and
 - b. whether the topic of the presentation is relevant to or complements the theme of the meeting.

Rule 4

Agenda

1. The Secretariat, in consultation with the Chair, must prepare a provisional agenda for each meeting.
2. The provisional agenda must be circulated to members together with each invitation to the meeting.
3. A member may propose an agenda item for discussion at the meeting by advising the Secretariat of the issue before the meeting.
4. The Secretariat may include the following items on the agenda:
 - a. issues the Secretariat puts forward in consultation with the Chair;
 - b. a report from the Secretariat on work done over the previous year;
 - c. a financial report from the Secretariat;
 - d. presentation of country reports; and
 - e. an issue requested by a member country, observer member or invited observer.

5. The Secretariat, in consultation with the Chair, may determine not to include an item on the agenda.
6. The Secretariat must circulate a revised agenda no later than two weeks before the annual meeting.
7. The Secretariat may issue a further revised agenda as necessary.
8. The Secretariat must circulate an agenda for a special meeting as early as possible, but only to the members attending that meeting.
9. The Secretariat must seek the agreement of the Chair before each revised agenda is released.

Rule 5

The Chair

1. The Chair is responsible for organising a meeting in consultation with the Secretariat, including:
 - a. determining an appropriate meeting venue within the host country;
 - b. selecting suitable accommodation options for meeting delegates; and
 - c. arranging for transportation for members and observer members to and from the meeting venue.
2. The role of the Chair during a meeting involves:
 - a. declaring the meeting open and closed;
 - b. directing discussions;
 - c. ensuring observance of these rules and the Charter;
 - d. according the right of persons to speak;
 - e. announcing when decisions are reached; and
 - f. otherwise performing functions consistent with the role.

Rule 6

Responsibilities for meetings

1. The Secretariat is responsible for coordinating arrangements during meetings, including providing secretarial services and circulating documents.
2. The Secretariat must maintain official meeting record and copies of circulated material.

3. During a meeting the host country is responsible for:
 - a. the costs associated with hosting the annual meeting;
 - b. communications, printing and copying facilities and other assistance to the Secretariat and members present at the meeting; and
 - c. stationery and office supplies required by delegates.

Rule 7

Outcomes reports

1. At the beginning of a meeting, the Chair may establish a Drafting Committee to guide the development of an outcomes report.
2. The Secretariat, the Chair, and the Drafting Committee, if established, are jointly responsible for developing an outcomes report during a meeting.
3. The Secretariat must:
 - a. work with the Drafting Committee to prepare an initial draft outcomes report;
 - b. seek the approval of the Chair for the draft outcomes report; and
 - c. seek final approval of the outcomes report from PILON member countries before each PILON meeting concludes.
4. The Drafting Committee must provide guidance and drafting assistance where required to enable the Secretariat to carry out its functions during a meeting.
5. Once members have approved the outcomes report, the Secretariat must:
 - a. circulate the outcomes report to members and observer members; and
 - b. publish the report on the PILON website.

Rule 8

Amendments

1. PILON may amend these rules in accordance with article 13 of the Charter.

Attachment A – *Chair’s Report*, 25th PILOM, Kiribati, February 2007

Attachment B – *Pacific Islands Law Officers’ Meeting Review*

Attachment C – Proposal for a Permanent PILOM Secretariat

Attachment D

Extract of article XI of the *Agreement establishing the Pacific Islands Forum Secretariat 2000*:

1. The Secretariat shall enjoy the legal capacity of a body corporate in the territories of member governments.
2. The Secretariat shall have immunity from suit and legal process and its premises, archives and property shall be inviolable.
3. The Secretariat shall be exempt from taxes, other than such as represent charges for specific services rendered. It shall also be exempt from taxes, duties and other levies, other than charges for specific services rendered, on goods imported for its official use.
4. The Secretariat shall be free of prohibition on goods imported or exported for its official use.
5. The Staff shall be entitled to immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of their official duties.
6. The Secretary General and the Deputy Secretary General shall be accorded the same exemption from taxes, duties and other levies as is accorded to a diplomatic agent.
7. All Staff who are not nationals of Fiji shall be accorded exemption from taxes in respect of salaries received from the Secretariat. They shall also be accorded exemption from taxes on furniture and effects imported at the time of first taking up post.
8. Representatives attending meetings of the Committee shall be accorded immunity from suit and legal process and their official documents shall be inviolable.

Extract of article X of the *Agreement establishing the Pacific Islands Forum 2005*:

1. The Forum shall enjoy the legal capacity of a body corporate within the jurisdictions of its members. The Secretary General shall be empowered to enter into legal undertakings on behalf of the Forum.
2. The Forum shall enjoy in the territory of each member such privileges and immunities as the member and the Forum Secretariat may agree are necessary to enable the Forum to fulfil its purpose and carry out its functions. Members shall take all necessary measures to confer such privileges and immunities upon the Forum in accordance with their domestic legislation. Where appropriate, such privileges and immunities may be defined in separate agreements between the Forum and its members.
3. When requested by the Forum Secretariat, member states shall take measures in accordance with their domestic laws to afford all appropriate immunities to representatives attending Forum Leaders' Meetings, Ministerial meetings, and meetings of the Committee or of other Forum councils and committees, including immunity from suit and legal process and inviolability in respect of their official documents.

Attachment E – Correspondence with French Polynesia