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United Nations Environment Assembly of the United Nations Environment Programme

Annual subcommittee meeting of the Committee of Permanent Representatives to the United Nations Environment Programme

Seventh meeting

Nairobi, 12-16 October 2020

Online meeting

1.00 pm – 6.00 pm (GMT+3)

Agenda Item 5 (iii): Preparations for UNEA-5, including a possible scoping exercise and/or timetable for the tabling of resolutions

Secretariat note on the tabling and consideration of draft resolutions for UNEA-5

A. Introduction

1. This note is prepared in view of the decision of the UNEA bureau at its meeting on 8 October to apply a “2-step approach” for the organization of the fifth session of the UN Environment Assembly (UNEA-5), whereby the Secretariat was requested to prepare a list of issues which may require action during the first part of UNEA-5 in February 2021.
2. This list builds on the note that was initially made available as an annex to the [Revised note on the preparations for the fifth session of the United Nations Environment Assembly](#) made available to the subcommittee of the Committee of Permanent Representatives at its [meeting on 2 July 2020](#).
3. The Secretariat proposes the following steps to facilitate a structured consultative process for the period between the 7th meeting of the annual subcommittee and the fifth meeting of the Open-Ended Meeting of the Committee of Permanent Representatives (OECPR-5), scheduled for 15-19 February 2021:
 - Identify appropriate areas suitable for a procedural decisions and resolutions to be adopted at the first part of UNEA-5 in February 2021, for consideration and possible approval at the regular meeting of the CPR scheduled for 19 November 2020;
 - With the support of the Secretariat, explore options to develop one or more procedural decision(s) covering one or several of the identified areas;
 - As of the week of 23 November, meet at least once per week until the meeting of the OECPR (with the exception of the period 7 December – 1 January 2021), in the format of a subcommittee, to consider the a draft procedural decision(s) in preparation for the Open-Ended Meeting of the Committee of Permanent Representatives;
 - Invite the UNEA and CPR Bureaus to facilitate the nomination and selection of one or more facilitator(s) taking the lead in this endeavor.
4. The Committee of Permanent Representatives is invited to provide guidance on the way forward to prepare for a meaningful outcome of UNEA-5.

B. Outcomes of the United Nations Environment Assembly

5. There is no standard UN definition of what is a substantive or a procedural matter, and no explicit definitions are provided in the UNEA rules of procedure. Ultimately, it is for Member States or the Parties to a treaty to decide on this definition, acting under the authority of a presiding officer. For example, in the rules of procedure of treaty bodies it is often for the President of the Conference of the Parties to rule on whether a matter is procedural or substantive, and the ruling stands unless overruled by a majority of the parties present and voting.¹
6. Within subsidiary bodies of the United Nations, including governing bodies of its Funds and Programmes, certain practices have emerged on what constitutes a substantive as well as procedural matter. As far as the UN Environment Assembly is concerned, procedural resolutions and decisions have typically been used to address the following questions:
 - Decisions by the President on procedural motions and/or points of order made by Member States during the course of a meeting under rules 37-43 of the UNEA rules of procedure;
 - Decisions that relate to the organization of work of a future session of the Assembly by addressing, inter alia the date of the future session as well as its provisional agenda; and
 - Decisions that relate to the organization of work and budget of the Secretariat that would require the Assembly's approval.
7. The agendas of Environment Assembly have all contained a separate agenda item for programme of work and budget and other administrative and budgetary issues, distinguishing the programme of work and budget from substantive questions that the Assembly is considering, such as international environmental policy and governance issues (ref: UNEP/EA.1/1 and Add.1; UNEP/EA.2/1/Rev.1; UNEP/EA.3/1; and UNEP/EA.4/1/Rev.1).
8. Furthermore, the distinction between resolutions on substance and decisions on procedure has recently been formally reflected in the outcomes of UNEA. The Report of the Fourth Session of UNEA of March 2019 (A/74/25), indicates a distinction between the substantive outcomes of UNEA, encompassing twenty three resolutions and one Ministerial Declaration (Annex 1), and three UNEA Decisions that address procedural matters, including the (i) programme of work and budget; (ii) the provisional agenda, date and venue of the fifth session of the Environment Assembly; and (iii) the management of trust funds and earmarked contributions.
9. With regard to the Medium Term Strategy, paragraph 32 of Decision 4/1 of the fourth Environment Assembly on the programme of work and budget, "requests the Executive Director to submit for consideration and approval by the United Nations Environment Assembly at its fifth session, in consultation with the Committee of Permanent Representatives, and building on lessons learned from previous biennia, a results-oriented and streamlined medium term strategy and programme of work."
10. Furthermore, paragraph 11 of Governing Council Decision 27/2 states as follows: "Decides to establish a subcommittee of the Committee of Permanent Representatives that will meet annually for a period of five days to review, with the support of the secretariat, the medium-term strategy and programme of work and budget, in a manner coherent with the budgetary cycle of the United Nations, to be endorsed by the Committee of Permanent Representatives and for the governing body's approval, and to oversee their implementation and accountability by the Secretariat".
11. It is also important to recall that, as part of the United Nations Secretariat, UNEP's activities are subject to the planning, programming, budgeting, monitoring and evaluation cycles established by the United Nations through resolutions and decisions of the General Assembly and which are reviewed by relevant inter-governmental bodies including the Committee for Programme and Coordination and the Advisory Committee on Administrative and Budgetary Questions ("CPC" and "ACABQ") which report to the

¹ Rule 45 of the rules of procedure of the Minamata Convention.

Fifth Committee. Final budgetary authority over UNEP is exercised by the General Assembly, through the CPC, ACABQ and Fifth Committee.

12. The General Assembly, in resolution 45/248 B, Part VI, of 21 December 1990, has reaffirmed that the Fifth Committee is the appropriate Committee of the General Assembly entrusted with responsibility for administrative and budgetary matters. That resolution also expressed concern at the tendency of other inter-governmental bodies to involve themselves in these matters.
13. In order to ensure consistency with this resolution, it would be advisable for the Environment Assembly to regard its review of the programme of work and budget as procedural matter, and as part of a process whereby the programme of work and budget is approved for onward consideration to the CPC, ACABQ and Fifth Committee and ultimately the General Assembly.
14. In conclusion, the provisional agenda for the fifth session of the Environment Assembly, as adopted by UNEA Decision 4/2 follows prior practice by having a separate agenda item on programme of work and budget, and other administrative and budgetary issues (agenda item 6) thus distinguishing it from substantive matters including international environmental policy and governance issues addressed under agenda item 5. Consequently, the decision to be adopted at the fifth session of the Environment Assembly on programme of work and budget should be seen as a procedural and not a substantive decision.
15. Subject to further consideration by the Committee of Permanent Representatives, and depending on the purpose and content of possible additional areas for consideration, there may be other matters that could be categorized as a procedural decision.

C. Indicative list of procedural decisions and resolutions for possible consideration of UNEA-5

16. Taking into account the considerations set out in the previous sections, the Secretariat outlines the following indicative list of decision of strict procedural nature which could be considered by UNEA-5, building on the experience previously adopted decisions of the Environment Assembly. This list may not be exhaustive.

i) Draft procedural decisions which require urgent consideration and approval at UNEA 5

1. Draft decision on the programme of work and budget for 2022–2023 and medium term strategy for 2022-2025, on the basis of a proposal from the Executive Director, as mandated by [UNEA decision 4/1, paragraph 32](#).
2. Draft decision on management of trust funds and earmarked contributions.

ii) Other decisions which may be considered during the resumed session of UNEA

3. Draft procedural decision on the logo/visual identity of the United Nations Environment Programme (UNEP) on the basis of a proposal from the Executive Director submitted upon recommendation of the CPR.
4. Draft procedural decision on the provisional agenda, date and venue of the sixth session of the United Nations Environment Assembly, as mandated by the UNEA Rules of procedure on the basis of a proposal from the Executive Director.
5. Draft procedural decision to take note of the action plan for the implementation of subparagraphs (a)–(h) of paragraph 88 of the outcome document of the United Nations Conference on Sustainable Development, on the basis of a proposal from the Executive Director, as mandated by [UNEA decision 4/2, paragraph 14](#)

iii) Draft resolutions associated to UNEA processes which can be submitted by co-facilitators or chairs of specific processes and considered at the substantive resumed session or earlier if agreed by member States

6. Draft procedural resolution on the consensual process for review by the Committee of Permanent Representatives, as mandated by [UNEA decision 4/2, paragraphs 9-13](#), to be submitted by co-facilitators.

7. Draft procedural resolution on the outcome of the ad hoc expert group on marine litter and microplastics, on the basis of a report from the Executive Director, as mandated by [UNEA Resolution 4/6](#), to be submitted by the Bureau of the ad-hoc expert group.

8. Draft procedural resolution on the future of the Global Environment Outlook process, on the basis of an options document and a report from the Executive Director, as mandated by [UNEA resolution 4/23, paragraphs 6 and 9](#), to be submitted by the expert group established by resolution 4/23.

9. Draft procedural resolution on the future of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities, on the basis of a recommendation from a meeting of the GPA Intergovernmental Review Meeting.

10. Draft procedural resolution on the implementation of [UN General Assembly resolutions 73/333](#), entitled “Follow-up to the report of the ad hoc open-ended working group established pursuant to General Assembly resolution 72/277”, to be submitted by co-facilitators.