

5 March 2020

*Government of Australia comments on the*

ANNEX to the Emerging consensual elements by the co-facilitators to the process for review by the CPR:

**Revised draft terms of reference of the Bureaus of the United Nations Environment Assembly and of the Committee of Permanent Representatives**

*These two draft terms of reference have been developed taking into account relevant decisions of the governing bodies of the United Nations Environment Assembly, its [UNEA Rules of Procedure](#), and standard practices.*

**Commented [A1]:** As an overarching comment on this document, we understand that the amendments to the ToR are subject to the agreement of the UNEA. However, the final line for each ToR proposes that the Bureaus can amend the ToR, provided all members of the Bureau agree. While some of the amendments to the ToR re-state functions established under the Rules of Procedure of the UNEA for the United Nations Environment Programme, other amendments to the ToR propose to give new functions to the Bureaus. As such, we consider that it would be preferable for the ToR to only be amended with the agreement of the UNEA and CPR respectively.

**A. REVISED DRAFT TERMS OF REFERENCE OF THE BUREAU OF THE UNITED NATIONS ENVIRONMENT ASSEMBLY <sup>1</sup>**

*Changes, as compared with the version that was considered by the CPR on 16 January 2020, are marked in bold.*

Election and composition of the Bureau

1. Pursuant to rule 18 of the Rules of Procedure, during the final meeting of a regular session, the United Nations Environment Assembly ("**Environment Assembly**") shall elect a President, eight Vice-Presidents and a Rapporteur from among its members. **These officers shall constitute the Bureau of the Environment Assembly.** The Bureau shall assist the President in the general conduct of business of the Environment Assembly. The chairpersons of sessional committees or working parties shall be invited to participate in Bureau meetings. In electing its officers, the Environment Assembly shall ensure that each of the five regions<sup>2</sup> is represented by two members in the Bureau of the Environment Assembly. The Offices of President and Rapporteur shall normally be subject to rotation among the five regions referred to in section I, paragraph 1 of General Assembly resolution 2997(XXVII).<sup>3</sup>

2. Pursuant to a decision taken at the second Joint Meeting of the Bureau of the Environment Assembly and the Committee of Permanent Representatives (the Committee) on 22 May 2017, the Chair of the Committee shall participate in an ex officio capacity in meetings of the Environment Assembly.<sup>3</sup> The Chair of the Committee shall not have the right to vote.

Replacement of a Bureau member

<sup>1</sup> In most cases the relevant language from the rules of procedure has been followed. However, on occasion, it has been abbreviated for purposes of clarity.

<sup>2</sup> The five regions are Africa; Asia; Eastern Europe; Latin America; Western European or other States; <sup>3</sup> Rule 18 of the Rules of Procedure

<sup>3</sup> Decision taken at the second Joint Meeting of the Bureau of the UN Environment Assembly and the Committee of Permanent Representatives on 22 May 2017. In addition, Rule 18 of the rules of procedure provides that the chairpersons of sessional committees and working parties shall be invited to participate in meetings of the Bureau.

3. Pursuant to rule 19 of the Rules of Procedure, during a session of the Environment Assembly, if a Bureau member, except the President, is unable to permanently carry out any of her or his functions, the Environment Assembly may elect an alternate upon appointment by a member State or by the regional group to which that member belongs. During the intersessional period, if a Bureau member resigns or is unable to exercise her or his functions, the Member State or the regional group to which that member belongs shall nominate a replacement for the remainder of the term. The Executive Director shall inform all member States of the Environment Assembly of the nomination in writing. If within one month no objections are received in writing, the nominee is elected. If a member State objects, the nominee is elected if a majority of member States responding support the nominee.<sup>4</sup>

#### Terms of Office

4. Pursuant to rule 20 of the Rules of Procedure, the President, the Vice-Presidents and the Rapporteur shall hold office until their successors are elected. They shall commence their terms of office at the closure of the session at which they are elected and remain in office until closure of the next regular session. They are eligible for re-election.<sup>5</sup>

#### Meetings of the Bureau

5. The Bureau shall meet as necessary as decided by the members of the Bureau. **The Bureau may, upon the invitation of the President, meet at a location outside Nairobi.** Depending on the agenda, the President may invite observers to attend Bureau meetings. The President may also invite other individuals or organizations as observers if they have qualifications with regard to matters on the agenda.

#### Quorum

6. Following rule 32 of the Rules of Procedure on quorum for the meetings of the Environment Assembly, the President may declare a meeting open when at least one third of the members of the Bureau that have been elected by the Environment Assembly to the Bureau are present. The presence of a majority of members shall be required for any decision to be taken.

#### Decision-making

7. The Bureau shall to the extent possible take all decisions by consensus. When all efforts to reach consensus have been exhausted, decisions of the Bureau shall be taken by a majority of the members officers present and voting as provided for in rule 49 of the rules of procedure.

#### Joint Bureau Meetings

8. Joint Bureau meetings may be held between the Bureau of the Environment Assembly and the Bureau of the Committee. **A joint meeting may, upon the invitation of the President of the Environment Assembly and the Chair of the Committee, meet at a location outside Nairobi.** The President and the Chair of the Committee may alternate in chairing a joint meeting. Joint meetings shall be convened for the purpose of conducting consultations between the Bureaus. **Decisions shall be taken separately by each Bureau.**

#### Powers of the President

<sup>4</sup> Rule 19 of the Rules of Procedure

<sup>5</sup> Rule 20 of the Rules of Procedure

**Commented [A2]:** We believe this paragraph would benefit from further clarification – it almost mirrors rule 20 of the Rules of Procedure, but misses a key element that officers are eligible for re-election subject to the provisions of rule 18. That is, each of the five regions must be represented by two members in the Bureau and the office of the President and the Rapporteur shall normally be subject to rotation.

**Commented [A3]:** In our view, the reference to rule 32 does not add clarification here. Rather, rule 32 relates to the quorum for the UNEA and while it is open to the Bureau to adopt the same approach, referring to a rule that does not apply to the Bureau potentially causes more confusion.

**Commented [A4]:** As per the language in paragraph 1, we suggest referring to the officers of the Bureau as opposed to 'members' for consistency.

**Commented [A5]:** Similar to the above paragraph, rather than referring to rule 49 (which is about the UNEA, not the Bureau), we consider that it would be clearer to simply state the requirements for voting.

9. (a) Under rule 18, paragraph 1, the President shall with the assistance of the other Bureau members be responsible for the general conduct of business of the Environment Assembly;<sup>6</sup>  
 (b) In accordance with rules 33, 34 and 35, the President shall preside at meetings of the Environment Assembly;<sup>7</sup>  
 (c) The President shall preside at Bureau meetings.  
 (d) The Bureau, may, upon the invitation of the President, meet at a location outside Nairobi;  
 (e) The President may consult with member States and other stakeholders for the purposes of preparing and facilitating agreement on key high-level outcomes of the Environment Assembly;  
 (f) The President may represent the Environment Assembly in intergovernmental meetings at both regional and global levels in order to convey key outcomes of the Environment Assembly, including at other UN meetings.  
 (g) In accordance with UNEA resolution 3/3 entitled, “Contributions of the UNEA to the Highlevel Political Forum on Sustainable Development” the President may represent the Environment Assembly at the High-level Political Forum on Sustainable Development;<sup>8</sup>  
 (h) The President may designate a Bureau member to perform representative functions.

**Commented [A6]:** This paragraph does not list all of the rules relevant to the President’s powers when presiding at meetings - for example, Rules 38 and 39 are also relevant. We suggest including all of the rules relevant to the functions of the President, or alternatively using text along the lines of ‘the President shall preside at the meeting of the Environment Assembly in accordance with the Rules of Procedure’.

**Commented [A7]:** This replicates paragraph 5. As all of paragraph 9 relates to the powers of the President, this sub-paragraph could be rephrased to ‘The President may invite the Bureau to meet at a location outside of Nairobi’. Additionally, if this sub-paragraph remains, we also suggest the inclusion of the President’s power to invite, in conjunction with the Chair of the CPR, a joint meeting of UNEA and CPR.

#### Functions of the Bureau

10. In accordance with rule 18 of the Rules of Procedure, the Bureau shall assist the President in the general conduct of the business of the Environment Assembly<sup>9</sup>.
11. **The Bureau shall in consultation with members of regional groups:**
- Carry out the tasks entrusted to it by the Environment Assembly and the President;
  - In accordance with rule 17 of the Rules of Procedure, assist the President in the general conduct of business of the Environment Assembly, including the review of credentials<sup>10</sup>;
  - Prepare for the sessions of the Environment Assembly, including by providing guidance on the selection of an overarching theme, advising and providing input on the preparation of the provisional agenda, the draft programme of work of the session, the scheduling of items for the Environment Assembly;
  - Consider and facilitate the negotiation of draft resolutions and decisions for consideration by the Environment Assembly including through the selection of facilitators and the setting of deadlines for the submission of draft resolutions and decisions;
  - Evaluate draft resolutions and decisions, drawing on consensually-agreed criteria in order to guide the negotiation schedule and maintain a manageable UNEA workload. Such evaluation guidance should be based on agreed criteria including, inter alia, relevancy to the theme of the session of the Environment Assembly, length, timeliness, broad applicability and support;
  - Recommend the allocation of items to subsidiary bodies of the Environment Assembly;
  - Provide guidance on the organization of relevant meetings of an informal nature related to the Environment Assembly, such as side-events;

**Commented [A8]:** The current text means that the Bureau cannot do any of the activities in the following sub-paragraphs without consulting members of regional groups. In the interests of encouraging effective and streamlined governance, we query whether the text should be amended to say ‘The Bureau shall perform the following functions, in consultation with members of regional groups where necessary’.

**Commented [A9]:** Rule 17 of the Rules of Procedure only relates to providing assistance for the review of the credentials, but not the requirement to assist the President in the general conduct of business of the UNEA. Moreover, this sub-paragraph now replicates the proposed amendments to paragraph 10. We suggest that the phrase ‘assist the President in the general conduct of business of the Environment Assembly’ is removed from sub-paragraph (b).

**Commented [A10]:** We consider it would be beneficial to specify where the consensually-agreed criteria can be located.

<sup>6</sup> Rule 18 of the Rules of Procedure

<sup>7</sup> Rules 33, 34 and 35 of the Rules of Procedure

<sup>8</sup> UNEA resolution 3/3 “Contributions of the UNEA to the High-level Political Forum on Sustainable Development”

<sup>9</sup> Rule 18 of the Rules of Procedure

<sup>10</sup> Rule 17 of the Rules of Procedure

h) Ensure that there is coherence and complementarity between the work of the Committee of Permanent Representatives and the Environment Assembly.

12. The Bureau shall perform its functions in a manner that is without prejudice to the role and mandate of the Open-Ended Committee of Permanent Representatives, which is the subsidiary inter-sessional body of the governing body of UNEP **with a mandate to, during the inter-sessional period, inter alia, prepare draft resolutions and decisions for adoption of the Environment Assembly as provided for under Governing Council decision 19/32 paragraph (7)d and Governing Council Decision 27/2, paragraph (9)c.**

#### Final provisions

12. The Bureau shall conduct its business in English.

*These Terms of Reference were adopted by the Bureau on \_\_\_\_\_ and may be **subsequently** amended with the agreement of all the members of the Bureau.*

## **B. DRAFT TERMS OF REFERENCE OF THE BUREAU OF THE COMMITTEE OF PERMANENT REPRESENTATIVES**

*Changes, as compared with the version that was considered by the CPR on 16 January 2020, are marked in **bold**.*

#### Election and composition of the Bureau

- 1. In accordance with Rule 18 of the Rules of Procedure as applicable to the Committee of Permanent Representatives (“the Committee”), and Governing Council Decision 19/32 entitled “Governance of UNEP”, which decided that the Bureau of the Committee shall consist of 5 members elected for a 2 year term**, the Committee shall elect a Chair, three Vice Chairs and a Rapporteur<sup>11</sup> from among its members who shall constitute the Bureau. The Bureau shall assist the Chair in the general conduct of business of the Committee. In electing its officers, the Committee shall ensure that each of the five regions is represented. The Chair shall normally be subject to rotation among the five regions<sup>12</sup>.
- 2. In accordance with the decision taken at the second Joint Meeting of the Bureau of the Environment Assembly and the Committee on 22 May 2017, a representative of the President of the Environment Assembly shall participate in an ex officio capacity in meetings of the Committee, without the right to vote.**<sup>13</sup>

#### Replacement of a Bureau member

**3. In accordance rule 19 of the Rules of Procedure, as applicable to the Committee of**, during a meeting of the Committee, if a Bureau member, except the Chair, is unable to permanently carry out any of her or his functions, the Committee may elect an alternate upon appointment by a member State or by the regional group to which that member belongs. In cases where the Committee is not meeting and a Bureau member resigns or is unable to exercise her or his functions, the member State or the regional group to which that Member belongs shall nominate a replacement for the remainder of the term. The Executive Director shall inform all members of the Committee of the nomination in writing. If within one month no objections are received in writing, the nominee is elected. If a member State objects, the nominee is elected if a majority of member States responding support the nominee<sup>14</sup>

#### Term of Office

**4. In accordance with Governing Council Decision 19/32 entitled “Governance of UNEP”,** the Chair, the Vice-Presidents and the Rapporteur shall, as a matter of practice, be elected for a term of two years, commencing 1 July every odd year. They are eligible for re-election.<sup>15</sup>

#### Meetings of the Bureau

5. The Bureau shall meet as required, upon the request by the Chair. Depending on the agenda, the Chair of the Bureau may invite observers to attend Bureau meetings. The Chair may also invite other individuals or organizations as observers if they have qualifications with regard to matters on the agenda. **The**

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<sup>11</sup> **Governing Council Decision 19/32 entitled “Governance of UNEP”, decided that the Bureau of the Committee of Permanent Representatives shall consist of 5 members elected for a 2 year term .**

<sup>12</sup> Rule 18 of the Rules of Procedure as applicable to the Committee of Permanent Representatives

<sup>13</sup> **Decision taken at the second Joint Meeting of the Bureau of the UN Environment Assembly and the Committee of Permanent Representatives on 22 May 2017.**

<sup>14</sup> Rule 19 of the Rules of Procedure, as applicable to the Committee of Permanent Representatives

<sup>15</sup> **Governing Council Decision 19/32 entitled “Governance of UNEP**

invitations for the meetings of the Bureau should be sent 14 days in advance of the meeting and the related documents should be available 10 days in advance.

#### Quorum

6. Notwithstanding the provisions of the [Rules of Procedure](#), the Chair may only declare a meeting open and allow decisions to be taken when a majority of Bureau members are present.

#### Decision-making

**7. The Bureau shall to the extent possible take all decisions by consensus. When all efforts to reach consensus have been exhausted, decisions of the Bureau shall be taken by a majority of the members present and voting as provided for in rule 49 of the rules of procedure.**

#### Joint Bureau Meetings

8. Joint Bureau meetings may be held between the Bureau of the Committee and the Bureau of the Environment Assembly. **A joint meeting may, upon the invitation of the President of the Environment Assembly and the Chair of the Committee, meet at a location outside Nairobi.** The President and the Chair of the Committee may alternate in chairing a joint meeting. Joint meetings shall be convened for the purpose of conducting consultations between the Bureaus. **Decisions shall be taken separately by each Bureau.**

#### Functions of the Chair

9. (a) Pursuant to rule 18 as applicable to the Committee, the Chair shall with the assistance of the Bureau be responsible for the general conduct of business of the Committee. (b) The Chair shall preside at Bureau meetings and at meetings of the Committee; or delegate other Bureau members to chair the Committee meetings. (c) The Chair may consult with member States and other stakeholders for the purposes of preparing and facilitating agreement on key outcomes of the Committee.

#### Functions of the Bureau

10. The Bureau with the support of the Secretariat and in consultation with members of regional groups, shall:

- a) Carry out the tasks entrusted to it by the Committee and the Chair;
- b) Assist the Chair in the general conduct of business of the Committee;
- c) Prepare for the meetings of the Committee, including by providing guidance on the dates of meetings, advising and providing input on the preparation of the provisional agenda, the draft programme of work and the scheduling of items for the meetings of the Committee;
- d) Consider and facilitate the negotiation of draft resolutions and decisions for consideration by the Committee and for subsequent transmission to the Environment Assembly, **including through the selection of Facilitators;**
- e) **Consider and facilitate the negotiation of draft resolutions and decisions for consideration by the Environment Assembly, until the beginning of its session;**
- f) Ensure that there is coherence and complementarity between the work of the Committee and the Environment Assembly.

**Commented [A11]:** We repeat our comment on Paragraph 11 of the draft UNEA Bureau Terms of Reference regarding the current text stipulating that the CPR Bureau cannot do any of the activities in the following subparagraphs without consulting members of regional groups.

Final provisions

11. The Bureau shall conduct its business in English.

*These Terms of Reference were adopted by the Bureau on \_\_\_\_\_ and may be amended with the agreement of all the members of the Bureau.*