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Enlargement of the membership of the United Nations Commission on International Trade Law

Proposal by the Governments of Austria, Canada, Japan, Pakistan and Sri Lanka

The Governments of Austria, Canada, Japan, Pakistan and Sri Lanka submitted a proposal with regard to the enlargement of the UNCITRAL membership. The text received by the Secretariat is reproduced as an annex to this note in the form in which it was received.



Annex

1. UNCITRAL's goal is to harmonize international trade law and, thereby, to have good governance prevail. As such, its work needs to be based on a solid understanding of the different legal systems. In a rapidly changing world, new economies and legal systems have emerged. In this light, the co-sponsors are convinced that increased participation in the work carried out by the Commission and its Working Groups will serve to further the achievement of the important objective of UNCITRAL and that, as the starting point, enlargement of UNCITRAL membership is necessary to bring the opportunity for increased participation.

2. The Commission, at its fifty-second session in 2019, considered the proposal to enlarge its membership put forward by the Governments of Japan and Israel. While broad support was expressed for the idea of enlarging the membership of UNCITRAL, it was noted that issues remained open in relation to the proposal. After discussion, the Commission decided to encourage its member States to consult with each other and other interested States on the proposal during the intersessional period and requested the Secretariat to facilitate those consultation.¹

3. Accordingly, the Government of Japan launched an open-ended informal process involving the Permanent Missions in Vienna and held six rounds of Vienna-based informal consultations on 24 September 2019, 21 November 2019, 27 February 2020, 22 May 2020, 27 January 2021 and 23 April 2021. Alongside, Japan also organized regional group meetings with all five regional groups.

4. At the second part of its fifty-third session in September 2020, the Commission discussed the way forward with respect to the proposal. Based on the discussions, the Commission: (i) took note of the progress that had been made with respect to the proposal through the Vienna-based informal consultations and meetings and encouraged its member States to continue consulting with each other and other interested States with a view to resolving the remaining open issues and bringing the results of the intersessional consultations to the Commission for its consideration and appropriate action at its next session, in 2021; (ii) stressed that a decision by the Commission recommending enlargement of its membership should be adopted by consensus; (iii) welcomed Japan's willingness to continue to organize and lead Vienna-based consultations on that matter; and (iv) requested the Secretariat to continue to facilitate the process.²

5. In the course of the informal consultations, four issues were identified and discussed as being key in contemplating the enlargement of the Commission's membership. The four issues were: (i) process towards enlargement; (ii) rationale/purpose of enlargement; (iii) number of seats to be added and their regional distribution; and (iv) draft resolution to be recommended for adoption by the United Nations General Assembly. The informal consultations have fostered a common understanding that the Commission's recommendation to the General Assembly to enlarge its membership should be adopted by consensus and a general acceptance to adopt a recommendation to that end. From the second round and onwards, the discussions in the informal consultations have converged on the issue with respect to the number of seats to be added and their regional distribution. On these issues, five proposals have been put forward as described in the table below.

¹ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 311–315.

² *Ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, paras. 18(b), 120–124.

Table
Proposals A to E

	Current	A	B	C	D	E
Total Members	60	72 (+12)	72 (+12)	72 (+12)	Open-ended seats	70 (+10)
AG	14 [23.33%]	17 (+3) [23.61%]	16 (+2) [22.22%]	18 (+4) [25%]		16 (+2) [22.86%]
APG	14 [23.33%]	17 (+3) [23.61%]	16 (+2) [22.22%]	18 (+4) [25%]		16 (+2) [22.86%]
EEG	8 [13.33%]	9 (+1) [12.5%]	11 (+3) [15.28%]	9 (+1) [12.5%]		10 (+2) [14.29%]
GRULAC	10 [16.67%]	12 (+2) [16.67%]	13 (+3) [18.06%]	12 (+2) [16.67%]		12 (+2) [17.14%]
WEOG	14 [23.33%]	17 (+3) [23.61%]	16 (+2) [22.22%]	15 (+1) [20.83%]		16 (+2) [22.86%]

6. During the informal consultations, there seemed to be broader support for a moderate increase, i.e. an increase of ten to twelve seats.

7. Among the proposals put forward, proposal E was gaining traction. Proposal E seemed to be gaining support, based on the following assessment. Enlargement of the membership was initially seen as an opportunity to address the issue of geographical distribution, in other words, the underrepresentation of certain regions.³ The discussions in the informal consultations have shown, however, that the positions on the issue as to whether the current regional balance should be maintained or changed, and if so how, were diverse and that there was not a simple or straightforward solution to reach a consensus on those issues.⁴ Meanwhile, the desire of States to participate in UNCITRAL's work as its member seemed to only grow over time. Thus, as a way forward and in light of the circumstances, it would seem prudent to accommodate the desire of those States by creating additional space for all regional groups so as to enable increased participation in UNCITRAL's work as members, but doing so equally and moderately. The addition of two seats per regional group should, however, be without prejudice to the question of regional representation.

8. In the latest discussions, a number of States also expressed support for proposal A. Accordingly, a draft General Assembly resolution based on proposal E and alternative language for proposal A is found below.

9. Japan takes this opportunity to extend its sincere gratitude to member States and interested States for their continued interest and participation in this initiative. A number of issues such as the number of additional seats and their regional distribution remain open for further discussion. Japan will continue to engage with those States prior to the fifty-fourth session of the Commission, upon which an oral report on the developments would be delivered. Japan is mindful that the current text below, which is limited in terms of the number of additional seats, does not address the issue regarding regional balance and wishes to discuss how this issue may be further contemplated in the mid-to-long term.

³ Of the 193 Member States of the United Nations, 54 (27.98 per cent) are African States, 54 (27.98 per cent) are Asian States, 23 (11.92 per cent) are Eastern European States, 33 (17.1 per cent) are Latin American and Caribbean States and 29 (15.03 per cent) are Western European and other States.

⁴ As an attempt to reconcile the different positions, the idea of "floating seats" was suggested by the coordinator in the course of informal consultations. It was suggested that, if adopted, the additional ten to twelve floating seats would not be allocated to regional groups but instead be open for States of all regional groups to present their candidatures. Though this idea was appreciated as a way to bypass the sensitive issue of regional distribution of additional seats, so far, it has not received broad support.

10. The co-sponsors submit the text of the draft General Assembly resolution which is largely based on General Assembly resolution 57/20 and found below for consideration by States.

Enlargement of the membership of the United Nations Commission on International Trade Law (Draft General Assembly resolution)

Text for proposal E

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its resolution 3108 (XXVIII) of 12 December 1973, by which it increased the membership of the Commission from twenty-nine to thirty-six States, and its resolution 57/20 of 19 November 2002, by which it increased the membership of the Commission from thirty-six to sixty States,

Being satisfied with the practice of the Commission of inviting States not members of the Commission and relevant intergovernmental and international nongovernmental organizations to participate as observers in the sessions of the Commission and its working groups and to take part in the formulation of texts by the Commission, as well as with the practice of reaching decisions by consensus without a formal vote,

Observing that the considerable number of States that have participated as observers and made valuable contributions to the work of the Commission indicates that there exists an interest in active participation in the Commission beyond the current sixty member States, and noting that there is an interest by a significant number of current member States of the Commission to continue their roles as members and from other States to become new members,

Convinced that wider participation of States in the work of the Commission would further the progress of its work and that an increase in the membership of the Commission would stimulate interest in its work,

Recognizing that increased membership is necessary for but may not sufficiently ensure the achievement of increased and active participation and that, therefore, the Commission should further explore accompanying means to achieve this aim,

Acknowledging that member States of the Commission consulted with each other and other interested States on the proposal to enlarge the membership of the Commission,

Takes note of the fact that the impact of an increase in the membership of the United Nations Commission on International Trade Law on the secretariat services required to properly facilitate the work of the Commission would not be material enough to quantify and that the increase would therefore have no financial implications,

Decides to increase the membership of the Commission from sixty to seventy States, bearing in mind that the Commission is a technical body; the regional representation resulting from this increase in membership shall not be a precedent for the enlargement of other bodies in the United Nations system,

Decides also that the ten additional members of the Commission shall be elected by the General Assembly for a term of six years in accordance with the following rules:

(a) In electing the additional members, the General Assembly shall observe the following distribution of seats:

- (i) Two from African States;
- (ii) Two from Asian and Pacific States;

- (iii) Two from Eastern European States;
- (iv) Two from Latin American and Caribbean States;
- (v) Two from Western European and other States;

(b) Of the ten additional members, five, i.e. one from each regional group, shall be elected at the election to be held during the seventy-sixth session of the General Assembly;

(c) The additional members elected in accordance with subparagraph (b) shall take office from the first day of the fifty-fifth session of the Commission in 2022;

(d) The remaining five additional members, i.e. one from each regional group, shall be elected at the election to be held during the seventy-ninth session of the General Assembly;

(e) The additional members elected in accordance with subparagraph (d) shall take office from the first day of the fifty-eighth session of the Commission in 2025;

(f) The provisions of section II, paragraphs 4 and 5, of General Assembly resolution 2205 (XXI) shall also apply to the additional members;⁵

Decides further that, when electing members of the Commission, Member States shall take into account voluntary pledge of the candidates which outline the concrete commitments of the candidates to the work of the Commission,

Appeals to Governments, the relevant United Nations organs, organizations, institutions and individuals, in order to ensure full participation by the Member States in the sessions of the Commission and its working groups, to consider making voluntary contributions to the Trust Fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General,

Calls upon member States of the Commission to make efforts to increase their active participation in the sessions of the Commission and its working groups which serve as an important forum for strategy and decision making of the work of the United Nations in the field of international trade law,

Requests the Secretariat to further explore ways to incorporate information technologies within the methodology of the sessions of the Commission and its working groups with the aim to enhancing active participation and inclusive engagement,

Requests the Secretariat to periodically provide to the Commission data on the attendance of member States of the Commission and observer States to the sessions of the Commission and its working groups, and also to explore ways to broaden the scope and/or to increase the effectiveness of its awareness raising efforts, and

Requests the Commission to assess the impact of this resolution and discuss any other issues in relation to this resolution at its session in 2026.

Alternative operative paragraphs 2 and 3 for proposal A

Decides to increase the membership of the Commission from sixty to seventy-two States, bearing in mind that the Commission is a technical body whose composition reflects, inter alia, the specific requirements of the subject matter; the regional representation resulting from this increase in membership, which takes those requirements into account, shall not be a precedent for the enlargement of other bodies in the United Nations system,

⁵ For reference: “4. The representatives of members on the Commission shall be appointed by Member States in so far as possible from among persons of eminence in the field of the law of international trade. 5. Retiring members shall be eligible for re-election.”

Decides also that the twelve additional members of the Commission shall be elected by the General Assembly for a term of six years in accordance with the following rules:

(a) In electing the additional members, the General Assembly shall observe the following distribution of seats:

- (i) Three from African States;
- (ii) Three from Asian and Pacific States;
- (iii) One from Eastern European States;
- (iv) Two from Latin American and Caribbean States;
- (v) Three from Western European and other States;

(b) Of the twelve additional members, six shall be elected at the election to be held during the seventy-sixth session of the General Assembly;

(c) The additional members to be elected from regional groups in accordance with subparagraph (b) shall be as follows:

- (i) Two from African States;
- (ii) One from Asian and Pacific States;
- (iii) One from Eastern European States;
- (iv) One from Latin American and Caribbean States;
- (v) One from Western European and other States;

(d) The additional members elected in accordance with subparagraph (b) shall take office from the first day of the fifty-fifth session of the Commission in 2022;

(e) The remaining six additional members shall be elected at the election to be held during the seventy-ninth session of the General Assembly;

(f) The additional members to be elected from regional groups in accordance with subparagraph (e) shall be as follows:

- (i) One from African States;
- (ii) Two from Asian and Pacific States;
- (iii) None from Eastern European States;
- (iv) One from Latin American and Caribbean States;
- (v) Two from Western European and other States;

(g) The additional members elected in accordance with subparagraph (e) shall take office from the first day of the fifty-eighth session of the Commission in 2025;

(h) The provisions of section II, paragraphs 4 and 5, of General Assembly resolution 2205 (XXI) shall also apply to the additional members.⁶

⁶ For reference: “4. The representatives of members on the Commission shall be appointed by Member States in so far as possible from among persons of eminence in the field of the law of international trade. 5. Retiring members shall be eligible for re-election.”