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## UNCITRAL rules of procedure and methods of work

### Note by the Secretariat\*

#### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction .....	1-3	2
II. Background information .....	4-32	3
A. UNCITRAL rules of procedure .....	4-12	3
1. Decision by the General Assembly as regards UNCITRAL rules of procedure .....	5-6	3
2. Decision by the Commission as regards its rules of procedure .....	7-12	4
B. UNCITRAL working methods .....	13-32	5
1. Original parameters for working methods .....	13-17	5
2. Review by the Commission of its working methods .....	18-24	7
3. Views in the General Assembly and the Sixth Committee as regards methods of work of the Commission .....	25-26	9
4. Working groups' methods of work .....	27-32	10
Annex		
Rules of procedure of the General Assembly applicable to UNCITRAL .....		12

\* This note is submitted late due to the need to complete consultations and finalize subsequent amendments.



## I. Introduction

1. The United Nations Commission on International Trade Law (UNCITRAL or the “Commission”), at the first part of its fortieth session (Vienna, 25 June-12 July 2007), considered observations and proposals by France on UNCITRAL’s working methods, set out in document A/CN.9/635. In the general discussion of the observations and proposals, it was widely felt that, while the current UNCITRAL’s working methods had demonstrated their efficiency, a comprehensive review of the working methods of the Commission might be timely, particularly in view of the recent increase in membership of the Commission and the number of topics being dealt with by the Commission and its six full-membership working groups to which also non-member States were invited. It was agreed that the guiding principles for such a comprehensive review should be those of inclusiveness, transparency and flexibility.<sup>1</sup> The Commission requested the Secretariat to prepare a compilation of procedural rules and practices established by UNCITRAL itself or by the General Assembly in its resolutions regarding the work of the Commission, and present it for consideration by the Commission if possible as early as at its resumed fortieth session.<sup>2</sup>

2. The present note is submitted to the Commission pursuant to that request. For the purpose of the review of the Commission’s procedural rules and practices, a distinction is drawn between rules of procedure and working methods of the Commission. While to some extent interlinked, “rules of procedure” regulate proceedings at formal meetings, including representation, election and functions of officers, delivery of statements and decision-making, while “working methods” refer to ways by which the Commission, its subsidiary organs and secretariat fulfil UNCITRAL functions. The review focuses on the rules of procedure applicable to the Commission and the working methods related thereto. It cannot therefore be considered an exhaustive review of all working methods of the Commission, its subsidiary organs and secretariat.

3. This document consists of a general part containing background information about applicable rules of procedure and relevant working methods (A/CN.9/638), and several addenda. Addenda 1 to 4 to this note describe practices in the Commission and its subsidiary organs with the application and interpretation of each applicable rule of procedure, and the related methods of work. Addendum 5 addresses the status of observers in the General Assembly and the Commission. Addendum 6 describes regulations and practices related to the use of languages in the General Assembly, its subsidiary organs and in the Secretariat. The issues addressed in addenda 5 and 6, which are not specifically addressed in the applicable rules of procedure, have been included in the review since reference thereto has been made in document A/CN.9/635 (see paragraph 1 above). (This document and the addenda extensively refer to the Commission’s records and other documents, most of which are available on the UNCITRAL website: [www.uncitral.org](http://www.uncitral.org)).

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<sup>1</sup> A/62/17 (Part I), para. 236.

<sup>2</sup> Ibid., paras. 237 and 241.

## II. Background information

### A. UNCITRAL rules of procedure

4. UNCITRAL is a subsidiary organ of the United Nations General Assembly, established by General Assembly resolution 2205 (XXI) of 17 December 1966 (hereinafter referred to as the “founding resolution”). In accordance with Article 22 of the United Nations Charter, “[t]he General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.”<sup>3</sup> Rule 161 of the Rules of Procedure of the General Assembly<sup>4</sup> restates this provision of the Charter and in addition states that “[t]he rules relating to the procedure of committees of the General Assembly, as well as rules 45 and 60, shall apply to the procedure of any subsidiary organ unless the Assembly or the subsidiary organ decides otherwise.”

#### 1. Decision by the General Assembly as regards UNCITRAL rules of procedure

5. The General Assembly, in the founding resolution and subsequent resolutions related to the work of UNCITRAL,<sup>5</sup> did not provide for UNCITRAL rules of

<sup>3</sup> “Subsidiary organs” are to be distinguished from principal organs specified in the United Nations Charter or from completely autonomous bodies established by separate international agreement. *United Nations Juridical Yearbook, 1979* (United Nations publication, Sales No. E.82.V.1), pp. 171-172, under item 6, para. 5.

<sup>4</sup> A/520/Rev.16, embodying amendments and additions adopted by the General Assembly up to September 2006.

<sup>5</sup> They are: (i) resolutions on the annual report of UNCITRAL 2421 (XXIII), 2502 (XXIV), 2635 (XXV), 2766 (XXVI), 2928 (XXVII), 3108 (XXVIII), 3316 (XXIX), 3494 (XXX), 31/99, 32/145, 33/92, 34/143, 35/51, 36/32, 37/106, 38/134, 39/82, 40/71, 41/77, 42/152, 43/166, 44/33, 45/42, 46/56, 47/34, 48/32, 49/55, 50/47, 51/161, 52/157, 53/103, 54/103, 55/151, 56/79, 57/17, 58/75, 59/39, 60/20 and 61/32; and (ii) the topic-specific resolutions related to the work of UNCITRAL 2929 (XXVII), 3104 (XXVIII) and 3317 (XXIX) on the United Nations Conference on Prescription (Limitation) in the International Sale of Goods; 31/98 on the UNCITRAL Arbitration Rules; 31/100 and 32/438 on the United Nations Conference on the Carriage of Goods by Sea; 33/93 on the United Nations Conference on Contracts for the International Sale of Goods; 34/142 on coordination in the field of international trade law; 35/52 on the UNCITRAL Conciliation Rules; 37/107 on the Provisions for a Unit of Account and Adjustment of Limitations of Liability; 38/135 on Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance; 40/72 on the Model Law on International Commercial Arbitration; 42/153 on the Draft Convention on International Bills of Exchange and International Promissory Notes; 43/165 on the United Nations Convention on International Bills of Exchange and International Promissory Notes; 48/33 on the UNCITRAL Model Law on Procurement of Goods and Construction; 48/34 on the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules); 49/54 on the UNCITRAL Model Law on Procurement of Goods, Construction and Services; 50/48 on the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit; 51/162 on the UNCITRAL Model Law on Electronic Commerce; 52/158 on the UNCITRAL Model Law on Cross-Border Insolvency; 56/80 on the UNCITRAL Model Law on Electronic Signatures; 56/81 on the United Nations Convention on the Assignment of Receivables in International Trade; 57/18 on the UNCITRAL Model Law on International Commercial Conciliation; 57/19 on enhancing coordination in the area of international trade law and strengthening the secretariat of UNCITRAL; 57/20 on the enlargement of the UNCITRAL membership; 58/76 on the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects; 59/40 on the UNCITRAL Legislative Guide on Insolvency Law; 60/21 on the United Nations Convention on the Use of Electronic

procedure. Neither has it made any request or recommendation to the Commission to adopt its specific rules of procedure.

6. On several occasions, the General Assembly expressed its position as regards certain aspects of the Commission's rules of procedure, such as on the practice of taking decisions by consensus and involving all States and relevant intergovernmental and non-governmental organizations in the work of the Commission. These aspects are analysed in more detail in the addenda to this note (A/CN.9/638/Add.4 and 5).

## **2. Decision by the Commission as regards its rules of procedure**

7. At its first session, in 1968, the Commission had before it a note by the Secretary-General entitled "Adoption of rules of procedure" (A/CN.9/3). The note described options available to the Commission as regards its rules of procedure. The note, in particular, recalled that in resolutions establishing some subsidiary organs that, like the Commission, were to have continuing functions, the General Assembly had expressly directed the organ concerned to adopt its own rules of procedure. This was the case, for example, with the Industrial Development Board<sup>6</sup> and the Trade and Development Board.<sup>7</sup> In other instances, however, for example in the case of the International Law Commission,<sup>8</sup> and UNCITRAL itself, the resolutions establishing the subsidiary organ did not contain any reference to rules of procedure, including an obligation by a subsidiary organ to adopt any specific rules (A/CN.9/3, paras. 2 and 3).

8. The note further stated that, in the absence of a decision by the General Assembly on this matter, the rules of procedure of committees of the Assembly as well as rules 45 and 60 (the latter was rule 62 at the time of the preparation of the note) would apply to the procedure of the Commission *mutatis mutandis*, unless the Commission decided to adopt its own rules of procedure. It was noted that the International Law Commission, since its first session in 1949, had followed the former course, i.e., applied to its procedure the rules of procedure of committees of the Assembly and other relevant Assembly rules (A/CN.9/3, paras. 4-6).<sup>9</sup> It was suggested that, should the Commission wish to adopt the same course on matters not covered by the above-mentioned rules, the Commission might wish to be guided by the general principle that the rules of the General Assembly would apply to the Commission as might be appropriate for the performance of its functions (A/CN.9/3, paras. 5-6).

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Communications in International Contracts; and 61/33 on the revised articles of the UNCITRAL Model Law on International Commercial Arbitration, and the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958.

<sup>6</sup> General Assembly resolution 2152 (XXI) of 17 November 1966, establishing the United Nations Industrial Development Organization (UNIDO), para. 10.

<sup>7</sup> General Assembly resolution 1995 (XIX) of 30 December 1964, establishing the United Nations Conference on Trade and Development (UNCTAD), para. 12.

<sup>8</sup> General Assembly resolution 174 (II) of 21 November 1947, establishing the International Law Commission.

<sup>9</sup> For the relevant decision by the International Law Commission, see *Yearbook of the International Law Commission, 1949*, Report to the General Assembly, para. 5.

9. The Commission, in formulating its position on the matter at its first session, decided that the rules relating to the procedure of committees of the General Assembly as well as rules 45 and 60 [62] would apply to the procedure of the Commission, until such time as the Commission adopted its own rules of procedure. The Commission further decided that on matters not covered by these rules, the Commission would be guided by the general principle that the rules of procedure of the General Assembly would apply *mutatis mutandis* to the Commission as may be appropriate for the performance of its functions.<sup>10</sup>

10. Since then, the Commission has not adopted a formal set of its own rules of procedure. Instead it has taken decisions on its procedures as needed and has applied the Rules of Procedure of the General Assembly with flexibility.

11. According to the legal opinion of the Office of Legal Affairs, a General Assembly subsidiary organ is a master of its own procedures and free to depart from the Rules of Procedure of the General Assembly under rule 161 (see paragraph 4 above).<sup>11</sup> In addition, the standard practice of United Nations bodies is that each body may interpret the rules of procedure applicable to it, to the extent such interpretation does not constitute an amendment or suspension of the rules, which may only be done pursuant to relevant rules governing method of amendment and method of suspension.<sup>12</sup>

12. The rules relating to the procedure of committees of the General Assembly as well as rules 45 and 60 of the General Assembly, applicable *mutatis mutandis* to the procedure of the Commission, are reproduced in the annex to the present document.

## **B. UNCITRAL working methods**

### **1. Original parameters for working methods**

13. Upon the establishment of UNCITRAL, the General Assembly chose not to adopt a statute of UNCITRAL and set out specific requirements as regards organization and methods of work of the Commission. The Sixth Committee of the General Assembly has repeatedly expressed general agreement that it is for the Commission itself to establish its working methods.<sup>13</sup> Therefore, unlike the International Law Commission, which is bound by certain requirements in its Statute<sup>14</sup> as regards organization and methods of work, the Commission, since its inception, has been free to organize its work and establish working methods, subject to the provisions of the founding resolution and subsequent resolutions of the General Assembly related to UNCITRAL.

14. The Commission, at its first session, considered a note by the Secretary-General on organization and methods of work (A/CN.9/6). The Secretary-General,

<sup>10</sup> A/7216, paras. 16 and 17.

<sup>11</sup> *United Nations Juridical Yearbook, 1973* (United Nations publication, Sales No. E.75.V.1), p. 144, para. 4.

<sup>12</sup> *Ibid.*, 1989 (United Nations publication, Sales No. E.00.V.1), p. 366.

<sup>13</sup> See, e.g., documents A/9408, para. 20; A/9920, para. 16; and A/10420, para. 14.

<sup>14</sup> General Assembly resolution 174 (II) of 21 November 1947. The Statute of the International Law Commission was subsequently amended by General Assembly resolutions 485 (V) of 12 December 1950, 984 (X) and 985 (X) of 3 December 1955, and 36/39 of 18 November 1981.

taking into account the relevant experience in United Nations organs, in particular the International Law Commission, recommended in his note that the Commission take a pragmatic and flexible approach to its organization and methods of work. The Secretary-General, noting the breadth and complexity of the Commission's responsibilities that necessitated work all year round, suggested that the Commission consider a variety of methods for dealing with a particular matter, in the light of the relevant factors, such as a stage of implementation of the work programme and the financial implications. The examples of suggested working methods included envisaging work through intersessional subcommittees, inviting other organizations, scientific institutions or individual experts to work on particular topics, and giving assignments to the Secretariat (A/CN.9/6, paras. 23-27).

15. At that session, the Commission set general parameters for its working methods stating that the particular methods of work to be followed by the Commission, including consultations with other bodies active in the field of international trade law, would be decided upon by the Commission in the light of requirements of each particular topic.<sup>15</sup> As regards methods of work on the three priority topics identified by the Commission for its work (International sale of goods, International payments, and Commercial arbitration),<sup>16</sup> the Commission set out specific procedures to be followed, including (i) circulation of a questionnaire by the Secretary-General to States; (ii) invitation to the States members of the Commission to prepare studies on the subjects concerned; (iii) transmission by the Secretary-General of replies and studies received to States members of the Commission and organizations concerned with the subject matter, for their comments; (iv) preparation by the Secretary-General, in consultation with the relevant organizations, of an analysis of replies and studies received, and of preliminary reports/studies; (v) consideration of replies and studies, analysis and comments by the Commission at its sessions; (vi) delegation through the Secretary-General of work on the subjects or in the areas identified by the Commission to other relevant organizations; (vii) preliminary examination by the Secretary-General of a matter with a view to the possibility of making a study for submission to the Commission at the appropriate time; and (viii) suitable consultations by the Secretary-General with the organs and organizations concerned as may be indicated in the different phases of the work.<sup>17</sup> At the same session, the Commission established sessional and intersessional working groups (see A/CN.9/638/Add.1, paras. 16 and 22).<sup>18</sup>

16. The Commission followed these parameters and established additional parameters for its working methods at its subsequent sessions. In particular, at its second session, the Commission agreed that, in order for it to implement the mandate entrusted to it by the General Assembly, it was desirable that there should be the widest possible participation by members of the Commission also in the preparatory work to be done by intersessional subcommittees, working groups or special rapporteurs, which the Commission might decide to establish or appoint.<sup>19</sup> It

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<sup>15</sup> A/7216, para. 43.

<sup>16</sup> Ibid., para. 40, II. See also A/CN.9/L.1/Rev.1.

<sup>17</sup> Ibid., para. 48. See also document A/CN.9/9.

<sup>18</sup> Ibid., paras. 45 and 52.

<sup>19</sup> Although the Commission envisaged establishing, along intersessional working groups, intersessional subcommittees, no intersessional subcommittees have been established. Since its

was also considered desirable that provisions should be made, where necessary, to obtain the services of consultants or organizations with special expertise in technical matters dealt with by the Commission. The Commission agreed that this would be the normal pattern of work during the coming years.<sup>20</sup>

17. Furthermore, at its sixth session, the Commission took a policy decision that consideration by the Commission of substantive provisions of a legal instrument being considered by its working group should, as a general rule, be deferred until after the work of the working group on the instrument had been finished and the working group had submitted its final report on the instrument to the Commission.<sup>21</sup> Since then the Commission has generally adhered to this procedure.<sup>22</sup>

## **2. Review by the Commission of its working methods**

18. At its own initiative or upon the request of a member State or the General Assembly, the Commission on several occasions has undertaken the review of its working methods.

19. At its fifth and sixth sessions, the Commission considered its working methods on the basis of a proposal by Spain<sup>23</sup> and the recommendations of a sessional working group established by the Commission at its fifth session to examine that proposal.<sup>24</sup> It was in particular recommended that the Commission should follow the practice of establishing small working groups, holding longer sessions of these groups and shorter sessions of the Commission, and using experts. The Commission decided, in planning its work, to bear in mind the suggestions on its working methods submitted by Spain.<sup>25</sup>

20. At its eleventh session, in connection with review of its long-term programme, the Commission established an ad hoc working group to inter alia make recommendations as to working methods which might be adopted by the Commission as regards topics included in the new work programme.<sup>26</sup> At the same session, the Commission considered and adopted the recommendations of the working group, which inter alia stated that: (i) as a general rule, the Commission should not refer subject-matters to a working group until after the preparatory studies had been made by the Secretariat and the consideration of these studies by the Commission had indicated not only that the subject-matter was a suitable one but that the preparatory work was sufficiently advanced for a working group to commence work in a profitable manner; (ii) the Secretariat should, in the first instance undertake preliminary studies, where necessary in consultation with interested international organizations; (iii) the Secretariat could exercise its discretion in determining the order in which such studies were prepared but take into account any priorities indicated by the Commission; and (iv) the Commission should decide on the scope of further work on these subjects, and their possible

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inception, the Commission has appointed a special rapporteur only once. See A/CN.9/638/Add.1, paras. 31-32.

<sup>20</sup> A/7618, para. 180.

<sup>21</sup> A/9017, paras. 33 and 55.

<sup>22</sup> See, e.g., A/9617, paras. 16, 27 and 47; A/10017, paras. 14 and 30; and A/31/17, para. 32.

<sup>23</sup> A/8717, para. 106.

<sup>24</sup> Ibid., paras. 107-110, and A/9017, paras. 140-142.

<sup>25</sup> A/9017, para. 143.

<sup>26</sup> A/33/17, paras. 66-68. For the list of topics, see *ibid.*, para. 67 (c).

allocation to working groups after having examined the studies prepared by the Secretariat.<sup>27</sup> In its subsequent work, the Commission has as a general rule adhered to this procedure.

21. At its twenty-first and twenty-third sessions, the Commission considered its working methods, on the basis of a note by the Secretariat (A/CN.9/299), focusing on the composition of its working groups.<sup>28</sup> As a result of that review, the Commission decided that it would not change its policy that its working groups should be composed of all States members of the Commission. It noted that when a working group was given a new mandate, it would be possible, if it seemed appropriate at the time, to reconsider the size of that working group for the period of the specific mandate.<sup>29</sup> The practice of convening only full-membership working groups has been consistently followed since the Commission's thirteenth session.<sup>30</sup> (For the evolution of composition of the Commission's working groups, see A/CN.9/698/Add.1, paras. 23 and 25-27.)

22. At its thirty-fourth session, in connection with its deliberations on the implications of increasing its membership, the Commission held another overall review of its working methods on the basis of notes by the Secretariat (A/CN.9/499 and A/CN.9/500).<sup>31</sup> In the light of the expanded work program of the Commission, the Commission increased the number of its working groups from three to six, working in parallel, with the corresponding shortening of the duration of the working group sessions from two weeks to one week.<sup>32</sup> The Commission also agreed that working groups should hold substantive deliberations during the first eight half-day meetings, with a draft report on the entire period to be adopted at the tenth and last meeting during the working group's session (on Friday afternoon). The Commission acknowledged that, under that option, no extensive report could be prepared on deliberations held during the ninth meeting (on Friday morning). The Commission agreed that main conclusions reached at that meeting should be summarily read out for the record by the Chairman at the tenth meeting and subsequently incorporated into the report. The prevailing view within the Commission was that it was important for the working group to adopt the entire report at the same session.<sup>33</sup> The understanding was that new working methods would be used in a flexible manner and, depending on priority, a working group would be able to use two weeks for consideration of one topic. The Commission also invited delegations to resort to informal consultations prior to actual meetings, thus reserving actual conference time only for those issues that required extensive

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<sup>27</sup> Ibid., paras. 67 and 68.

<sup>28</sup> A/43/17, paras. 110-119; and A/45/17, paras. 65-69.

<sup>29</sup> A/45/17, para. 69.

<sup>30</sup> A/35/17, para. 143 (5). For the Commission's decisions at subsequent sessions to open membership of existing working groups to all States members of the Commission, see, e.g., A/38/17, para. 143; and A/41/17, para. 221. Upon establishment of additional working groups in 2001, the Commission did not change the policy as regards membership of working groups.

<sup>31</sup> A/56/17, paras. 370-383.

<sup>32</sup> Ibid., para. 425.

<sup>33</sup> Ibid., para. 381. In the current practice of working groups, substantive deliberations continue during the ninth meeting (on Friday morning), and main conclusions of that meeting are summarized by the Secretariat and read out to the working group at the tenth meeting, on Friday afternoon. The working group adopts the entire report of the session, including the summary of the ninth meeting, at its last meeting, on Friday afternoon.



deliberations, both formal and informal, in the context of Commission and working group meetings.<sup>34</sup>

23. At the following sessions, the Commission expressed its conviction that its current working methods had proved their efficiency. The disadvantage of shortening the duration of a session of a working group from nine days to five days was considered to be outweighed by the advantages, which included: the ability of the Commission to work on more than three subjects (which was necessary in view of the pressing need for modernization of commercial laws in an increased number of areas of commercial law); the savings in time and expenditure for delegates attending a given session; and the experience that a number of members of delegations of member States and observers were able to attend a five-working-day session whereas, owing to their busy agenda, they could not attend a two-week session.<sup>35</sup>

24. At its thirty-sixth session, the Commission formulated a policy, which has been followed since then, that: (a) working groups should normally meet for a one-week session twice a year; (b) extra time, if required, could be allocated from the unused entitlement of another working group provided that such arrangement would not result in the increase of the total number of 12 weeks of conference services per year currently allotted to sessions of all six working groups of the Commission; and (c) if any request by a working group for extra time would result in the increase of the 12-week allotment, it should be reviewed by the Commission, with proper justification being given by that working group regarding the reasons for which a change in the meeting pattern was needed.<sup>36</sup>

### **3. Views in the General Assembly and the Sixth Committee as regards methods of work of the Commission**

25. The General Assembly, in a number of occasions, commended the Commission for its efforts to enhance the efficiency of its working methods and recommended that the Commission keep its working methods under review with the aim to further increase the effectiveness of its work.<sup>37</sup> In its resolutions 46/56, section B, paragraph 3, and 47/34, paragraph 13, the General Assembly recommended that the Commission rationalize the organization of its work and consider, in particular, the holding of consecutive meetings of its working groups. In its resolution 56/79, paragraph 3, the General Assembly expressed appreciation to the Commission for its decision to adjust its working methods in order to accommodate its increased workload without endangering the high quality of its work. In its resolution 57/19, the General Assembly expressed satisfaction that the adjusted working methods had proved their efficiency.

26. Many representatives in the Sixth Committee repeatedly expressed satisfaction with UNCITRAL working methods, in particular their flexibility.<sup>38</sup> Criticism by

<sup>34</sup> Ibid., para. 382.

<sup>35</sup> A/57/17, para. 271; and A/58/17, paras. 270-275.

<sup>36</sup> A/58/17, para. 275.

<sup>37</sup> See, e.g., resolutions 3494 (XXX), paras. 2 and 7 (g); 31/99, para. 2; 32/145, para. 5 (f); 33/92, paras. 3 and 7 (f); 34/143, para. 5 (f); and 35/51, para. 3.

<sup>38</sup> See A/8146, paras. 10-13; A/8506, paras. 11-12; A/8896, para. 10; A/9408, para. 13; A/9920, para. 10; A/10420, paras. 10, 12 and 13; A/31/390, paras. 10-11; and A/32/402, paras. 13-14.

some delegations about the Commission's working methods was also voiced.<sup>39</sup> In the early years of the Commission, some representatives in particular cautioned against a tendency towards the excessive use of working groups, which was regarded as costly.<sup>40</sup> Suggestions were made that, instead the Commission should make greater use of its own skills and other less expensive working methods, such as cooperation with competent international organizations. Some representatives expressed the view that to reduce the costs of holding intersessional working groups, their meetings should be during the Commission's regular sessions.<sup>41</sup> Some representatives were also concerned that the Commission extensively delegated its tasks to the Secretariat.<sup>42</sup> Opposite views on these points were also expressed.<sup>43</sup>

#### **4. Working groups' methods of work**

27. In its early years, the Commission tended to set out methods of work on a particular topic assigned to a working group. For example, at its third session, the Commission as regards the working methods to be followed by a working group with respect to uniform rules on the international sale of goods (the Working Group on Sales): (i) decided that the Working Group should meet at least for ten days before the Commission's next session; (ii) recommended that consideration of uniform rules should proceed chapter by chapter instead of on selected items; (iii) requested members of the Working Group to submit their proposals in writing and in time to allow their circulation prior to the meetings; (iv) recommended that representatives of members of the Working Group alone or in cooperation with representatives of other members should be entrusted if so willing with the examination and redrafting of the articles and any other related provisions and instructed that those entrusted shall submit the results of their work to the Secretary-General for transmission to other members of the Working Group for comments; (v) instructed the Secretary-General to submit its observations to the Working Group for consideration and render assistance to the Working Group in the performance of its task, in particular, by preparing either at the request of the Working Group or on his own motion studies and other preparatory documents (with the assistance of experts, if necessary and budget permitting) and by submitting proposals for consideration; (vi) suggested that, before the new text is completed, the Working Group should only submit questions of principle to the Commission for consideration; and (vii) requested members of the Commission to submit their proposals relating to the report of the Working Group in writing preferably in advance of the next Commission session.<sup>44</sup> There was also general agreement that the Working Group in reporting revised provisions should make explanatory comments on each article.<sup>45</sup>

28. Many representatives in the Sixth Committee commended the Commission for the effective manner in which it had delegated authority to the Working Group on

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<sup>39</sup> See, e.g., A/9408, paras. 14 and 16-19; and A/8896, para. 10.

<sup>40</sup> See, e.g., A/8506, para. 13; and A/8896, para. 11.

<sup>41</sup> See, e.g., A/8506, para. 14.

<sup>42</sup> See A/9408, para. 17; and A/9920, para. 13.

<sup>43</sup> Ibid., and, in the later years, A/32/402, paras. 13-14; and A/33/349, paras. 13-14.

<sup>44</sup> A/8017, para. 72.

<sup>45</sup> Ibid., para. 70.

Sales and for the various measures adopted to systematize and streamline its work in that field.<sup>46</sup>

29. At its fourth session, the Commission decided that the newly established working group on international shipping legislation would plan its programme and methods of work in such a way that the examination of the topics referred to it might be undertaken as quickly as possible.<sup>47</sup> The Working Group, after holding a sessional meeting, reported to the Commission at the same session the Working Group's decision as regards its programme and methods of work, which the Commission took note of with approval.<sup>48</sup> The decision envisaged the preparation of reports by the Secretary-General, their circulation for comment to members of the Working Group, invitation to members of the Working Group to prepare studies and proposals and their transmission to the Secretary-General for use in the preparation of the reports and to other members of the Working Group.<sup>49</sup>

30. At the same session, in considering future work by the Working Group on Sales, the Commission authorized the Working Group to determine and improve where necessary its own working methods and programme of work. It decided that until the new text of a uniform law or the revised text had been completed, the Working Group should submit a progress report on its work to each session of the Commission, and any comments or recommendations which representatives might make at the sessions on issues set out in the progress reports should be considered by the Working Group in the preparation of the final draft. It was further decided that the Commission would take its decisions on the substantive issues which might arise in connection with provisions of a new uniform law or the revised text when it had before it for approval the final text and accompanying commentary prepared by the Working Group. The Commission also authorized the Working Group to request the Secretary-General to prepare studies and other documents that were necessary for the continuation of its work.<sup>50</sup>

31. At that session, the Commission set out similar working methods for the Working Group on Time-limits and Limitations (Prescription). The Commission also invited the representatives to put any proposals they might have into written form in time for consideration by its working groups.<sup>51</sup>

32. Since its seventeenth session, the Commission has delegated to its working groups decisions regarding their working methods.<sup>52</sup> The Commission's working groups followed essentially the general parameters and working methods established by the Commission for its working groups in earlier years (see in particular paragraph 27 above for the working methods to be followed by the Working Group on Sales, established by the Commission at its third session, and paragraph 30 above for the rules on the division of labour between the Commission and its working groups on the preparation of draft legal texts, established by the Commission at its fourth session).

<sup>46</sup> A/8146, para. 11.

<sup>47</sup> A/8417, para. 19 (3)(c).

<sup>48</sup> Ibid., paras. 20-23.

<sup>49</sup> Ibid., para. 22.

<sup>50</sup> Ibid., para. 92.

<sup>51</sup> Ibid., paras. 110-111 and 118.

<sup>52</sup> See, e.g., A/39/17, para. 108.

## Annex

### **Rules of procedure of the General Assembly applicable to UNCITRAL<sup>53</sup>**

#### **Rule 45**

The Secretary-General shall act in that capacity in all meetings of the General Assembly, its committees and its subcommittees. He may designate a member of the Secretariat to act in his place at these meetings.

#### **X. Public and private meetings of the General Assembly, its committees and its subcommittees**

##### *General principles*

#### **Rule 60**

The meetings of the General Assembly and its Main Committees shall be held in public unless the organ concerned decides that exceptional circumstances require that the meeting be held in private. Meetings of other committees and subcommittees shall also be held in public unless the organ concerned decides otherwise.

#### **XIII. Committees**

##### **Establishment, officers, organization of work**

##### *Establishment of committees*

#### **Rule 96**

The General Assembly may establish such committees as it deems necessary for the performance of its functions.

##### *Categories of subjects*

#### **Rule 97**

Items relating to the same category of subjects shall be referred to the committee or committees dealing with that category of subjects. Committees shall not introduce new items on their own initiative.

##### *Main Committees*

#### **Rule 98**

The Main Committees of the General Assembly are the following:

- (a) Disarmament and International Security (First Committee);
- (b) Special Political and Decolonization Committee (Fourth Committee);

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<sup>53</sup> The rules are reproduced in the present annex without accompanying footnotes and other references. For the full text, see A/520/Rev.16. The addenda to this note reproduce each of the above rules and refer to the content of the accompanying footnote(s).

- (c) Economic and Financial Committee (Second Committee);
- (d) Social, Humanitarian and Cultural Committee (Third Committee);
- (e) Administrative and Budgetary Committee (Fifth Committee);
- (f) Legal Committee (Sixth Committee).

*Organization of work*

**Rule 99**

(a) All the Main Committees shall, at least three months before the opening of the session, elect a Chairman. Elections of the other officers provided for in rule 103 shall be held at the latest by the end of the first week of the session.

(b) Each Main Committee, taking into account the closing date for the session fixed by the General Assembly on the recommendation of the General Committee, shall adopt its own priorities and meet as may be necessary to complete the consideration of the items referred to it. It shall at the beginning of the session adopt a programme of work indicating, if possible, a target date for the conclusion of its work, the approximate dates of consideration of items and the number of meetings to be allocated to each item.

*Representation of Members*

**Rule 100**

Each Member may be represented by one person on each Main Committee and on any other committee that may be established upon which all Members have the right to be represented. It may also assign to these committees advisers, technical advisers, experts or persons of similar status.

**Rule 101**

Upon designation by the chairman of the delegation, advisers, technical advisers, experts or persons of similar status may act as members of committees. Persons of this status shall not, however, unless designated as alternate representatives, be eligible for election as Chairmen, Vice-Chairmen or Rapporteurs of committees or for seats in the General Assembly.

*Subcommittees*

**Rule 102**

Each committee may set up subcommittees, which shall elect their own officers.

*Election of officers*

**Rule 103**

Each Main Committee shall elect a Chairman, three Vice-Chairmen and a Rapporteur. In the case of other committees, each shall elect a Chairman, one or more Vice-Chairmen and a Rapporteur. These officers shall be elected on the basis of equitable geographical distribution, experience and personal competence. The

elections shall be held by secret ballot unless the committee decides otherwise in an election where only one candidate is standing. The nomination of each candidate shall be limited to one speaker, after which the committee shall immediately proceed to the election.

*The Chairman of a Main Committee shall not vote*

#### **Rule 104**

The Chairman of a Main Committee shall not vote, but another member of his delegation may vote in his place.

*Absence of officers*

#### **Rule 105**

If the Chairman finds it necessary to be absent during a meeting or any part thereof, he shall designate one of the Vice-Chairmen to take his place. A Vice-Chairman acting as Chairman shall have the same powers and duties as the Chairman. If any officer of the committee is unable to perform his functions, a new officer shall be elected for the unexpired term.

*Functions of the Chairman*

#### **Rule 106**

The Chairman shall declare the opening and closing of each meeting of the committee, direct its discussions, ensure observance of these rules, accord the right to speak, put questions and announce decisions. He shall rule on points of order and, subject to these rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat. The Chairman may, in the course of the discussion of an item, propose to the committee the limitation of the time to be allowed to speakers, the limitation of the number of times each representative may speak, the closure of the list of speakers or the closure of the debate. He may also propose the suspension or the adjournment of the meeting or the adjournment of the debate on the item under discussion.

#### **Rule 107**

The Chairman, in the exercise of his functions, remains under the authority of the committee.

### **Conduct of Business**

*Quorum*

#### **Rule 108**

The Chairman may declare a meeting open and permit the debate to proceed when at least one quarter of the members of the committee are present. The presence of a majority of the members shall be required for any decision to be taken.

*Speeches***Rule 109**

No representative may address the committee without having previously obtained the permission of the Chairman. The Chairman shall call upon speakers in the order in which they signify their desire to speak. The Chairman may call a speaker to order if his remarks are not relevant to the subject under discussion.

*Congratulations***Rule 110**

Congratulations to the officers of a Main Committee shall not be expressed except by the Chairman of the previous session—or, in his absence, by a member of his delegation—after all the officers of the Committee have been elected.

*Precedence***Rule 111**

The Chairman and the Rapporteur of a committee or subcommittee may be accorded precedence for the purpose of explaining the conclusions arrived at by their committee or subcommittee.

*Statements by the Secretariat***Rule 112**

The Secretary-General, or a member of the Secretariat designated by him as his representative, may at any time make either oral or written statements to any committee or subcommittee concerning any question under consideration by it.

*Points of order***Rule 113**

During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the Chairman in accordance with the rules of procedure. A representative may appeal against the ruling of the Chairman. The appeal shall be immediately put to the vote, and the Chairman's ruling shall stand unless overruled by a majority of the members present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion.

*Time limit on speeches***Rule 114**

The committee may limit the time to be allowed to each speaker and the number of times each representative may speak on any question. Before a decision is taken, two representatives may speak in favour of, and two against, a proposal to set such limits. When the debate is limited and a representative exceeds his allotted time, the Chairman shall call him to order without delay.

*Closing of list of speakers, right of reply***Rule 115**

During the course of a debate, the Chairman may announce the list of speakers and, with the consent of the committee, declare the list closed. He may, however, accord the right of reply to any member if a speech delivered after he has declared the list closed makes this desirable.

*Adjournment of debate***Rule 116**

During the discussion of any matter, a representative may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote. The Chairman may limit the time to be allowed to speakers under this rule.

*Closure of debate***Rule 117**

A representative may at any time move the closure of the debate on the item under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be immediately put to the vote. If the committee is in favour of the closure, the Chairman shall declare the closure of the debate. The Chairman may limit the time to be allowed to speakers under this rule.

*Suspension or adjournment of the meeting***Rule 118**

During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated but shall be immediately put to the vote. The Chairman may limit the time to be allowed to the speaker moving the suspension or adjournment of the meeting.

*Order of procedural motions***Rule 119**

Subject to rule 113, the motions indicated below shall have precedence in the following order over all other proposals or motions before the meeting:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the item under discussion;
- (d) To close the debate on the item under discussion.



*Proposals and amendments***Rule 120**

Proposals and amendments shall normally be submitted in writing to the Secretary-General, who shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the committee unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The Chairman may, however, permit the discussion and consideration of amendments, or of motions as to procedure, even though such amendments and motions have not been circulated or have only been circulated the same day.

*Decisions on competence***Rule 121**

Subject to rule 119, any motion calling for a decision on the competence of the General Assembly or the committee to adopt a proposal submitted to it shall be put to the vote before a vote is taken on the proposal in question.

*Withdrawal of motions***Rule 122**

A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion thus withdrawn may be reintroduced by any member.

*Reconsideration of proposals***Rule 123**

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the committee, by a two-thirds majority of the members present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

**Voting***Voting rights***Rule 124**

Each member of the committee shall have one vote.

*Majority required***Rule 125**

Decisions of committees shall be made by a majority of the members present and voting.

*Meaning of the phrase “members present and voting”***Rule 126**

For the purposes of these rules, the phrase “members present and voting” means members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting.

*Method of voting***Rule 127**

(a) The committee shall normally vote by show of hands or by standing, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the members, beginning with the member whose name is drawn by lot by the Chairman. The name of each member shall be called in any roll-call, and its representative shall reply “yes”, “no” or “abstention”. The result of the voting shall be inserted in the record in the English alphabetical order of the names of the members.

(b) When the committee votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the committee shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the members; nevertheless, the result of the voting shall be inserted in the record in the same manner as that of a roll-call vote.

*Conduct during voting***Rule 128**

After the Chairman has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The Chairman may permit members to explain their votes, either before or after the voting, except when the vote is taken by secret ballot. The Chairman may limit the time to be allowed for such explanations. The Chairman shall not permit the proposer of a proposal or of an amendment to explain his vote on his own proposal or amendment.

*Division of proposals and amendments***Rule 129**

A representative may move that parts of a proposal or of an amendment should be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favour and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are approved shall then be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

*Voting on amendments***Rule 130**

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of the proposal.

*Voting on proposals***Rule 131**

If two or more proposals relate to the same question, the committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The committee may, after each vote on a proposal, decide whether to vote on the next proposal.

*Elections***Rule 132**

When only one person or Member is to be elected and no candidate obtains in the first ballot the majority required, a second ballot shall be taken, which shall be restricted to the two candidates obtaining the largest number of votes. If in the second ballot the votes are equally divided, and a majority is required, the Chairman shall decide between the candidates by drawing lots.

*Equally divided votes***Rule 133**

If a vote is equally divided on matters other than elections, the proposal shall be regarded as rejected.

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