



# General Assembly

Distr.: General  
18 October 2007

Original: English

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## United Nations Commission on International Trade Law

Resumed fortieth session

Vienna, 10-14 December 2007

### UNCITRAL rules of procedure and methods of work

#### Note by the Secretariat\*

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



## V. Use of languages

1. The present addendum describes regulations and practices with the use of official and working languages in the United Nations system.

### A. Use of languages in the General Assembly

#### 1. Formal meetings, documentation and publications

2. In accordance with the rules of procedure of the General Assembly concerning the use of languages in the General Assembly: (i) “Arabic, Chinese, English, French, Russian and Spanish shall be both the official and the working languages of the General Assembly, its committees and its subcommittees” (rule 51); (ii) “Speeches made in any of the six languages of the General Assembly shall be interpreted into the other five languages” (rule 52); (iii) “Any representative may make a speech in a language other than the languages of the General Assembly. In this case, he shall himself provide for interpretation into one of the languages of the General Assembly or of the committee concerned. Interpretation into the other languages of the General Assembly or of the committee concerned by the interpreters of the Secretariat may be based on the interpretation given in the first such language” (rule 53); (iv) “Verbatim or summary records shall be drawn up as soon as possible in the languages of the General Assembly” (rule 54); (v) “During the sessions of the General Assembly, the Journal of the United Nations shall be published in the languages of the Assembly” (rule 55); (vi) “All resolutions and other documents shall be published in the languages of the General Assembly” (rule 56); and (vii) “Documents of the General Assembly, its committees and its subcommittees shall, if the Assembly so decides, be published in any language other than the languages of the Assembly or of the committee concerned” (rule 57).<sup>1</sup>

3. In its resolution 2 (I), adopted at its first session, in 1946, the General Assembly promulgated rules of procedure concerning languages. Under the resolution, Chinese, French, English, Russian and Spanish were to be designated the official languages, and English and French the working languages, in all the organs of the United Nations, other than the International Court of Justice.<sup>2</sup> Speeches made in either of the working languages were to be interpreted into the other working language, and speeches made in any of the other three official languages were to be interpreted into both working languages. Summary records and all resolutions and other important documents were to be made available in the official languages. Verbatim records and the Journals of the United Nations were to be issued in the working languages. A translation of the whole or part of any verbatim record or any other document was to be made available in any of the other official languages, or in all of the official languages in case of any other document, upon the request by any delegation. The resolution allowed any representative to make a speech in a language other than the official languages, provided that he himself provide for

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<sup>1</sup> The rules are accompanied by the same footnote 28 that refers to paragraphs 5, 27, 28, 34 and 40 of the introductory part of the Rules of Procedure of the General Assembly, providing the drafting history of the rules.

<sup>2</sup> According to the Statute of the Court (article 39.1), English and French are official and working languages of the Court.

interpretation into one of the working languages. It was allowed to base interpretation into the other working language by an interpreter of the Secretariat on the interpretation given in the first working language. The resolution also allowed publication of documents of the organs of the United Nations, if those organs so decide, in any languages other than the official languages. In the same resolution, the General Assembly recommended to the other organs of the United Nations the adoption of the language rules in conformity with the rules promulgated in the resolution.

4. The current rules 51-57 of the Rules of Procedure of the General Assembly (see paragraph 2 above) reflect the substance of the rules contained in resolution 2 (I) with amendments adopted by the General Assembly in its subsequent resolutions. In particular, by its resolution 247 (III), the General Assembly decided to include Spanish among its working languages and the Rules of Procedure of the General Assembly were amended accordingly (see resolution 262 (III) of 11 December 1948). By its resolution 2479 (XXIII) of 21 December 1968, the same decision was taken as regards Russian. By its resolution 3189 (XXVIII) of 18 December 1973, the General Assembly decided to include Chinese among the working languages of the General Assembly. By its resolution 3190 (XXVIII) of 18 December 1973, the General Assembly decided to include Arabic among the official and working languages of the General Assembly and its Main Committees.<sup>3</sup> By its resolution 35/219 A and B of 17 December 1980, the General Assembly decided to include Arabic among the official and working languages of the subsidiary organs of the Assembly and amended its rules of procedure concerning languages.<sup>4</sup>

5. As a result of these amendments, all six official languages are also the working languages of the General Assembly and its subsidiary organs. Although the reference to official and working languages was retained in rule 51 of the Rules of Procedure of the General Assembly, in practice there is no functional difference in the use of the official and working languages in the General Assembly as was originally envisaged in resolution 2 (I). As opposed to rule 51, rules 52 to 57 of the Rules of Procedure of the General Assembly do not refer to official and/or working languages, instead using the reference to “the languages of the General Assembly”.

6. Some General Assembly resolutions, while not amending rules 51 to 57, supplemented them. For example, in its resolution 3355 (XXIX) of 18 December 1974, the General Assembly decided that the resolutions and decisions

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<sup>3</sup> See also General Assembly resolution 3191 (XXVIII) of 18 December 1973 that contains the amended Rules of Procedure of the General Assembly as regards its languages, incorporating *inter alia* the relevant decisions made by the General Assembly in its resolutions 3189 (XXVIII) and 3190 (XXVIII).

<sup>4</sup> In some instances, while amending rules as regards its official and working languages as well as official and working languages of its subsidiary organs, the General Assembly recommended that another organ of the United Nations considered amending its rules respectively. In its resolution 2479 (XXIII) of 21 December 1968 and 3189 (XXVIII) of 18 December 1973, the General Assembly, for example, considered it desirable that Chinese, Russian and Spanish be included among the working languages of the Security Council, and requested the Secretary-General to transmit these resolutions to the President of the Security Council. According to the provisional rules of procedure of the Security Council, Arabic, Chinese, English, French, Russian and Spanish are the official and working languages of the Council (see S/96/Rev.7, rule 41).

of the General Assembly as well as the other supplements to its official records, and the resolutions and decisions of the Security Council and the Economic and Social Council should be issued in the German language.

7. In its resolution 36/117 B of 10 December 1981, the General Assembly decided that documents should be given effective simultaneous distribution in sufficient time in the official and working languages of the organs of the United Nations. Problems with the effective implementation of this decision and ensuring equal treatment of the languages have been a recurring issue on the agenda of the General Assembly. In its resolutions, in particular on pattern of conferences and multilingualism, the General Assembly repeatedly expressed concern about the difficulties in the provision of conference services, which are reflected particularly in delays in the simultaneous distribution of documents in the official and working languages of the organs of the United Nations and unequal use of official languages. Recalling the universality of the United Nations and its corollary, multilingualism, that entail for each Member State of the Organization, irrespective of the official language in which it expressed itself, the right and the duty to make itself understood and to understand others, the General Assembly repeatedly stressed the need for strict observance of the resolutions and rules establishing language arrangements for the different bodies and organs of the United Nations.<sup>5</sup>

8. The implementation of the multilingualism in the United Nations system became the subject of the recent review by the Joint Inspection Unit (JIU).<sup>6</sup> The JIU in its recommendations contained in its report to the General Assembly reaffirmed the need for strict adherence to language arrangements at intergovernmental meetings, unless the membership decides otherwise (Recommendation 1 (b)) and called for surveys of user satisfaction with the services provided in different languages in the context of meetings and for the dissemination of information (including, apart from linguistic groups of Member States, among representatives of non-governmental organizations and news media) (Recommendation 5). At the same time, JIU noted that, while user satisfaction may be an important performance indicator, there may be capacity constraints irrespective of the dedication of the staff concerned, in particular increasing needs for recurring documentation that makes it impossible to provide high quality documents in all prescribed language versions and within the prescribed deadlines. It was recommended therefore that intergovernmental bodies reassess their needs for recurring documentation and provisions related to the submission of documents originating from Member States in order to supplement efforts made by secretariats towards overall reduction of documentation and their timely submission (Recommendation 6). JIU also stated that where intergovernmental bodies have called on secretariats to adhere strictly to language parity, seldom had they recognized that this entailed either additional resources or a reallocation of resources. The report noted that, although secretariats in the United Nations system concur on the meaning of equal treatment of all the official languages, in practice, they are caught between the request to “adhere strictly” to applicable rules and a pragmatic approach dictated by many factors,

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<sup>5</sup> See, e.g., resolutions 42/207 C, 50/11, 59/309 and 61/266.

<sup>6</sup> JIU/REP/2002/11, transmitted by a note of the Secretary-General (A/58/93). For the JIU’s earlier report on a related subject, in 1977, see JIU/REP/77/5, “The implications of additional languages in the United Nations system,” transmitted to the General Assembly by a note of the Secretary-General (A/32/237).

including the level of resources allocated by the relevant governing bodies. Very often implementation of new programmes or demands “within existing resources” encounter difficulties by stretching resources to the limit. Besides the regular budget, which should remain the prime source of funding to support efforts aimed at reducing current imbalances in the use of languages, JIU identified extrabudgetary sources of funding and partnerships as a complementary source of support for such efforts (Recommendation 7).<sup>7</sup>

9. The JIU report was accompanied by the comments thereon of the Secretary-General and the United Nations System Chief Executives Board for Coordination (CEB).<sup>8</sup> In considering the JIU recommendations, CEB members took into account the need to strike a proper balance between improving multilingualism, and the considerable investment and operating costs needed to achieve it. That balance, in the view of CEB members, is determined not only by the priorities decided by the Member States but also by the effectiveness of policies, strategies and practices of the organizations of the system in the implementation of multilingualism, and the sense of shared responsibility that exists between Member States and the secretariats.

10. In its resolution 59/309, the General Assembly took note of the JIU report.

## **2. Informal meetings and documentation**

11. Rules 51 to 57 of the Rules of Procedure of the General Assembly are applicable to official meetings and documents and publications of the General Assembly and its subsidiary organs. According to the legal opinion of the Office of Legal Affairs, informal meetings, consultations or negotiations are outside the formal rules of procedure.<sup>9</sup>

12. Nevertheless, in its resolution 50/11 of 2 November 1995, the General Assembly noted that the principle of equality of the official languages is being called into question with increasing frequency by the holding of so-called “low-cost” informal meetings.<sup>10</sup> In the same resolution, the General Assembly urged the delegations of Member States and the Secretariat to endeavour to avoid holding informal meetings without interpretation.<sup>11</sup> In its resolution 56/262 of 15 February 2002, the General Assembly requested the Secretary-General to carry out a comprehensive review of the reasons for holding informal calendar meetings without interpretation.<sup>12</sup>

13. In accordance with paragraph 8 of resolution 56/262, the Secretary-General reviewed the main reasons why informal calendar meetings were held without interpretation and determined that the explanation was twofold. First, as such meetings are not provided for in the official calendar of conferences and meetings approved by the General Assembly, services for these meetings are offered, whenever possible, on an “as available basis”. They are thus supported from “within

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<sup>7</sup> See also JIU/REP/2002/11, para. 38.

<sup>8</sup> A/58/93/Add.1.

<sup>9</sup> *United Nations Juridical Yearbook, 1993* (United Nations publication, Sales No. E.97.V.13), p. 420, under item 44, para. 24.

<sup>10</sup> See the seventh preambular paragraph of the resolution.

<sup>11</sup> See paragraph 9 of the resolution.

<sup>12</sup> See paragraph 8 of the resolution.

existing resources” that may become available owing mostly to the cancellation of meetings of calendar bodies. As the capacity of duty stations to provide interpretation services varies significantly, the likelihood of their providing interpretation services further to ad hoc requests is equally at variance. For example, since the established capacity to provide such interpretation services is commensurate with the daily number of calendar meetings to be supported, the chances that a calendar meeting may be postponed or cancelled are greater in New York, where resources are earmarked on a daily basis to support meetings of the Security Council, than at any other duty station. For that reason, the overwhelming majority of requests to provide interpretation services for informal meetings are met at Headquarters. Similarly, the capacity for a smaller duty station to provide services on an “as available basis” decreases in accordance with the number of budgeted resources earmarked to supporting calendar conferences and meetings.<sup>13</sup>

14. The Secretary-General determined that the second factor resided in the methods of work developed over the years by intergovernmental bodies whose members prefer to conduct informal consultations and negotiations without interpretation. Such practices, well developed in certain duty stations, may have originated in the limitations imposed by the established capacity at those duty stations. Once an intergovernmental forum routinely conducts its informal meetings without interpretation, however, its membership reaches the conclusion that its informal consultative process is furthered by an informal work dynamic without the benefit of formal interpretation services.<sup>14</sup>

15. The General Assembly, in its resolution 59/309, took note of the report of the Secretary-General.

16. The JIU report referred to in paragraph 8 above addressed language arrangements in informal meetings, such as expert group meetings or seminars. The JIU review in particular revealed that a number of informal meetings in organizations of the United Nations system are held in one language, which has been justified apart from cost considerations, by the increased efficiency of the deliberative process during such meetings. The JIU relevant recommendation states that informal meetings should be organized taking into account the language proficiency of those called upon to attend (Recommendation 1 (c)). At the same time, JIU observed that pragmatism could also lead to practices that seriously limited the possibility of Member States, particularly developing countries, and other stakeholders to participate fully in the activities of the organizations concerned.<sup>15</sup>

17. CEB members, while supporting the principle underlying the JIU relevant recommendation that language requirements should be a reflection of the needs of the target audience, expressed the view that a degree of flexibility should nevertheless be allowed in the choice of languages for certain types of meetings so as to ease the burden on the services concerned.<sup>16</sup>

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<sup>13</sup> A/58/363, para. 21.

<sup>14</sup> *Ibid.*, para. 22.

<sup>15</sup> See JIU/REP/2002/11, paras. 39 and 48.

<sup>16</sup> A/58/93/Add.1, para. 5.

### 3. Specific decisions as regards the use of languages in the Commission

18. The General Assembly, in its resolution establishing the Commission and in its subsequent resolutions related to the work of UNCITRAL, did not address the issue of the use of languages in the Commission. Thus, unless explicitly decided otherwise by the General Assembly, General Assembly resolutions and rules as regards the use of languages in the General Assembly committees and sub-committees apply to the Commission.<sup>17</sup>

19. The Commission itself, on several occasions, addressed the issue of the use of languages in the context of publication of its records and other documents.<sup>18</sup>

### B. Use of languages in the United Nations Secretariat: working languages

20. Pursuant to General Assembly resolution 2 (I) (see paragraph 3 above), English and French are the working languages of the United Nations Secretariat. In some duty stations, additional working language(s) is/are mandated (see paragraphs 21 and 23 below).

21. In its resolutions on personnel matters and most recently on multilingualism, the General Assembly has repeatedly requested the Secretary-General to implement measures aimed at achieving the equality of the two working languages of the Secretariat and the use of additional working languages in specific duty stations as mandated.<sup>19</sup> In particular, in its resolution 2480 B (XXIII) of 21 December 1968, the General Assembly requested the Secretary-General, with a view to ensuring a linguistic balance, to take the steps that the acceptable minimum requirement at the moment of recruitment would be: (i) ability to use one of the working languages of the Secretariat; or (ii) ability to use one of the working languages of a United Nations organ in the case of staff members recruited for one of the sections of the Secretariat working for that organ (such staff members have to be able to work in one of the working languages of the Secretariat if they are to be appointed on a permanent basis or to be entitled for extension of their fixed-term engagement beyond two years). The resolution also envisaged language incentives, in particular as regards promotion from one grade to another and passage through the steps within each grade, for learning any other official language of the General Assembly. The knowledge of the second language was to be confirmed by the language proficiency certificate. With the understanding that the end in view was essentially to provide understanding of the written and the spoken language, the General Assembly decided that the United Nations language-training course would

<sup>17</sup> See *United Nations Juridical Yearbook, 1978* (United Nations publication, Sales No. E.80.V.1), p. 184, under item 15, para. 2; and *ibid.*, 1983 (United Nations publication, Sales No. E.90.V.1), p. 169, under item 6.

<sup>18</sup> See, e.g., A/8417, paras. 120-125; A/8717, paras. 98-104; and A/54/17, paras. 431 and 432 (all as regards the languages of the publication of the *UNCITRAL Yearbook*); A/59/17, paras. 129-130 (as regards the languages of publication of summary records of the Commission); and A/62/17 (Part I), para. 246 (as regards publication of the proceedings of the 2007 Congress).

<sup>19</sup> See, e.g., resolutions 2241 B (XXI); 2359 B (XXII); 2480 B (XXIII); 43/224 D; 50/11; 56/262; and 59/309.

have to be modified accordingly.<sup>20</sup> In most recent resolutions on the subject, the General Assembly requested the Secretary-General to ensure that vacancy announcements specify the need for either of the working languages of the Secretariat, unless the functions of the post require a specific working language.<sup>21, 22</sup>

22. In its resolution 50/11, the General Assembly expressed its desire that persons recruited by the Organization should have a command and use of at least one of the six official languages in addition to one working language of the Secretariat.<sup>23</sup> To that end, it requested the Secretary-General to ensure that the use of another of the six official languages is duly encouraged and taken into account, particularly when promotional and incremental steps are under consideration.<sup>24</sup> The General Assembly has also repeatedly encouraged the United Nations staff to continue to use actively United Nations existing training facilities to acquire and enhance proficiency in one or more official languages of the United Nations.<sup>25</sup> In its most recent resolutions on multilingualism, the General Assembly noted with satisfaction the willingness of the Secretariat to encourage staff members, in meetings with interpretation services, to use any of the six official languages of which they have a command.<sup>26, 27</sup>

23. The Secretary-General of the United Nations, as the chief administration officer of the Organization,<sup>28</sup> has issued two bulletins on the use of the working languages in the Secretariat. In bulletin ST/SGB/201 of 8 July 1983, the Secretary-General, in reminding the staff about the official policy of the Secretariat regarding the use of its working languages, in particular stated that: (i) by virtue of his or her appointment, every staff member is required to work in either English

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<sup>20</sup> The decisions made in resolution 2480 B (XXIII) have been confirmed in General Assembly subsequent resolutions, most recently, in resolution 61/266, para. 21.

<sup>21</sup> See, e.g., resolutions 59/309, para. 7; and 61/266, para. 18. This has been followed in practice, with vacancy announcements usually referring to two categories of language: the language of which a perfect command is expressly required and a language of which knowledge constitutes an advantage (may be the other working language or another official or non-official language of the United Nations).

<sup>22</sup> As regards the implementation of language incentives, the United Nations Staff Regulations establish accelerated increments for professional staff subject to geographical distribution, who have an adequate and confirmed knowledge of a second official language of the United Nations. (see annex I of the United Nations Staff Regulations, para. 4). In addition, a language allowance is payable to staff members in the General Service, Security or Trade and Craft categories, and to eligible staff in the Field Service category, proficient in any two official United Nations languages. (see annex I of the United Nations Staff Regulations, para. 7; and staff rule 103.6 (100 series)). See also Administrative instruction ST/AI/1999/2 of 13 May 1999 on language proficiency and language incentives.

<sup>23</sup> See, the fifth preamble paragraph of the resolution.

<sup>24</sup> See paragraph 3 of the resolution.

<sup>25</sup> Most recently, in resolution 59/309, para. 9; and 61/266, para. 22.

<sup>26</sup> See, e.g., resolutions 56/262, para. 3; 59/309, para. 6; and 61/266, para. 11. Also A/56/656, para. 29.

<sup>27</sup> The consideration of the subject in the General Assembly is usually based on the progress reports of the Secretary-General that describe the status of the implementation of various resolutions and rules establishing language arrangements for the different bodies and organs of the United Nations, including about the status of linguistic skills of the Secretariat staff. See, e.g., most recent, A/58/363 and A/61/317, submitted pursuant to General Assembly resolutions 56/262 and 59/309, respectively.

<sup>28</sup> See Article 97 of the United Nations Charter.

or French; (ii) in addition, since the regional commissions for Europe, Latin America<sup>29</sup> and Western Asia also have Russian, Spanish and Arabic, respectively, as a working language, individual staff members in the secretariats of these commissions are required to work in the respective language;<sup>30</sup> (iii) it has been the long-standing policy of the Organization to encourage all staff members to become proficient in more than one official language; and (iv) within the Secretariat as a whole, each staff member should be free to use in his written communications either English or French, at his or her option (this policy is to be extended within the regional commissions to the use of the respective additional working language). In bulletin ST/SGB/212 of 24 September 1985, the Secretary-General reaffirmed the policy of the Secretariat regarding the use of its working languages set out in bulletin ST/SGB/201. The Secretary-General noted that this policy, although well established, was not fully put into practice. He emphasized the importance of a linguistic balance among staff members of the Secretariat and encouraged those staff members throughout the Secretariat whose principal language is French, or who prefer to work in that language, to use French in all official communications.

24. The JIU report referred to in paragraph 8 above touched upon the use of languages in the secretariats of various organizations of the United Nations system (see Recommendations 2 to 4 and 8). It in particular noted the shortcomings in the United Nations language policy, in particular as elaborated in the Secretary-General's bulletins ST/SGB/201 and ST/SGB/212: while there is a formal entitlement to use either working language, there is no corresponding obligation to have even a rudimentary knowledge of a second working language or to take a course in it as a matter of priority. JIU observed that hierarchical considerations and concerns for career prospects have often prevailed over staff members' desire to exercise their right to use a language in which, in particular, their supervisor may not be fluent. JIU further observed that there was a risk that these bulletins would continue not to be fully applied unless further measures are taken.<sup>31</sup> In addition, JIU recommended that the borderline between mandated working languages and other languages used for work should be reviewed; basic rules concerning language requirements in vacancy announcements should be made more uniform and transparent; and vacancy announcements via Internet should be posted simultaneously in at least two working languages of the Secretariat so as to avoid giving any language group an unfair advantage.<sup>32</sup>

25. CEB members, in commenting on the relevant parts of the report, took the view that the organizations of the system are not quite as competitive as they could be in view of the prevailing salary conditions. They observe that considerable difficulty is still being encountered in the recruitment and retention of staff with the necessary linguistic skills.<sup>33</sup>

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<sup>29</sup> Currently, the Economic Commission for Latin America and the Caribbean (ECLAC).

<sup>30</sup> Subsequently, two additional regional commissions were created: the Economic Commission for Africa (ECA) (the working languages of this Commission are Arabic, English and French) and the Economic and Social Commission for Asia and the Pacific (ESCAP) (the working languages of this Commission are Chinese, English, French and Russian).

<sup>31</sup> See JIU/REP/2002/11, paras. 71-75.

<sup>32</sup> *Ibid.*, paras. 50-61.

<sup>33</sup> A/58/93/Add.1, para. 4.