

**General Assembly**Distr.: General
20 June 2008

Original: English

[Start]

**United Nations Commission
on International Trade Law**
Forty-first session
New York, 16 June-3 July 2008**UNCITRAL rules of procedure and methods of work****Compilation of comments by Governments****Note by the Secretariat****Addendum*****Contents**

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* This document was submitted less than ten weeks before the opening of the session because it contains comments received in response to a Note Verbale circulated by the Secretariat on 6 May 2008.



II. Comments received from Governments

A. Member states

Malaysia

[Original: English]
[20 June 2008]

This [Attorney-General's] Chambers has perused the UNCITRAL Rules of Procedure and Methods of Work which was circulated for comments by all Member States. The details of this Chambers' comments are as follows:

Decision making in the Commission – consensus as the preferred method

It is noted that the Commission may wish to decide to continue using consensus as the preferred method for taking decisions as this method permits the Commission, whose members are States with different social-economic systems, different levels of development and different legal systems and traditions, to base its work on careful regard for proposals submitted and respect for mutual interests. It is viewed that maintaining the consensus approach would enable larger cooperation among countries having different legal, economic and social systems to ensure that the uniform rules derived from the work of the Commission are generally acceptable and not only approved by a small majority. In addition, this practice is consistent with the long-established and common practice in the United Nations General Assembly, its committees and subsidiary organs.

Attendance of meetings by non-member States – intergovernmental and non-governmental organizations

It is noted that the Commission may wish to continue following the flexible approach in inviting intergovernmental and non-governmental organizations to attend sessions of the Commission and its working groups, or it may decide to set up a procedure for such purposes. Malaysia is agreeable with the proposal that the Commission compiles a list of organizations concerned with the whole range of the activities of the Commission and invites them to each session of the Commission and its Working Groups or to authorize the Secretariat to issue a standing invitation to them. Organizations may be added or excluded from the list upon decision of the Commission.

Extent of observers' participation in the work of UNCITRAL

Participation in decision-making

It is a well-established rule in the United Nations that the right to vote is reserved exclusively for full members of an intergovernmental organ. On the only occasion when voting took place in the Commission, observers, consistent with the United Nations rules and practice, participated neither in the voting nor in the explanation-of-vote period, and they were not counted for quorum purposes. It is viewed that this practice should be maintained whereby without prejudice to the observers' participation in UNCITRAL, the extent of their participation should

remain limited compared to that of the Members whom exclusive voting rights and opinion should be prioritized.

Participation in deliberations

It is noted that the recent trend has been towards more flexibility whereby observers, usually upon invitation of the presiding officer, and subject to the agreement of the UNCITRAL Commission and its Working Groups concerned, may address the session, to the same extent as full members or only within the scope of their competence. It is viewed that the Commission may take this flexible approach, as it has done so previously as regards observers' participation in deliberations on procedural issues. In this regard, the Commission may confirm its existing practices, which ensure comprehensive, uninterrupted and structured debates that benefit from expert contributions of observers.

Submission of written proposals/circulation of documents

It is viewed that albeit UNCITRAL has been quite flexible in respect of the above, submission of written proposals/circulation of documents from observers should be decided on a case-by-case basis depending on the necessity.

Preparatory work by the Commission's Secretariat

It is noted that it is a common practice for the Commission and its Working Groups to authorize the Secretariat to have recourse to assistance of outside experts in its preparatory work. Studies and other preparatory documents would be prepared by the Secretariat with the assistance of experts, if necessary, and budget permitting. While seeking assistance of outside experts from different legal traditions and affiliations, such as government officials, academics, practicing lawyers, judges, bankers, arbitrators and members of various international, regional and professional organizations, the Secretariat should not, in all cases, be bound by the advice of experts. Instead, the UNCITRAL Secretariat should formulate the final proposals for the Commission or its working groups under its own responsibility, and in accordance with the instructions received from the Commission or its Working Groups, also bearing in mind the policies expressed in the relevant General Assembly resolutions and decisions of the Commission.

Please be informed that there would also be no representative from this Chambers to attend the 41st Commission Session. This Chambers would like extend its apologies for the delay in submitting the comments and any inconvenience caused, which is not intentional.