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on International Trade Law**
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UNCITRAL rules of procedure and methods of work

Comments received from Member States and interested international organizations

Note by the Secretariat*

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* This document transmits comments by a Member State. It was submitted less than ten weeks before the opening of the session, upon receipt of the comments.



I. Introduction

1. At its fortieth session (Vienna, 25 June-12 July 2007 and 10-14 December 2007), the Commission considered the issue of its working methods on the basis of the following documents: observations by the Government of France on the working methods of the Commission (A/CN.9/635); observations by the United States on the same topic (A/CN.9/639); and a note by the Secretariat on UNCITRAL rules of procedure and methods of work (A/CN.9/638 and Add.1-6).¹ The Commission requested the Secretariat to prepare a working document that would describe current practices of the Commission concerning the application of rules of procedure and methods of work, in particular as regards decision-making and the participation of non-State entities in the work of UNCITRAL.² It also requested the Secretariat to circulate the working document to all States for comment and compile any comments it might receive for consideration by the Commission.

2. The Secretariat submitted a working document (A/CN.9/653) prepared pursuant to that request for consideration by the Commission at its forty-first session, and circulated the document to all States for comment by a note verbale dated 6 May 2008.

3. At its forty-first session (New York, 16 June-3 July 2008), the Commission had before it, in addition to the documents listed in the preceding paragraphs, notes by the Secretariat transmitting the comments received from States on document A/CN.9/653 prior to the Commission's forty-first session (A/CN.9/660 and Add.1-5). The Commission requested the Secretariat to prepare, on the basis of the note by the Secretariat (A/CN.9/653), a first draft of a reference document addressing decision-taking, the status of observers in UNCITRAL and the preparatory work by the Secretariat, for use by chairpersons, delegates, observers and by the Secretariat itself. The Secretariat was requested to circulate the draft reference document for comment by States and interested international organizations and to prepare a compilation of those comments for consideration by the Commission at its forty-second session.³

4. The reference document prepared by the Secretariat pursuant to that request is contained in a note by the Secretariat (A/CN.9/676). Upon its issuance in all the official languages of the United Nations, it will be circulated for comment by States and interested international organizations, as requested by the Commission.

5. The present document reproduces the comments from Iraq on document A/CN.9/653 received by the Secretariat on 2 April 2009. Comments received by the Secretariat either on document A/CN.9/653 or A/CN.9/676 after the submission of the present document and before the forty-second session of the Commission will form the subject of the subsequent addenda to document A/CN.9/676 in the order in which the comments are received.

¹ *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17* (A/62/17), Part one, paras. 234-241, and Part two, paras. 101-107.

² *Ibid.*, (A/62/17), Part two, para. 107.

³ *Ibid.*, *Sixty-third Session, Supplement No. 17* (A/63/17), paras. 375-381.

II. Comments received from Member States

A. Member States

Iraq

[Original: Arabic]

[2 April 2009]

Decision-making in the Commission

We support continued use of consensus as the preferred method for taking decisions as it helps to achieve larger cooperation among countries having different economic and social systems, and adopting decisions by consensus is desirable when it contributes to the effective and lasting settlement of differences (A/CN.9/653, paras. 9 and 10), bearing in mind that there have been numerous occasions in the United Nations practice where States have made declarations or reservations while not objecting to a decision being recorded as taken by consensus (*ibid.*, para. 11) and the Charter-given right of Member States to exercise their vote (*ibid.*, paras. 13 to 18).

Consensus is appropriate for UNCITRAL's work of setting legislative standards, which requires dozens of decisions to be taken in the course of a single day, as was found by the Hague Conference on Private International Law (one of the international organizations working on the preparation of legislative standards), which has generally abandoned taking decisions by vote and adopted a system based on consensus.

Status of observers in UNCITRAL

We support the Commission's continuing to invite non-Member States to attend its sessions as observers and the participation of representatives from observer States in informal meetings, in implementation of the General Assembly resolution on this matter (*ibid.*, paras. 22 and 23). We also support attendance by intergovernmental and non-governmental organizations active in the field of the law of international trade as one of the appropriate and effective means to achieve collaboration and coordination between UNCITRAL and these organizations (*ibid.*, para. 25). We are further of the opinion that the Commission should continue to follow a flexible approach in inviting intergovernmental and non-governmental organizations to attend sessions of the Commission and its working groups (*ibid.*, para. 29).

Observer participation in decision-making

We support the Commission's practice of taking an "indicative" vote, with observers participating, before taking decisions by consensus (para. 37), and the election of individuals from observer States as officers of the Commission's subsidiary organs (para. 41). We also support the Commission's approach to permitting observers to participate in deliberations on substantive matters to the same extent as full members: they have been allowed to make oral proposals and statements, including in reply to statements made by States members of the Commission. The Commission has taken a flexible approach as regards observers' participation in deliberations on procedural issues. The Commission's practices as

outlined above enables it to benefit from expert contributions of observers (paras. 44 and 46). As for the submission of written proposals, we support the Commission's practice of giving observers the opportunity to submit written proposals and to have their written documents officially circulated in the Commission and its subsidiary organs as a Secretariat document (para. 49).
