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**United Nations Commission
on International Trade Law**
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UNCITRAL rules of procedure and methods of work**Proposal by France****Note by the Secretariat*****Introduction**

1. At its forty-second session, the Commission will consider the agenda item “Working methods of UNCITRAL”. Under this agenda item, it will have before it a note by the Secretariat containing 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 (A/CN.9/676). As requested by the Commission, the draft reference document was circulated for comment by States and interested international organizations. The Secretariat transmitted the comments received to the Commission in the addenda to document A/CN.9/676.
2. The Secretariat received from France: (a) comments on the draft reference document; and (b) a proposal for revisions to be made to the reference document. Both the comments and the proposal were received on 2 June 2009, in English and French. The comments were transmitted to the Commission in document A/CN.9/676/Add.2. The proposal is reproduced as an annex to this note in the form in which it was received by the Secretariat.

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



Annex

Decision-making in UNCITRAL

1. Consensus is the preferred method for taking decisions in the United Nations Commission on International Trade Law (UNCITRAL), as it is conducive to achieving a larger cooperation among countries having different legal, economic and social systems and ensuring that the uniform rules derived from the Commission work are generally acceptable. This does not however exclude taking decisions by vote. Indeed, in the light of the right to exercise their right to vote given to Member States by the United Nations Charter, Member States are entitled to request a vote.

The United Nations Office of Legal Affairs, in its legal opinions analysing the United Nations practice of taking decisions by consensus, stated that there is no definitive or authoritative interpretation of the notion of “consensus” in the United Nations. Yet, it also stated in its legal opinions that, although it is somewhat difficult to arrive at an exact definition of consensus, the notion is generally understood to mean adoption of a decision without formal vote and without any objection.

2. As regards chairpersons’ role in determining the existence of consensus, in keeping with the practice used in the United Nations, the discretion of the presiding officer in determining whether consensus has been reached is limited.

2-1. First of all, in the light of the right to exercise a vote given by the United Nations Charter to United Nations Member States, if any Member State formally requests that a vote be taken, such a vote must be taken regardless of the views of the majority, even of a substantial majority. In such situations, the presiding officer cannot declare consensus by disregarding a request for a vote even by one State. Nor can the presiding officer demand that more than one State request taking a decision by vote.

2-2. Secondly, a formal objection to a decision being recorded as taken by consensus blocks the adoption of that decision by consensus. In practical terms, when the presiding officer announces, for example, that it is his/her understanding that the organ wishes to adopt a proposal by consensus, any delegation may block a consensus by lodging an objection or by specifically requesting a vote on the proposal at hand.

The notion being thus explained, it is the duty of both the presiding officer and delegations to seek a consensus:

- As regards the presiding officer, this must be reflected in **efforts to continue debates until wording which is acceptable to everyone have been found**. It is only when significant efforts have been made to reach a consensus that the presiding officer may take a decision, under his/her own responsibility, to bring about a vote.
- As regards delegations, it is the duty of the objecting delegation to formulate the grounds for its objection, and to put forward alternative proposals. **An objection formulated in these conditions will not by itself give rise to a vote** but may lead to resuming the debate on the matter under consideration.

3. Member States also have the right to issue statements or reservations regarding the substantive matter at issue or a part thereof while not objecting to a decision being recorded as taken by consensus. Those dissenting from the general trend are prepared simply to make their position or reservation known and placed on the record. In the light of the principle of sovereign equality and consistent with a well-established custom in the United Nations, records of the Commission and its subsidiary organs reflect clearly any reservations, generally in the words of the person who has them.

Status of Observers in UNCITRAL

4. The General Assembly, in its resolution 31/99, paragraph 10 (c), decided that: "Governments of Member States that are not members of the United Nations Commission on International Trade Law are entitled, when they so request, to attend the sessions of the Commission and its Working Groups as observers."

Moreover, the General Assembly, in its resolution 2205 (XXI) establishing UNCITRAL, laid down the basis for collaboration and coordination of UNCITRAL with various organizations active in the field of international trade law. The General Assembly has affirmed on several occasions the importance of the participation of observers from interested international organizations in UNCITRAL sessions and its working groups.

5. Today it has become necessary to specify the rights and obligations of observer States who are members of the United Nations but not of UNCITRAL. The same applies to United Nations organs, specialized agencies and other intergovernmental organizations with observer status at the General Assembly.

6. As regards non-governmental organizations, a distinction has to be drawn between those with a wide scope of action and interested in the whole range of the activities of UNCITRAL, and those more specialized in areas in which UNCITRAL is likely to take action, for which arrangements for working relations are to be made. While the former are entitled to attend any of the Commission's sessions and its working groups, the latter will be invited by the Commission, in principle at its plenary meeting, to participate in work just before it is begun by a working group, without prejudice to specific invitations, for one or several sessions of a working group. The secretariat has the right to put forward proposals in this respect.

6.1. The Commission shall compile a list of organizations concerned with the whole range of its activities and authorize the Secretariat to issue a standing invitation to them.

6.2. As for other competent organizations, they have to meet a certain number of requirements:

- General requirements will include: (a) the aims and purpose of the organization being in conformity with the spirit, purposes and principles of the Charter of the United Nations; and (b) the organization's undertaking to support the work of UNCITRAL and to promote knowledge of its activities and work.
- Specific requirements will include: (a) the organization's recognized standing in the field of a particular concern to UNCITRAL; (b) the organization's ability to contribute meaningfully to the work of UNCITRAL in view of the

organization's membership and specificity of its role in representing a particular sector or industry; (c) as a general rule, the international, regional or subregional nature of the organization; and (d) the independence of the organization with regard to Member States.

7. Regarding **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. As regards decision-making by consensus or without a vote, these terms are commonly interpreted in the General Assembly and its committees and other subsidiary organs as meaning decision-making with solely the **participation of members of the organ concerned**.

7.1. Both within working groups and in the Commission's plenary meeting, non-governmental organizations are **only** entitled to make their viewpoints and concerns known on a specific point **at the stage prior to the actual deliberations** that will take place between Member States on this point.

7.2. Likewise, as regards observer States, they are entitled to express their views but they may not participate in deliberations with a view to taking decisions.¹ However it may be admitted that a State whose mandate is at an end might carry on its participation with full rights in a working group, with a view to strict continuity in the working group's work.

7.3. A similar rule to that which applies to the observer States concerning the right to vote is applied to the United Nations organs, its specialized agencies and other intergovernmental institutions with observer status at the General Assembly.

8. According to United Nations practice, the right to circulate written proposals/documents, which entail financial implications for the United Nations, is reserved to its Member States.

As a result, **NGOs will not be allowed to distribute written documents for submission to UNCITRAL as working papers**, unless this is expressly requested by the competent working group.

9. The general practice observed in UNCITRAL, as endorsed by the General Assembly, by which the Secretariat circulates, upon request of the Commission or its working groups, drafts for comments to observers, including relevant organizations, is accepted.

Preparatory work by the Commission's Secretariat

10. The Commission itself or its working groups delegate a variety of different tasks to the Secretariat and, in the light of limited resources available to the Secretariat, give it a certain measure of discretion in the implementation of the assigned tasks. The delegated tasks include legal research and preparation of studies, reports and draft texts on matters that are being considered for possible future inclusion in the work programme, and on matters already included in the work programme. In addition, the secretariat is authorized to: (i) circulate questionnaires or draft texts prepared by the Commission or its working groups or by the secretariat itself to States and organizations; (ii) transmit comments, replies

¹ The "right to participate in deliberations" means that observers do not have the right to vote nor the right to participate in the consensus but have the right to speak.

and studies received to the Commission for consideration; and (iii) prepare analyses of comments and replies received.

11. The Secretariat may make proposals to the Commission as regards new topics to be considered for inclusion in its work programme on the basis of consultation with various international organizations, results of special colloquiums and seminars or consideration of related subjects in the Commission or its working groups.

12. In general, when a topic is included in the Commission's work programme, **the Secretariat shall notify the Commission on a regular basis** of the implementation work it carries out.

12-1. At the beginning of work, a systematic consultation of the Member States, in particular by circulating questionnaires, is undertaken by the Secretariat on the matter under consideration.

12-2. The Secretariat prepares and circulates a report on the colloquiums and seminars it organizes in preparation of the work to be conducted by a working group.

12.2. The work in the Commission and working groups may be based on the preliminary drafts prepared by the Secretariat. The Secretariat informs the Commission of the organizations and experts that have provided their assistance in preparing these preliminary drafts.

12.3. The Commission and its working groups may authorize the Secretariat to have recourse to assistance of outside experts in their preparatory work.

12.4. The Commission may instruct the Secretariat to submit its observations to a working group for consideration and to render assistance to the working group in the performance of its tasks, in particular, by preparing either at the request of the working group or of its own motion studies and other preparatory documents and by submitting proposals for consideration. The Commission may authorize its working groups to request the Secretariat to prepare studies and other documents that are necessary for the continuation of their work.

12.5. The Secretariat is not bound by the advice of experts and formulates the ultimate 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 the Commission's decisions.

13. The Secretariat informs the Commission and its working groups of the consultations in various forms that it considers organizing with experts, in particular **by making known the dates and places of informal meetings** as well as their participants in due course. It also reports to the Commission's plenary session on the consultations it has conducted over the past year.

Languages

14. The United Nations General Assembly, in its second resolution adopted in 1946, decided that “in all the organs of the United Nations, other than the International Court of Justice, Chinese, French, English, Russian and Spanish shall be the official languages, and English and French the working languages”.

15. In addition, the General Assembly Rules of Procedure stipulate, in Article 51, that all United Nations official languages are also working languages.

16. Given these rules, a distinction should be made concerning UNCITRAL activities, between official meetings within the framework of working groups and the Commission, and the preparatory work and informal meetings conducted under the Secretariat’s responsibility:

16-1. As regards official meetings of UNCITRAL, a subsidiary organ of the General Assembly, working documents must be circulated in the six working languages, and be **made available simultaneously on the UNCITRAL website**. This requirement will be applied particularly rigorously for negotiations on an international treaty instrument.

16-2. Activities directly organized by the secretariat in the form of colloquiums or informal groups are to be conducted under the rules of the United Nations Secretariat relating to the languages, which state the principle of parity between the two working languages.

The Commission will be governed in this area by these rules, and also by the intention to encourage the most widespread use as possible of the official languages of the United Nations:

- **Documents** submitted to expert groups and other informal meetings, as well as documents issued by those, must be made available **in the two working languages**.
- **These same documents will also be made available in the language of experts** participating in informal meetings in order to encourage as diverse participation as possible from a geographical standpoint of experts.
- Similarly, interpreting services will as far as possible be provided to experts participating in informal meetings in their language.