



General Assembly

Distr.: General
3 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

	<i>Page</i>
II. Comments received from Governments	2
A. Member States	2
Australia	2
B. Observer States	4
Turkey	4

* 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

Australia

[Original: English]
[2 June 2008]

The Australian Government acknowledges and appreciates the Secretariat's efforts in preparing its Note on UNCITRAL rules of procedure and methods of work (A/CN.9/653). Australia welcomes the opportunity to comment on the issues raised in the Secretariat's Note prior to the Commission's forty-first session in New York (16 June-3 July 2008).

The Commission's working methods, developed since its inception in 1966, have allowed it to work productively and effectively to modernize and harmonize laws of international trade and business. In light of this successful history, Australia does not consider it necessary for a new set of rules to be adopted for the Commission's work.

Nonetheless, there are several areas where clarification of existing rules and procedures would better equip the Commission to fulfil its mandate. Australia's comments on these areas follow.

Consensus Decision-Making

Australia recognizes the benefits of decision-making by consensus identified by the Secretariat (Secretariat Note, paragraphs 9-10). Australia supports the continued use of consensus as the primary means for the Commission to make decisions.

However, Australia has been concerned that, on occasion in certain Working Groups, consensus has been deemed to have been reached when the room was clearly divided on the decision in question. Such an approach has the potential to undermine the Commission's work. In Australia's view, the Commission's use of consensus decision-making should be clarified to ensure that the benefits of this method are fully realized.

The Secretariat noted that consensus is often defined as the adoption of a decision without formal objection and vote. Accordingly, there is no consensus where even one delegate formally objects to a proposal. Australia agrees with these points, but would like to offer additional comments by way of further clarification.

The adoption of a decision by consensus signifies more than the mere absence of formal objection. The Secretariat refers to the Commission's practice of determining consensus based on the existence of a "substantially prevailing view" (Secretariat Note, paragraph 17). However, Australia emphasizes that where a proposal which may attract substantial support nonetheless faces significant objection, consensus cannot simply be declared to exist in favour of one position. Rather, reasonable efforts must be made to reach an acceptable compromise.

The Chair has an important role in ascertaining whether a proposal has received genuine support from the members present. Where a contested proposal has

been debated but remains subject to controversy with members expressing deeply opposing views, the Chair cannot declare that the proposed decision has been made by consensus. In the absence of consensus, States naturally retain the right to vote on proposals.

Australia strongly urges all those involved in the decision making process at Commission meetings to apply the consensus requirement in a fair, honest and accurate manner.

Status of observers at UNCITRAL

Australia supports the participation of observers – including experts, non-member States, intergovernmental organizations and non-governmental organizations – in Commission meetings. These observers have time and again contributed valuable expertise to discussions.

Australia's view is that this role, which may include speaking at meetings and circulating information documents, should be maintained. Australia stressed, however, that observers are not entitled to participate in formal decision-making; in particular, observers' views are irrelevant in ascertaining whether consensus has been reached.

Australia is willing to consider other members' views as to the utility of establishing a formal observer status for non-governmental organizations which would classify them according to whether their expertise is broadly based or limited to specific topics under consideration, with their entitlement to participate in particular Commission meetings being determined accordingly.

Preparatory work by the Secretariat

Australia commends the Secretariat for its professionalism and efficiency in supporting the Commission's work. In this respect, the Secretariat should ensure that all members are kept informed on an equal basis of work undertaken in informal meetings, colloquia and consultations convened by the Secretariat, both prior and subsequent to such events. There should be adequate opportunity for members, including those not based in close proximity to the Secretariat, to contribute to and be involved in these deliberations. Ensuring that the Secretariat is inclusive and responsive to input from diverse members will ultimately assist the Commission in producing texts that attract widespread adherence.

Other matters – the use of the Commission's official languages

Although the use of the Commission's official languages was not canvassed in the Secretariat Note, Australia notes that the translation of documents is a critical procedural issue since it facilitates optimal participation by all members. For all formal meetings, the Commission should generally work in its six official languages. Although it may be impractical and costly for full translation services to be provided at informal and intersessional meetings, Australia encourages the provision of such services by the Secretariat wherever possible.

Australia thanks the Secretariat again for the invitation to comment on its Note. Australia looks forward to further constructive discussions on UNCITRAL's rules of procedure and methods of work at the Commission's forty-first session.

B. Observer States

Turkey

[Original: English]
[30 May 2008]

We would like to commend the Secretariat for document A/CN.9/653 of 19 March 2008, summarizing very successfully the previous comprehensive note.

Turkey welcomes the inclusion of the item “working methods of UNCITRAL” to the agenda of the Commission, as it could offer an opportunity to clarify the current working methods, with a view to further the progress of its work and stimulate interest among States. Turkey believes that the guiding principles of such a review of the Commission’s working methods should be those of inclusiveness, transparency and flexibility.

As the Commission is established with a mandate to further the progressive harmonization and unification of the law of the international trade, it should continue using consensus without a formal vote as a preferred method of decision-taking. Its records and those of its subsidiary organs should reflect clearly any dissents or reservations, consistent with a well established custom in the United Nations.

The wider participation of States, at all levels of economic development and from different legal systems in the process of harmonizing and unifying international trade law, is of paramount importance for the success of the work of the Commission. In that context, Turkey strongly supports the Commission’s practice of taking into account the view of the observer States in determining whether consensus has been reached.

In the same vein, Turkey strongly supports the UNCITRAL practice as well, which consists of full participation in deliberations on substantive matters of observer States to the same extent as full members, making oral proposals and statements, including replying to statements made by Member States of the Commission, as well as the flexible approach adopted by the Commission allowing the observer States to submit written proposals and circulated documents, submit comments on drafts.

Turkey considers that the attendance of meetings by intergovernmental and non-governmental organizations is one of the effective means to achieve collaboration and coordination between UNCITRAL and these organizations. The contribution they have made is crucial for the quality of work of the Commission. Turkey favours the flexible approaches described in paragraph 29 of the above-mentioned document, while the second option in this paragraph may also be acceptable.

Finally, in the reviewing process of methods of work, some consideration might be given to the exploration of the reasons behind the fact that, while some instruments prepared by UNCITRAL have been widely accepted, others have not reached the indicated number of States for entry into force.
