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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 New Zealand. It was submitted less than ten weeks before the opening of the session, upon receipt of the comments.



I. Introduction

1. The background information relevant to the present note may be found in paragraphs 1-4 of document A/CN.9/676/Add.1.
2. The present document reproduces the comments from New Zealand, received by the Secretariat on 25 June 2009.

II. Comments received from Member States

B. Observer States

New Zealand

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[25 June 2009]

The Commission has been a very successful part of the United Nations system. The Commission has produced widely adopted and implemented international conventions, model laws, and legislative guides that have harmonized international trade law and built efficiency into international markets. The success of the Commission is, in part, owing to its working methods which have proven to be sound and effective. Due to this success, New Zealand is therefore cautious about changes to the Commission's working methods.

Decision-making in the Commission

New Zealand joins with others in welcoming the Secretariat's Note on the UNCITRAL rules of procedure and methods of work.¹ We agree that the Commission's current approach to decision-making, which favours consensus over majority vote, is effective and has consistently achieved beneficial outcomes that are widely implemented by countries at all stages of development. The Commission has regularly been commended for its commitment to the consensus-based approach which has allowed it to remain technically focused, and develop into an effective standard setting organization.

Observer state participation

We are concerned with the suggestion that the participation of observer States in the decision-making of the Commission may be reduced so that their views are not considered when determining whether consensus has been reached. As early as 1976, the Commission unanimously recognized the importance of giving non-member States the opportunity to participate in the work of the Commission as observers. The suggestion that only the views of member States be taken into account in the determination of whether consensus has been reached within the Commission will impact adversely on the effectiveness of the Commission to continue to make such marked achievements in the field of international trade law. Such changes are also unnecessary given the success to date of the Commission under its current working methods. New Zealand therefore opposes changes to the

¹ United Nations documents A/CN.9/676 and A/CN.9/638/Add.5.

Commission's working methods which would affect the involvement of observer States.

The Commission's mandate is "to further the progressive harmonization and unification of the law of international trade." Removing or reducing the participation of observer States could reduce the Commission's ability to fulfil this mandate by reducing the likelihood of the widespread acceptance of its work by countries at all stages of development. We believe that the limit on UNCITRAL membership to 60 States, coupled with diminished participation of observers, would result in politicization of the process for the election of member States to the Commission. This development could have a number of negative impacts on the effectiveness of the Commission and the quality of its work.

Participation of non-state observers

New Zealand considers that non-state observers, such as intergovernmental organizations, specialized agencies and non-governmental bodies, provide important contributions to the development of high quality of texts by the Commission. Accordingly, New Zealand agrees with the proposition in the United States of America's Note to the Secretariat of 21 November 2007 that the concern raised about the participation of non-state observers could be resolved by simply clarifying existing rules, rather than introducing new rules.²

Public meetings

New Zealand supports the holding of meetings of the Commission and its working groups in public, as has been the practice for the past 40 years. New Zealand believes that the opportunity that this affords to others to take part in the Commission's work, as well as the transparency in the Commission's work methods that this represents, are key to the Commission's success.

² United Nations document A/CN.9/639, paragraph 14.