



General Assembly

Distr.: General
20 August 2009

Original: English

United Nations Commission on International Trade Law Forty-second session

Summary record of the 892nd meeting

Held at the Vienna International Centre, Vienna, on Friday, 10 July 2009, at 4.05 p.m.

Chairperson: Mr. Soogeun Oh (Republic of Korea)

Contents

Adoption of the report of the Commission

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V.09-85490 (E)



The meeting was called to order at 4.05 p.m.

Adoption of the report of the Commission

Report of the Committee of the Whole to the Commission on its consideration of a draft UNCITRAL Model Law on Public Procurement

(A/CN.9/XLII/CRP.1 and Add.3-9; A/CN.9/664, 668 and 672)

1. **Ms. Blanchard** (Canada), Chairperson of the Committee of the Whole, thanked the Secretariat for its support to her in her role as Chairperson of the Committee during its seven days of meetings and for the quality of the documents it had prepared. The Committee's deliberations had been highly productive, but it did not feel that the revised text of the Model Law was ready for adoption by the Commission at its current session. The Committee had almost completed a second reading of chapter I, with respect to which only a few issues were outstanding, but it had not been able to take up the other chapters. It recommended that work on the draft revised Model Law should be continued, focusing on the unresolved issues. She understood that the Secretariat intended to engage in wide informal consultations before the next session of Working Group I (Procurement) on issues which the Committee of the Whole had not yet reviewed. The objective was for the Secretariat to provide a new set of working papers for the Working Group's consideration. The Committee recommended that the Commission should adopt its report, contained in documents A/CN.9/XLII/CRP.1 and addenda 3 to 9, as the section of the Commission's own report on its forty-second session pertaining to agenda item 5: Draft UNCITRAL Model Law on Public Procurement.

2. **The Chairperson** said that, if he heard no objection, he would take it that the Commission wished to adopt the report of the Committee of the Whole, which would form part of the Commission's report on the forty-second session.

3. *It was so decided.*

4. **Ms. Nicholas** (Secretariat) drew attention to the reports of Working Group I on its fourteenth, fifteenth and sixteenth sessions, contained in documents A/CN.9/664, 668 and 672 respectively. Each report set forth the detailed issues addressed by the Working Group and the conclusions it had reached. The main issues related to framework agreements, chapter I of

the draft revised Model Law and proposals for negotiated procurement under chapter IV. In all cases the Working Group had considered proposals for amendments, presented its commentary and given instructions to the Secretariat for revision of the text.

5. **The Chairperson** said he took it that the Commission wished to take note of the three reports and to mandate the Working Group to continue its work on the draft revised Model Law on Public Procurement.

6. *It was so decided.*

7. **Ms. Otunga** (Kenya) said that her delegation was greatly interested in the emerging issues in the area of public procurement that were dealt with in the draft revised Model Law and had hoped that the Commission would conclude its work on the project at the current session. Her country was contemplating the enactment of legislation dealing with topics such as electronic reverse auctions and framework agreements and had hoped to have an approved UNCITRAL Model Law as guidance for the relevant provisions. She expressed the hope that the Working Group would be able to complete its work on the draft revised Model Law by the end of the year. Otherwise countries might adopt provisions that were not in line with those eventually included in the Model Law.

8. **Mr. Ekedede** (Nigeria) said that the mandate of UNCITRAL to develop and harmonize international trade law did not consist solely in the production of legal texts. There was a need for a more proactive approach to promote the use of UNCITRAL products, especially in developing countries. In that connection, the approach taken by the United Nations Office on Drugs and Crime (UNODC) was instructive. UNODC had a network of regional and country offices which it used to promote partnerships with Member States and other stakeholders to promote its policies, and it had been authorized to seek extrabudgetary resources for that purpose. The time had come to seek solutions to the constraints that UNCITRAL faced in promoting wider use of its excellent products.

9. **Mr. Sorieul** (Secretariat) said that the Commission would be taking up the issue raised by the representative of Nigeria the following week under agenda item 13 (Technical assistance to law reform) and agenda item 14 (Status and promotion of UNCITRAL legal texts). He welcomed the enthusiasm

that the representative of Nigeria had expressed for UNCITRAL's mission and products. The Secretariat was well aware of the demand for cooperation that existed in developing countries, but UNCITRAL was hampered by staffing constraints in carrying out its mandate in the areas of technical cooperation and outreach. Thus, the number of posts available to the UNCITRAL Secretariat was more or less the same as in the 1960s. If UNCITRAL was to be able to interact effectively with States and other stakeholders in an era of increasing globalization, additional resources would be needed. In seeking to mobilize extrabudgetary resources, the Secretariat was also handicapped by a lack of capacity to develop programmes that might attract financial support from the private sector and other sources of funding. While the issue would be discussed in greater detail during the final week of the session, he was grateful to the representative of Nigeria for raising it in the context of the draft Model Law.

10. **Mr. Boutaqbout** (Morocco) said that, although UNCITRAL might not be able to have a physical presence in the field, it could publicize and promote its legal texts by organizing regional workshops, seminars and other events for the different stakeholders in Member States, including potential donors.

The meeting rose at 4.40 p.m.