



General Assembly

Distr.: General
21 July 2011

Original: English

United Nations Commission on International Trade Law Forty-fourth session

Summary record of the 942nd meeting

Held at the Vienna International Centre, Vienna, on Friday, 8 July 2011, at 2.30 p.m.

Chairperson: Mr. Moollan.....(Mauritius)

Contents

Agenda item

Paragraphs

23	Adoption of the report of the Commission (<i>continued</i>)	1-96
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* Reissued for technical reasons on 28 January 2014.

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The meeting was called to order at 2.45 p.m.

Adoption of the report of the Commission (*continued*)

A/CN.9/XLIV/CRP.1/Add.16

1. **Ms. Sabo** (Canada) suggested that, in the last sentence of paragraph 14, the words in square brackets — “[in accordance with the applicable criteria and procedure]” — and the accompanying footnote be deleted.

2. *It was so decided.*

3. **Ms. Sabo** (Canada) suggested that the last sentence of paragraph 16 be amended to read “It was agreed that the relevant information should be effectively communicated to those persons responsible for the work of UNCITRAL within the Governments of Member States.”

4. **Mr. Sorieul** (Secretary of the Commission) said that the Secretariat seldom knew who was responsible for the work of UNCITRAL within the Governments of Member States. It communicated, by means of notes verbales, with Member States through formal diplomatic channels, permanent missions, and was not responsible for problems of communication between the permanent mission of a country and the capital. It did send copies of notes verbales to organizations that it knew to be involved in UNCITRAL matters, but it could not bypass the permanent missions of Member States or take on the obligation of identifying individual persons.

5. **The Chairperson** suggested that the sentence be amended to read “It was agreed that, in addition to communication through formal diplomatic channels, the Secretariat would endeavour to circulate the relevant information to persons whom it knew to be involved with the work of UNCITRAL.”

6. **Mr. González** (Argentina), expressing support for the points made by the Secretary of the Commission, said that the sentence should not be changed. If it were changed in either of the manners suggested, permanent missions would have to be informed of all communications addressed by the Secretariat to persons in the Member States that they represented.

7. **The Chairperson** suggested, in the light of the point made by the representative of Argentina, that the sentence be amended to read “It was agreed that, in addition to communication through formal diplomatic channels, the Secretariat would endeavour to circulate

the relevant information to persons whom it knew to be involved with the work of UNCITRAL, always keeping the permanent mission informed.”

8. **Mr. Sorieul** (Secretary of the Commission) said that a formal mechanism whereby the Secretariat had to provide permanent missions with copies of all communications addressed to persons in the Member States represented by them who were known to be involved with the work of UNCITRAL would be very cumbersome.

9. **The Chairperson**, drawing attention to the words “would endeavour” in the sentence just suggested by him, said that the Secretariat would not be under an obligation.

10. **Mr. Sorieul** (Secretary of the Commission) said that an unnecessary bureaucratic burden could be avoided if in notes verbales sent to permanent missions it was stated that copies were being sent to persons in the Member States represented by them who were involved with the work of UNCITRAL.

11. **Mr. González** (Argentina) suggested that the last sentence of paragraph 16 be left as it stood and a sentence along the following lines be added at the end of the paragraph: “A number of delegations were of the view that it would be effective also to circulate the relevant information to persons whom it knew to be involved with the work of UNCITRAL.”

12. **The Chairperson** suggested that the proposed additional sentence read “A number of delegations were of the view that it would be effective also to circulate the relevant information to members of delegations to UNCITRAL.”

13. *It was so decided.*

14. **Ms. Sabo** (Canada) suggested that the last sentence of paragraph 18 be amended in such a way as to distinguish between comments made by the Secretariat and comments made by members of the Commission.

15. **Mr. Jezewski** (Poland) suggested the deletion of “certain” from the second sentence of paragraph 18.

16. **The Chairperson** took it that there were no objections to those suggestions.

17. *It was so decided.*

18. **Mr. Bellenger** (France) suggested that, in the first sentence of paragraph 20, the words “Another suggestion was to endorse the procedure followed so far by the Secretariat” be replaced by words to the effect that the Secretariat explained the procedure followed by it.

19. *It was so decided.*

20. **Mr. Bellenger** (France), supported by **Ms. Sabo** (Canada), suggested that the last sentence of paragraph 20, in order to better reflect the discussion, be amended using words to the effect that the procedure was nevertheless considered to be insufficiently transparent and efficient.

21. **The Chairperson** said that, given the tenor of the discussion, the report should state that the procedure had been considered to be good but still capable of being improved.

22. **Ms. Keyte** (United Kingdom) said that amending the sentence as suggested by the representative of France would mean contradicting the opening words of the first sentence of paragraph 21 (“While no objection was raised to that procedure”). Perhaps the last sentence of paragraph 20 should be deleted.

23. **The Chairperson** took it that there were no objections to the deletion of the last sentence of paragraph 20.

24. *It was so decided.*

25. **Ms. Sabo** suggested the deletion of the first sentence of paragraph 21 — objections had been raised to the procedure in question.

26. **Mr. Bellenger** (France), supported by **Ms. Sabo** (Canada), said that paragraph 21 should clearly indicate what procedure would be followed in the future.

27. He suggested that the paragraph be rewritten using words to the effect that, as a result of the discussion, the Commission had requested the Secretariat to inform States of the names of the non-governmental organizations that it intended to invite, in line with paragraph 10 in the Annex (UNCITRAL rules of procedure and methods of work) to document A/CN.9/697. The Secretariat should make accessible lists of the non-governmental organizations to be invited to Commission and working group sessions before the sessions.

28. **The Chairperson** recalled that the purpose of the Commission’s report was to record the decisions

actually taken by the Commission — not decisions that some Commission members would have liked to see taken.

29. The issue was a sensitive one, and it was particularly important that the tenor of the discussion be accurately reflected in the Commission’s report.

30. **Mr. Jezewski** (Poland) suggested that just the phrase “While no objection was raised to that procedure,” in the first sentence of paragraph 21 be deleted.

31. He also suggested the replacement of the word “agreed” in the second and third sentences with “suggested” or “proposed”.

32. **The Chairperson** said that the phrase “While no objection was raised to that procedure,” was probably inaccurate and should perhaps therefore be deleted.

33. As to the word “agreed”, his recollection was that there had indeed been agreement in the Commission. In his view, therefore, that word should remain in the second and third sentences.

34. **Mr. Bellenger** (France) said that he could see no difference between what his delegation had suggested and what the Chairperson seemed to be contemplating. The purpose of his delegation’s suggestion had simply been to make it clear what the Commission had concluded.

35. **The Chairperson** proposed, in order to make matters clearer, the insertion in the third sentence of a parenthetical reference to paragraph 17.

36. Apart from the delegation of Canada, no delegations seemed to be in favour of the reformulation suggested by the delegation of France. At the same time, there seemed to be no objections to the proposal regarding a reference to paragraph 17 that he had just made.

37. **The Rapporteur** said it had indeed been agreed that “referring States to the updated lists available online should be sufficient”, but the point had been made that the lists should be updated *before* Commission and working group sessions.

38. **The Chairperson** said that, in his view, the fact that the lists would be updated before Commission and working group sessions was made clear by the third sentence of paragraph 21 — “It was agreed that States should be reminded of the availability of the updated

lists [parenthetical reference to paragraph 17] in the standard note verbale ...”.

39. **Mr. Bellenger** (France) said he was not sure that the third sentence of paragraph 21 made it sufficiently clear that the lists would be updated before Commission and working group sessions.

40. **Mr. Sorieul** (Secretary of the Commission) said that the issue was an important one, and it was addressed in paragraph 20 (ii) — “at the same time the invitation was extended to such organization, the relevant list of invited organizations accessible to Member States being updated;”. The Secretariat envisaged updating lists of invited organizations before the sessions in question.

41. **The Chairperson** suggested that a reference to subparagraph 20 (ii) be inserted in paragraph 21.

42. **Mr. Bellenger** (France) said that, in his delegation’s view, such cross-referencing still left matters unclear.

43. His delegation would be very vigilant in checking whether lists of invited organizations were indeed updated before the sessions in question. If they were not, it would raise the issue formally — and without waiting until the Commission’s next session.

44. **The Chairperson** took it that the Commission wished to adopt paragraph 21 with the inclusion of references to paragraph 17 and subparagraph 20 (ii).

45. *It was so decided.*

46. *Document A/CN.9/XLIV/CRP.1/Add.16, as orally revised, was adopted.*

47. *Document A/CN.9/XLIV/CRP.1/Add.17 was adopted.*

A/CN.9/XLIV/CRP.1/Add.21

48. **The Chairperson**, referring to the last sentence of paragraph 2, proposed the insertion of “continued or” before “increased representation”.

49. He proposed the addition of the following sentence at the end of paragraph 2: “In terms of perception, it was also important that the uniform instruments of UNCITRAL be seen to be the result of a worldwide consensus based on proper representation.”

50. **Mr. Sorieul** (Secretary of the Commission) called for the inclusion of a sentence along the following lines: “Concern was expressed that the proposed change in the pattern of meetings would contradict General Assembly resolutions A/RES/2205 of 17 December 1966 on the establishment of UNCITRAL, A/RES/2609 of 16 December 1969 and A/RES/31/140 of 16 December 1976, all of which dealt with the problem of UNCITRAL meetings.”

51. **Ms. Sabo** (Canada) proposed the insertion of the word “Unanimous” before “Support” at the beginning of the second sentence of paragraph 2.

52. Regarding the third sentence of that paragraph, her delegation could not go along with the phrase “was not acceptable”. It was of the view that, if an alternative to cutting the travel budget of Secretariat staff to service UNCITRAL meetings in New York could not be found, the Secretary-General’s proposal would have to be accepted. She proposed the deletion of the words “was not acceptable since it”.

53. Similarly, her delegation could not go along with the words “was unacceptable” in paragraph 4.

54. **Ms. Keyte** (United Kingdom) suggested that paragraph 3, which set out the background to what was stated in paragraph 2, be moved to before paragraph 2.

55. **Mr. Bellenger** (France) expressed support for the proposed deletion of the words “was not acceptable since it” in paragraph 2.

56. **The Rapporteur** said that, instead of simply deleting those words, the Commission should find a softer way of expressing its view regarding the Secretary-General’s proposal.

57. **Mr. Sorieul** (Secretary of the Commission) said that, if the Commission did not send to New York a clear message to the effect that it was not prepared to abandon the present pattern of meetings, that pattern of meetings would be abolished. The Commission needed to take a firm stand.

58. **Ms. Keyte** (United Kingdom), following up on the suggestion just made by her, proposed that paragraphs 2 and 3 be rearranged and reformulated as three paragraphs reading as follows:

“2. The Commission took note of the proposal. Unanimous support was expressed for efforts to achieve savings across the United Nations.

“3. [Paragraph 3 (a) is contained in document A/CN.9/XLIV/CRP.1/Add.21]

“3 bis. Member States attending the session unanimously considered that abolishing the alternating pattern of meetings would entail detrimental consequences on UNCITRAL’s ability to continue its work on harmonization and unification of the law of international trade. That work, it was said, presupposed the fullest possible participation of States in the sessions of the Commission and its working groups so that UNCITRAL standards achieved universal acceptability. It was emphasized that the special interest of developing countries should be taken into account to ensure their increased representation in the work of UNCITRAL. The Commission expressed its full support for continuing the current pattern of meetings of UNCITRAL.”

59. Also, she proposed the deletion of the phrase “, while the proposed abolition of the alternating pattern of meetings was unacceptable,” in paragraph 4.

60. **Mr. Jezewski** (Poland) said that his delegation, which could understand the concern of the delegation of Canada about the use of strong words like “unacceptable”, nevertheless considered it important that the Commission send a clear message to New York. It could go along with the proposal just made by the representative of the United Kingdom, but felt that a sufficiently clear message would be achieved simply by adding “Unanimous” at the beginning of the second sentence of paragraph 2 and reformulating the third sentence to read “The proposed way of saving on UNCITRAL-related costs by abolishing the alternating pattern of meetings found no support within the Commission since it would entail ... the work of UNCITRAL.”

61. **Ms. González Lozano** (Mexico) expressed support for the proposal made by the representative of the United Kingdom.

62. **The Chairperson** said that, logically, the content of paragraph 3 should appear before that of paragraph 2. In his view, the Secretariat could be left to mesh the two paragraphs.

63. As regards the message to be sent to New York, no members of the Commission had gone along with the idea that the right way forward in reducing the

administrative costs involved in servicing UNCITRAL sessions was to abolish the New York sessions.

64. **Ms. Sabo** (Canada) said that her delegation, while believing that the holding of alternate sessions in New York should continue, would, with great regret, go along with their abolition if no acceptable alternative way of reducing the administrative costs were found.

65. **Mr. Gautney** (United States of America) said that the proposal of the representative of the United Kingdom made a lot of sense.

66. His delegation’s main concern was that the Commission should send a clear message without using strong words like “unacceptable”. It would prefer words such as “ill-advised” or “undesirable”.

67. **The Chairperson** said that the Commission seemed to want to go along with the proposal made by the representative of the United Kingdom.

68. **Mr. Sorieul** (Secretary of the Commission) suggested that, for the sake of consistency with paragraph 2 as proposed, the words “full support” at the end of proposed paragraph 3 bis be replaced with the words “unanimous support”.

69. **Ms. Nesdam** (Norway) endorsed the proposal made by the representative of the United Kingdom with the amendment proposed by the Secretary of the Commission.

70. **The Chairperson** said that the Rapporteur had suggested to him the addition, at the beginning of the final sentence of proposed paragraph 3 bis, of the phrase “In view of the above,”.

71. He took it that, together with that addition and the amendment proposed by the Secretary of the Commission, the text proposed by the representative of the United Kingdom was acceptable to the Commission.

72. **Mr. Gautney** (United States of America) said that the word “unacceptable” in the first sentence of paragraph 4 should be replaced with something on the lines of “ill-advised” or “undesirable”, in order to soften the language.

73. **Ms. Sabo** (Canada) proposed that the beginning of paragraph 4 read “In view of the above, the Commission expressed its unanimous support for the continuation of the current pattern of meetings and

agreed that every effort should be made to identify alternatives ...”.

74. **The Chairperson** suggested the formulation “, while the proposed abolition of the alternating pattern of meetings should be avoided,”.

75. **Ms. Keyte** (United Kingdom) said that, although the Chairperson’s suggestion was acceptable to her delegation, she had already proposed the deletion of the phrase “, while the proposed abolition of the alternating pattern of meetings was unacceptable”. However, her delegation could go along with the replacement of the word “unacceptable” with softer language.

76. Since paragraph 4 was meant to convey the Commission’s response to the Secretary-General’s request for cuts in light of the financial crisis, perhaps the first sentence could read “In response to the Secretary-General’s call for cuts and bearing in mind the current financial crisis, the Commission generally agreed that every effort should be made to identify alternatives ...”.

77. **The Chairperson** said that, in considering the paragraph, the Commission should think about how its message might be perceived at United Nations Headquarters. The paragraph indicated that the Commission had understood the need to make cuts but was reiterating its position that the way forward identified at Headquarters, without a proper understanding of how the Commission’s work was conducted, should be avoided. The Commission should simply amend the paragraph by replacing the word “unacceptable” with wording along the lines of “was not the right way forward” or “should be avoided”. He took it that the Commission could go along with such an amendment.

78. **Ms. Keyte** (United Kingdom), referring to the first sentence of paragraph 9, said that, if the emphasis of that sentence was meant to be on the greater efficiency that could be achieved through strategic planning, the phrase “, in light of the shortage of resources and budgetary cuts faced by the UNCITRAL secretariat,” should perhaps be deleted.

79. **Mr. Sorieul** (Secretary of the Commission) said that the phrase was intended to reflect the Commission’s recognition of the need for strategic planning in light of the fact that the resources available to the Commission would soon be substantially less. If

that phrase was deleted, the paragraph could give the impression that the Commission had doubts about the usefulness of its activities.

80. **The Chairperson** proposed that paragraph 9 be retained as drafted.

81. **Ms. Sabo** (Canada) said that the last sentence of paragraph 10 did not properly reflect the Commission’s request that the Secretariat provide it with full financial information during the preparation of the budget for 2014-2015. She proposed that the sentence be replaced with the following text: “The Secretariat was requested to prepare a document for the next session of the Commission setting out the budget situation as of that time so that States could take decisions on the work programme and efficiencies in light of available resources.”

82. **Mr. Sorieul** (Secretary of the Commission), referring to the last sentence of paragraph 9, said that the note on strategic planning requested by the Commission would enable the Commission to decide on its work programme and efficiencies in light of available resources.

83. **Mr. González** (Argentina) said that he shared the concern of the delegation of Canada regarding paragraph 10. In light of the comment just made by the Secretary of the Commission, however, he felt that the final sentence of paragraph 10 should simply be deleted.

84. **The Chairperson** took it that the Commission wished to accept that solution.

85. **Mr. Bellenger** (France), referring to paragraph 15, said that the dates of the session of Working Group I remained unclear. His delegation continued to believe that the earlier the session was held, the better.

86. **Mr. Sorieul** (Secretary of the Commission) said that it had been explained to Commission members, following consultations with various representatives involved in Working Group I, that, while a Working Group I session could, if necessary, be held before the end of 2011 on the basis of documents already prepared, Working Group I members would not have much time to consider those documents. It had therefore been thought preferable that the next session of Working Group I take place in April 2012 in order to allow sufficient time for the preparation and consideration of documents and for consultations, and

to ensure that States had an opportunity to provide inputs, particularly since Working Group I would be holding only one session between the Commission's current session and the end of 2012. The holding of a Working Group I session in February or March 2012 might be feasible, or indeed imposed, but the dates of 16-20 April 2012 were based on a request made by him following consultations with a number of experts. Those experts — and also other parties — would have to be consulted again if those dates were rejected.

87. **Mr. González** (Argentina) said it was his delegation's understanding that the Commission had decided that there would be a Working Group I session in 2011, on the basis of a swap with Working Group III or Working Group VI, and that no session would be held in 2012.

88. **Mr. Sorieul** (Secretary of the Commission), recalling that he had just said that a Working Group I session could be held before the end of 2011, said that a session of Working Group I also in 2012 would pose problems.

89. **Mr. González** (Argentina) requested clarification as to the number of sessions of Working Group I to be held before the Commission's forty-fifth session and whether resources for a session in 2012 had already been approved.

90. **Mr. Sorieul** (Secretary of the Commission) said that the Commission had decided that there would be

only one session of Working Group I, either late in 2011 or early in 2012. Budgetary resources were available for the one session, and the Secretariat had reserved dates and rooms for 2012.

91. **Mr. Grand d'Esnon** (France) said holding of a Working Group I session in April 2012 would leave very little time for the outcomes of the session to be digested before the 2012 session of the Commission.

92. **Mr. González** (Argentina) said that the manner in which working group sessions were budgeted for should be reviewed.

93. **Mr. Sorieul** (Secretary of the Commission) said that the Working Group I session in April 2012 would be preceded by meetings of experts who would help the Secretariat with the preparation of decisions to be endorsed by Working Group I and submitted to the Commission for adoption.

94. *Document A/CN.9/XLIV/CRP.1/Add.21, as orally revised, was adopted.*

95. *The draft report as a whole, as orally revised, was adopted.*

96. **The Chairperson** declared the Commission's forty-fourth session closed.

The meeting rose at 4.40 p.m.