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UNCITRAL rules of procedure and methods of work

Note by the Secretariat*

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* This note is submitted late due to the need to complete consultations and finalize subsequent amendments.



III. Practice with the implementation of the applicable rules of procedure (*continued*)

1. The present addendum describes the practice with the implementation of rules 124-133 (voting) of the Rules of Procedure of the General Assembly in the Commission and its subsidiary organs and addresses the related issue of taking decisions by consensus.

I. Rules 124-133: voting

1. Content of the rules

2. In accordance with the rules:

(a) Each member of the committee shall have one vote (rule 124);

(b) Decisions of committees shall be made by a majority of the members present and voting (rule 125); for the purpose of these rules, the phrase “members present and voting” means members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting (rule 126);

(c) The committee shall normally vote by show of hands or by standing, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the members, beginning with the member whose name is drawn by lot by the Chairman. The name of each member shall be called in any roll-call, and its representative shall reply “yes”, “no” or “abstention”. The result of the voting shall be inserted in the record in the English alphabetical order of the names of the members. When the committee votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the committee shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the members; nevertheless, the result of the voting shall be inserted in the record in the same manner as that of a roll-call vote (rule 127).¹ Under the provisions referred to in the accompanying footnote, it is recommended that delegations should endeavour not to request a roll-call vote, in particular when an electronic voting system is available for recording how votes were cast,² except when there are good and sound reasons for doing so;³

(d) After the Chairman has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The Chairman may permit members to explain their votes, either before or after the voting, except when the vote is taken by secret ballot. The Chairman may limit the time to be allowed for such explanations. The

¹ The rule is accompanied by a footnote that refers to paragraph 24 of the introduction, paragraph 84 of annex IV, and paragraph 2 of annex VII, of the Rules of Procedure of the General Assembly. Paragraph 24 of the introduction refers to the amendments made by the General Assembly to its Rules of Procedure on means of voting. The content of other references in the footnote is analyzed in the text.

² Paragraph 2 of annex VII.

³ Paragraph 84 of annex IV.

Chairman shall not permit the proposer of a proposal or of an amendment to explain his vote on his own proposal or amendment (rule 128).⁴ The provisions referred to in the accompanying footnote state that: (i) in explaining their votes, delegations should limit their statements to an explanation, as brief as possible (should be limited to ten minutes), of their own votes and should not use the occasion to reopen the debate;⁵ (ii) presiding officers should be encouraged to use, whenever they deem it appropriate, their powers under the rule;⁶ (iii) a delegation should explain its vote only once on the same proposal, in either a Main Committee or a plenary meeting, unless the delegation considers it essential to explain it in both meetings (for example, if that delegation's vote in the plenary meeting is different from its vote in the Committee);⁷ and (iv) the sponsor of a draft resolution adopted by a Main Committee should refrain from explaining its vote during the consideration of that draft resolution in the plenary unless it deems it essential to do so;⁸

(e) A representative may move that parts of a proposal or of an amendment should be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favour and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are approved shall then be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole (rule 129);⁹

(f) When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of the proposal (rule 130);¹⁰

(g) If two or more proposals relate to the same question, the committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.¹¹ The committee may, after each vote on a proposal, decide whether to vote on the next proposal (rule 131);

⁴ The rule is accompanied by a footnote that refers to paragraph 7 of the introduction, paragraphs 74 to 76 of annex IV, and paragraphs 6 and 7 of annex V, of the Rules of Procedure of the General Assembly. Paragraph 7 of the introduction provides drafting history of the rule. The content of other references in the footnote is analyzed in the text.

⁵ See paragraph 74 of annex IV, to be read together with paragraph 6 of annex V.

⁶ See paragraph 75 of annex IV.

⁷ See paragraph 76 of annex IV, to be read together with paragraph 7 of annex V.

⁸ See paragraph 76 of annex IV.

⁹ The rule is accompanied by a footnote that refers to paragraph 7 of the introduction of the Rules of Procedure of the General Assembly that provides drafting history of the rule.

¹⁰ Ibid.

¹¹ The order referred to is the order of submission of a draft to the Secretariat by Member States or by a main or a subsidiary organ, not the date of circulation of the document or of its formal

(h) When only one person or Member is to be elected and no candidate obtains in the first ballot the majority required, a second ballot shall be taken, which shall be restricted to the two candidates obtaining the largest number of votes. If in the second ballot the votes are equally divided, and a majority is required, the Chairman shall decide between the candidates by drawing lots (rule 132); and

(i) If a vote is equally divided on matters other than elections, the proposal shall be regarded as rejected (rule 133).

2. Decision-making in the Commission

(a) Voting

3. As mentioned in paragraph 57 of document A/CN.9/638/Add.3, a formal vote in the Commission took place only once, at its eleventh session, in 1978, on the motion to reopen the consideration of the Commission's recommendation to the General Assembly that it should defer the transfer of the Commission's secretariat to Vienna for a period of three years, on which the Commission had already adopted the decision at that session.¹² As a result of the voting, the Commission decided not to reopen the consideration.

4. The Commission's report of that session is brief about the voting procedure, recording only the fact of voting and the voting results. The summary record of the relevant meeting does not contain additional information.¹³ It is nevertheless assumed that, in accordance with rule 124 (see paragraph 2 (a) above),¹⁴ only members of the Commission were allowed to vote and each had only one vote. In other respects, according to the available data in the Commission's records of that session, the decision-making by vote also complied with the applicable rules, including as regards the requirements of quorum under rule 108 (see A/CN.9/638/Add.3, paras. 16-18) and of a qualified majority for adoption of decisions under rules 123 and 126 (see A/CN.9/638/Add.3, paras. 56 and 57, and paragraph 2 (b) above), of the Rules of Procedure of the General Assembly.

5. No explanation of vote took place either before or after the voting. Two representatives after the voting expressed reservations concerning the substance of the decision taken.¹⁵

(b) Consensus

6. At its first session, in 1968, the Commission agreed that its decisions should as far as possible be reached by way of consensus, but in the absence of a consensus, decisions should be made by a vote as provided for in the relevant rules of

introduction in the organ concerned. See *United Nations Juridical Yearbook, 1976* (United Nations publication, Sales No. E.78.V.5), p.181, under item 6, para. 1, and item 7, para. 2; and *ibid., 1984* (United Nations publication, Sales No. E.91.V.1), p.169, under item 16.

¹² A/33/17, paras. 97 and 101-102.

¹³ A/CN.9/SR.209, paras. 77-78.

¹⁴ At the time of the voting in the Commission, the following version of the Rules of Procedures of the General Assembly was applicable: A/520/Rev.12 and Amend. 1 and 2 (see A/520/Rev.16, Introduction, para. 50). The substance and numbering of the relevant rules in that version of the Rules of Procedure are the same as of the corresponding rules in the current version.

¹⁵ A/33/17, para. 103.

procedure of the General Assembly.¹⁶ In support of such practice, it was noted that harmonization and unification as had already been achieved in the field of international trade law was the result of consensus, and that there were several instances where, notwithstanding long and patient research and discussion, progress had not been achieved because of an absence of consensus.¹⁷

7. Many representatives in the Sixth Committee welcomed the understanding reached within the Commission with respect to taking its decisions as a general rule by consensus. It was stated in that body that this would permit the Commission, whose members were States with different social-economic systems, different levels of development and different legal systems and historical traditions, to base its work on careful regard for proposals submitted and respect for mutual interests. In the opinion of these representatives, the consensus method was conducive to achieving a larger cooperation among countries having different legal, economic and social systems and would ensure that the uniform rules derived from the work of the Commission were generally acceptable.¹⁸

8. Some representatives in that body, while agreeing with the principle of consensus, nevertheless observed that consensus should not be reached at all costs as if this were the essential objective of the Commission's discussions, nor should its purpose be merely to satisfy a dissident minority. In appropriate circumstances, decisions should be made by vote. It was noted that differing views with respect to the approach to specific problems were inevitable and the hope was expressed that the consensus method would not be allowed to block the solutions to these problems. There was also a suggestion that the principle of consensus should be abandoned as it was not an entirely necessary method of work, and consensus in the Commission with its limited membership did not necessarily imply universal consensus. In this connection, it was also stated that the Commission could accelerate its work considerably if it were to present alternative texts instead of texts in regard to which consensus had laboriously been reached, leaving the final decision to a conference of plenipotentiaries.¹⁹

9. When the report on the work of the first session of the Commission was considered by the Trade and Development Board of the United Nations Conference on Trade and Development (UNCTAD TDB), in support of the Commission's decision to reach decision by consensus, it was stated that it would not be conducive to the formulation of a unified law if some provisions or instruments were approved by a small majority.²⁰ Support for the Commission's approach to take decisions by consensus was also expressed in that body in 1973, when the Commission report on the work of its sixth session was considered.²¹

10. The early reports of the Commission explicitly stated that decisions at the session were taken by consensus.²² In several instances, reference is made to actions

¹⁶ A/7216, paras. 18, 35, 40 V and 44.

¹⁷ *Ibid.*, para. 35.

¹⁸ A/7408, para. 9; A/8146, para. 13; A/9408, para. 18; A/9920, para. 14; A/10420, para. 13; and A/31/390, para. 12.

¹⁹ A/7408, para. 9; A/8146, para. 13; and A/9408, para. 18.

²⁰ A/7214, para. 159.

²¹ A/9015/Rev.1, para. 556.

²² See e.g., A/7618, para. 15; A/8017, para. 16; A/8417, para. 8; A/8717, para. 11; A/9017, para. 7; A/9617, para. 7; and A/10017, para. 9.

taken by the Commission unanimously.²³ Records do not indicate that voting took place in those instances. In most of those cases, the context suggests that the term “unanimous” as opposed to the reference to “consensus” was used to highlight a higher degree of agreement in the Commission as regards certain action or decision. In other instances, it seems that both terms meant to indicate that the decision was reached by general agreement without vote and without strong objection, even in the presence of some unresolved differences and concerns.²⁴ In later years, the Commission reports as a rule recorded actions and decisions by the Commission without any reference on how the action or decision was taken, by consensus or unanimously.

11. Explicit reservations made to the content of the decision did not block the adoption of the Commission’s decision by consensus. For example, at the Commission’s second session, when a draft resolution negotiated during information consultations was discussed in the Commission, several representatives expressed the view that they supported the draft in a spirit of compromise but made observations about the points in the text that concerned them.²⁵ At the sixth session, some representatives expressed reservations regarding paragraph 2 of the Commission’s decision on international commercial arbitration that referred to the 1961 European Convention on International Commercial Arbitration.²⁶ When the report of that session was considered in the UNCTAD TDB, the representatives of the African countries pointed out that, although the Commission’s report stated that the decision was adopted unanimously, in their view there was no consensus on paragraph 2 of the decision in the Commission since the representatives of the African countries members of the Commission expressed reservation with respect to that paragraph and they were still maintaining reservation on that paragraph.²⁷ At the Commission’s twentieth session, upon adoption of the decision of the Commission and recommendation to the General Assembly as regards the draft convention on international bills of exchange and international promissory notes, the representative of France stated that, although the delegation of France did not oppose the adoption by consensus of the Commission’s recommendation to the General Assembly transmitting the draft convention, this in no way prejudiced the country’s position with regard to the text of the draft convention itself as it stood at the end of the session, which in view of the delegation had shortcomings and would adversely affect the accession by States to the convention. The representative requested the statement to be recorded in full in the Commission report.²⁸ ²⁹

²³ Including as regards acceptance of a working paper and election of officers. See e.g., A/7216, para. 40; A/7618, paras. 11, 38, 84, 95, 99, 112, 133, 141, 155, 160 and 167; A/8017, paras. 102, 118, 126, 138, 145, 156, 166, 172, 178, 186, 200, 209 and 217; A/8417, paras. 19, 35, 66, 93 and 119; A/8717, paras. 20, 32, 43, 51, 55, 78, 87, 97 and 104; A/9017, paras. 15, 24, 36, 45, 61, 85, 107, 116, 132, 143 and 148; A/9617, paras. 20, 29, 35, 37, 53, 59, 64, 81 and 93; A/10017, paras. 17, 25, 32, 41, 46, 63, 77, 83, 94, 103 and 113; A/31/17, paras. 11, 28, 33, 43, 56, 74 and 76; and A/32/17, para. 12.

²⁴ See e.g., A/7618, paras. 125-133.

²⁵ A/7618, para. 130.

²⁶ A/9017, para. 86.

²⁷ A/9015/Rev.1, para. 557.

²⁸ A/42/17, para. 305.

²⁹ For other examples, see e.g., A/32/17, paras. 41 and 44.

12. Although the policy decision as regards decision-making taken at the Commission's first session envisaged that in the absence of consensus, decisions should be made by a vote as provided for in the relevant rules of procedure of the General Assembly, the Commission did not take such a vote on substantive matters even in the absence of consensus. For example, at the fifth session, the Commission explicitly noted that it was not able to reach a consensus on certain provisions of the draft convention referred to it by the Working Group on Prescription, and to indicate this fact, it decided to place these provisions within square brackets for final consideration by an international conference of plenipotentiaries.³⁰ In the Sixth Committee, when the draft convention was considered, no concern was expressed that the Commission did not have recourse to a formal vote in the absence of consensus. The delegates were of the view that due to the fact that the Commission was not able to reach consensus on some provisions, convening an international conference to consider the draft would be premature and should be postponed to give the Commission more time to consider unresolved issues in the light of the comments and proposals received.³¹ The view eventually prevailed, as reflected in General Assembly resolution 2929 (XXVII), that the draft would be the basis for consideration in an international conference of plenipotentiaries to be convened by the Secretary-General to consider the question of prescription in international sale of goods and to embody the results of its work in an international convention or other instrument as it may deem appropriate.

13. The Commission's subsidiary organs have also taken their decisions by consensus. The records indicate that in a number of instances subsidiary organs have adopted decisions despite reservations or opposition as regards some aspects of the decision.³² Chances of voting in subsidiary organs are even lower than in the Commission as in practice the question on which no consensus was found in a subsidiary organ is referred to consideration and resolution by the Commission where the final decision is made. It is also usual for subsidiary organs to find compromise by formulating alternative provisions for consideration by the Commission.³³

14. Although there are examples in the Commission when authors of reservations or objections insisted that their names together with the content of reservation or objection be explicitly recorded, including as a footnote to the text of the relevant provision transmitted to the Commission or the General Assembly,³⁴ it is not common to do so.

³⁰ A/8717, paras. 18 and 20 (1).

³¹ A/8896, para. 16.

³² See e.g., A/8417, para. 56; A/31/17, para. 16, annex I as regards reservations made by delegates in Committee of the Whole I in the course of consideration of the draft convention on carriage of goods by sea: under article 5, para. 33; article 6, para. 11; article 8; article 15, para. 20; article 21, para. 15; and footnotes m, p and q; and annex II, as regards reservations made by delegates in Committee of the Whole II in the course of consideration of the draft UNCITRAL Arbitration Rules: paras. 29, 97, 106 and 178; and A/32/17, paras. 41 and 44, and annex I, the report of Committee of the Whole I relating the draft convention on the international sale of goods, paras. 216, 228, 338 and 560.

³³ See e.g., A/31/17, annex I, under article 6, referring to alternative options to the draft convention on the carriage of goods by sea, included by Committee of the Whole I.

³⁴ See e.g., A/32/17, annex I, para. 338, and para. 11 of the present note.

15. The General Assembly, in its resolutions related to the work of UNCITRAL, expressed satisfaction with the Commission's practice of reaching decisions by consensus without a formal vote.³⁵

3. Meaning of "consensus" in the United Nations

16. The Rules of Procedure of the General Assembly regulate decision-making by vote giving effect to Article 18 of the Charter of the United Nations that set rules on voting in the General Assembly, including that each member of the General Assembly has one vote. In their main part, the Rules of Procedure do not make reference to decision-making by "consensus". Such reference is found in annex IV to the Rules of Procedure that reproduces conclusions of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly. The Special Committee considered that "the adoption of decisions and resolutions by consensus is desirable when it contributes to the effective and lasting settlement of differences, thus strengthening the authority of the United Nations."³⁶ The Special Committee, however, emphasised that the right of every Member State to set forth its view in full must not be prejudiced by this procedure.³⁷

17. The conclusions of the Special Committee were approved by the General Assembly in its resolution 2837 (XXVI) of 17 December 1971. In that resolution, the General Assembly declared those conclusions to be useful and worthy of consideration by the Assembly, its committees and other relevant organs. The General Assembly decided that they should be annexed to its Rules of Procedure. In some other resolutions, the General Assembly expressly endorsed the practice of its organs of taking decisions by consensus³⁸ and agreed that such practice should continue, without prejudice, however, to the provisions of the Charter of the United Nations and the Rules of Procedure of the General Assembly governing the decision-making process.³⁹

18. Nevertheless, a distinction should be drawn between decision-making on substantive and procedural matters. It is common for committees and other relevant organs to agree on adoption of their decisions on matters of substance by consensus. Decisions on procedural matters,⁴⁰ including modification and interpretation of rules of procedure, in the light of their critical role, including in controlling the outcomes of deliberations on substantive issues, are to be put to vote.

19. Definitions of "consensus" are found in the rules of procedure of some United Nations organs.⁴¹ Some of them clearly state that consensus should not be confused with unanimity, i.e., the decision-taking process that arrives at a decision by a vote wherein no negative votes are cast albeit with abstentions. Consensus may not

³⁵ See e.g., resolutions 38/134, para. 2; 39/82, para. 2; 40/71, para. 2; 41/77, para. 2; 42/152, para. 2; 43/166, para. 2; and most recently, resolution 57/20, the third preambular paragraph.

³⁶ See paragraph 104 of annex IV of the Rules of Procedure of the General Assembly.

³⁷ *Ibid.*

³⁸ See e.g., resolution 41/213, section II, para. 6, and para. 15 of the present note.

³⁹ See e.g., resolution 41/213, section II, para. 5.

⁴⁰ Such as on the rights to speak, to make proposals, to raise points of order, to challenge the ruling and to vote.

⁴¹ See e.g., the United Nations Convention on the Law of the Sea, 1982, article 161 (7) (e), that defines consensus as "the absence of any formal objection" and sets out procedure to achieve consensus.

necessarily reflect unanimity of opinion.⁴² Some organs refer to decision-making “by consensus”,⁴³ “without a vote”⁴⁴ or “by general agreement”⁴⁵ or other terms having the same legal and practical effect.⁴⁶ Some of them instead describe procedures for decision-making that should be followed before recourse to a formal vote.⁴⁷

20. The United Nations Office of Legal Affairs, in its legal opinions on the subject, has repeatedly noted that there was no definitive or authoritative interpretation of the notion “consensus” and it was somewhat difficult to arrive at an exact definition of consensus.⁴⁸ It has also noted that nevertheless it has been the long-established and common practice in the General Assembly, its Committees, subsidiary organs and plenipotentiary conferences convened under United Nations auspices to operate on the basis of consensus.⁴⁹

21. According to the legal opinions of the United Nations Office of Legal Affairs, in United Nations practice, consensus is generally understood to mean adoption of a decision without formal objection and vote. This being possible only when no delegation formally objects to a consensus being recorded, though some delegations may have reservations to the substantive matter at issue or a part thereof. Those dissenting from the general trend are prepared simply to make their position or reservation known and placed on the record.⁵⁰ Thus a reservation made formally at the time of decision-making, while indicative of a qualified assent, does not prevent the adoption of the consensus text in question.⁵¹ In the light of the principle of sovereign equality, it is a well-established custom in the United Nations for reports

⁴² See e.g., the rules of procedure of the World Population Conference, document E/CONF.60/10, annex, that define consensus as “general agreement without vote, but not necessarily unanimity”.

⁴³ See e.g., the Statute and Rules of Procedure of the International Civil Service Commission, document ICSC/1/Rev.1, rule 30.

⁴⁴ See e.g., the Rules of Procedure of the Economic and Social Council (E/5715/Rev.2), rule 59.

⁴⁵ See e.g., the Rules of Procedure of the International Conference on the Question of Palestine, A/CONF.114/12, rule 30.

⁴⁶ Some organs use these terms interchangeably. In other organs, including in the Sixth Committee of the General Assembly, a distinction has been drawn between adoption of a decision “without a vote” and “by consensus” (see e.g., A/C.6/41/SR.35, para. 6). The Office of Legal Affairs in some of its legal opinions on the subject also drew a distinction between these terms (see the text of the legal opinion reproduced in paragraph 22 of the present note).

⁴⁷ See e.g., the Rules of Procedure of the Third United Nations Conference on the Law of the Sea (A/CONF.62/30/Rev.3, United Nations publication, Sales No. E.81.I.5), rule 37.

⁴⁸ See *United Nations Juridical Yearbook, 1974* (United Nations publication, Sales No. E.76.V.1), pp. 163-164, under item 12; *ibid.*, 1983 (United Nations publication, Sales No. E.90.V.1), p. 184, under item 23, para. 2; and *ibid.*, 1987 (United Nations publication, Sales No. E.96.V.6), p. 174, under item 5.

⁴⁹ *Ibid.*, 1987 (United Nations publication, Sales No. E.96.V.6), pp. 174-175, under item 5.

⁵⁰ *Ibid.* In practical terms, when the presiding officer announces, for example, that it is his understanding that the subsidiary organ wishes to adopt a proposal without a vote or by consensus, any delegation may block a consensus by lodging an objection or specifically requesting a vote on the proposal. It is for the objecting delegation to formulate the grounds for its objection, which, in any event has the same effect as requesting a vote on the proposal. See also, *ibid.*, 2003 (United Nations publication, Sales No. E.06.V.1), p. 533.

⁵¹ *Ibid.*, 1982 (United Nations publication, Sales No. E.89.V.1), p. 177, under item 16.

prepared by any representative organ or body of governmental experts to reflect clearly any dissents, generally in the words of the dissenter.⁵²

22. One of the legal opinions states as follows:

“The fact that consensus is recorded does not mean that there is “unanimity”, namely, complete agreement as to substance and a consequent absence of reservations. For example, there are numerous occasions where States make declarations or reservations to a matter at issue while not objecting to a decision being recorded as taken by consensus.

...

(a) Consensus decisions can be expressed in various ways. In its weakest form, that term is sometimes used to characterize any decision adopted “without a vote,” which may imply that while there is no formal objection to its being so adopted, the participating delegations do not consider themselves too closely associated with the adopted text. On the other hand, a decision may be expressly declared as having been adopted “by consensus”, implying that the decision was arrived as a result of a collective effort to achieve a generally acceptable text and consequently the participating delegations are considered to be more closely associated with the decision. It is the latter kind of decision by consensus that generally reflects the current usage of the term;

(b) With respect to the binding nature of decisions adopted by consensus, it should be noted that the legal status of a decision is not affected by the manner in which it is reached. Once adopted, it has the status of a legally adopted decision and the fact that it has been adopted by consensus or by means of a vote does not add to or diminish the legal value or significance of the decision in question. In other words, if a decision is of a binding character, adoption on the basis of consensus as opposed to adoption by means of a vote does not make the decision more binding or less binding. Adopted decisions are equal in status regardless of the manner in which they are adopted;

(c) If a delegation announces that it is not participating in the decision making but does not prevent the Chairman from stating that the decision has been adopted by consensus, the Chairman can make such an announcement and then, in effect, the situation would be viewed as if such a State was not present when the decision was taken. Those delegations which do not expressly indicate that they do not participate in a consensus must be deemed to have participated in it.

Finally, ..., it has become common practice for many organs of the United Nations to operate on the basis of consensus. At the same time, except in those rare cases where decision-making is formally limited to consensus, it is understood that delegations are entitled to request a vote and cannot be deprived of this right merely because the body concerned has agreed to operate by consensus.”⁵³

⁵² Ibid., 1983 (United Nations publication, Sales No. E.90.V.1), p. 172, under item 11, para. 3.

⁵³ Ibid., 1987 (United Nations publication, Sales No. E.96.V.6), pp. 174-175, under item 5.

23. The latter point has been elaborated in some other legal opinions where it was emphasized that consensus cannot be imposed on any member State of a subsidiary organ; any full member of a subsidiary organ may insist on its Charter-given right to exercise its vote; therefore, if any one Member formally objects to a consensus or formally requests that a vote be taken, such a vote must be taken regardless of the views of the majority. An organ cannot disregard a demand for a vote by its member, even by one State – for such a decision would deprive of the demander of the sovereign right to exercise the vote specifically granted by the Charter as restated in the Rules of Procedure of the General Assembly.⁵⁴ For the same reason, it cannot demand that more than one State request taking a decision by vote.

24. Ultimately, how States decide to reach a decision is an essentially political decision and an exercise of their sovereignty. Decisions taken by consensus are sometimes said to result in a text that is the “lowest common denominator” of the position of the participants. However, choosing to make decisions by this method may increase the chances of adopting a decision. It has also been stated that it is perhaps best to have consensus made the preferred method rather than the only method of taking decisions, since if consensus is the only method, any one participant can “hold the others to ransom.” There is practice in some subsidiary organs that decided to operate on the basis of consensus to take indicative votes on the proposals on which a consensus could not be achieved.⁵⁵ The organ later decides to vote or take a decision by consensus.

⁵⁴ See Article 18 of the United Nations Charter (referred to in paragraph 16 of this note) and rule 82 (plenary meetings) and corresponding rule 124 (committees’ meetings) (referred to in paragraph 2 (a) of this note).

⁵⁵ See *United Nations Juridical Yearbook, 1983* (United Nations publication, Sales No. E.90.V.1), p. 184, under item 23, para. 2. Apparently, such a practice existed also in UNCITRAL (see E. Suy, the former Legal Counsel of the United Nations, “The Status of Observers in International Organizations”, *Collected Courses of the Hague Academy of International Law, 1978 (II)*, p. 148), although official records do not confirm this.